

# Demystifying the LIS Purchase Cycle: All You Need to Know about RFP's and Contracts

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# University of Michigan Health System



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# UMHCC Stats and Volumes

- 1200 purchase orders done per year for all IT related equipment ( this is only for the central computing organization)
- Additional orders for Pathology, Radiology.
- 100 million dollar computing budget
- ~100 RFP's per year

# Why Computer system acquisition is like construction?

- Computer system acquisitions can be viewed as large commodity purchases such as desktops, servers, and some software
- Large application system acquisitions are like construction projects
- Laboratory information systems need to be viewed in this way

# Construction

- Just as you would contract for a commercial building or a house
- Complex computer systems have many components for success
- The building has the infrastructure: basement, walls, rooms, etc., but it also has services such as electricity, water, cable TV, etc.
- There are the enhancements such as woodwork, kitchen appliances, etc.



# Lab Systems

- The Laboratory Information System has analogous components.
  - The infrastructure:
    - Base product software
    - Operating system and database
    - Hardware
- Like a building construction there are choices that must be made:
  - Enhancements
  - Interfaces
  - Integration
  - Security

# Infrastructure

- Some LIS's require the infrastructure acquisition
- Others will be working via their current computing hospital infrastructure
- Need to include in the RFP a description of the current computing infrastructure that is installed at your institution; In addition, describing the computing standards such as Networking etc.; therefore, creating a good match between Vendor and Buyer



# Where do we start

- The process:
  - RFP with functions required
  - Contract template
  - Schedules
  - Buyer should have all of this prepared before sending to the Vendor

# RFP

- RFP
  - Need to have functional specs
  - Need to have Technical specs
  - Need to have Business specs
- This signals to the vendor:
  - The size of the LIS installation
  - The scope of project
  - Vendor is able to assess who to assign to the project and competently answer the RFP

# Bid Document

- Best Scenario for Bid document:
  - Attach a contract with legal and business terms defined
  - Attach sample schedules with template for performance requirements, interfaces, security and integration
  - Have prepared a selection criteria grid
    - This gets all issues on the table
    - This helps the buyer teams stay focused internally and keeps the decision process objective concerning vendor selection and evaluation
    - For Public sector institutions that must do a formal bid process, this facilitates the selection

# Templates

- If the Buyer can provide templates for the
  - Contract
  - Schedules
  - Policies
- If the Vendor writes the templates, the documents will be in their favor. Buyer might as well write them in their favor and make it easier to negotiate the deal.
- If Buyer actually does thorough due diligence review of the vendor paper there should be many, many changes to obtain deal on a level playing field.

# Proposal returned

- Buyer Needs
  - Right staff for analysis and the contracting process
  - Best Practice
    - Team or staff for Functional layout
    - Team or staff for Technical analysis
    - Team or staff for Business legal analysis

# Vendor Selection or Bake off

- Depending on negotiating strength, the time allotted to negotiate and the staff bandwidth for the negotiations:
  - Bake off: select top two vendors and force them to compete to win the deal
  - Compete not just on price but the best set of terms and conditions:
    - The best features
    - Services
    - Enhancements and modules
  - Make sure Vendor does not over promise to win the contract; still must be a feasible contract.

# Tentative award

- If cannot do Bake off, then select one vendor tentatively and tell the others they are in line if number one fails
- This keeps the pressure up on the selected vendor but the RFP selection team does not have to analyze two proposals

# Contract negotiation

- These systems are expensive and there are many components; so a checklist is a very good idea to not forget requirements.
- The checklist should take into account many things not just Software and Hardware.
- Services are key: a small study of U of M computer system acquisitions showed that services on some deals can be 2/3 of the cost, and the software and hardware 1/3.
- Maintenance and long term services are critical issues.
- Future purchases may need to be considered.



# Contract Check list

- Introduction
- Software grant
- Custom Development
- Equipment
- Implementation
- Testing and Acceptance
- Support and Maintenance
- Pricing and Payment terms
- Reps and warranties
- Term and Termination
- Data rights and confidentiality
- Indemnification
- Dispute Resolution
- Miscellaneous
  - Insurance
  - Bankruptcy
  - Press releases
  - Etc.

# Sample Check list Schedules

(High level, there maybe more for individual needs)

- Base software (list of components)
- Third party software
- Documentation
- Work plan
- Operating environment (hardware and software)
- Interfaces
  - HIS interfaces
  - Instrument interfaces
- Integration: security, other lab systems, other HIS systems
- Performance
  - Response time
  - Availability
  - Interface speed
  - Call back response time
  - Time to fix bugs, problems and management escalation process
  - Data Loss
- Services
  - Key personnel
  - Regular staff
- Training
- Optional future purchases
- Maintenance

# Strategies for a successful LIS Purchase

- There some key areas of the contract that will facilitate a successful implementation
- Specific Clauses for protection of the overall investment
- Considerations for finalizing the deal



# Enhancements

- Need to verify that enhancements to the system will be incorporated into future releases of the base product
- Need to verify the enhancements will not be charged to buyer in the future
- Enhancements designed by your institution should be given to you free or for reduction in cost

# Fixed price vs. Time and Materials

- Service component can be very risky
- Issues:
  - Buyer staff not ready to implement must pay for vendor time while not working
  - Vendor staff pulled away
    - Need to lock in Key personnel for engagement
    - Right to interview vendor personnel
    - Demand vendor staff must stay with project and cannot be moved to other clients

# T&M vs. Fixed

- Work plan must be in place; Vendor should be able to calculate how long it will take to do the work.
- Therefore, price is fixed like construction example. This adds some cost for vendor to assume risk of delays or unforeseen circumstances and accomplish the project.
- As long as buyer does not need many change orders and has planned well, fixed price is in their best interest to control cost. Vendor must get work done and then has to manage the cost not buyer.
- T & M works if it is a small installation without much vendor involvement, but not to do a complete overall lab system installation. Fixed price is the best practice.

# Lock-ins

- Need to lock in Maintenance fees when negotiating the initial contract purchase to obtain discounts for the new LIS: once LIS is installed, the LIS will probably not change for at least 5 years.
- Lock-in escalator clauses for increases in maintenance fees, plus lock-in escalator clause for increases in services fees. Get a rate card in contract with services and insist locked in for any salary raises.
- Need to lock-in future modules pricing; if you have to buy later the vendor has you locked in to the product line and will be less than willing to negotiate.
- Need to lock-in service prices such as:
  - Interfaces: there will always be new instruments and other data feeds that will have to be accommodated
  - Enhancements
  - Future customizations
  - Future assistance with upgrades
  - Future anything you can think of to lock in!!!



# Performance Credits or Liquidated Damages

- The Vendors will hate this!!!
- Now that we are over that
  - Need to think about performance for aspects of the Deal
  - 1<sup>st</sup> Actual delivery of the system
  - 2<sup>nd</sup> the performance of the system over its lifetime
    - Response time
    - Availability
    - Down time
    - Interface speed
    - Data loss

# Liquidated Damages (Categories)

- Attempt to get damages listed for non-delivery of the base product
- Not meeting milestones of payment schedule as defined in the work plan
- Non-delivery of performance
- Not meeting SLA on maintenance

# Liquidated Damages (Predictability of Outcomes)

- Damages between two parties is unlimited unless limited in the Contract.
- Damages are often difficult to ascertain in a contract; therefore, leaving the parties uncertain as to what could happen if there is a dispute.
- Damages maybe specified as long as reasonable.
- Avoids dispute resolution later via Court or Arbitration.

# Competitive and Derivative Works Clause

- Buyers' best interest to add this clause
- Protects during Mergers and Acquisitions
- Protects for acquisitions of Competitive works by Vendor
- Protects during sunset of products
- Defines what is the future course for Vendor and Buyer if one of the above events takes place

# Everything is Negotiable

- It's true, everything is negotiable
- But, do we want to negotiate everything?
  - Determine with legal staff the pure legal clauses that are musts
  - Determine then what must be accomplished in the base document
  - Then do the schedules
- Include RFP as a schedule in contract with all vendor responses

# Timing

- The legal issues are actually the easiest and should take around 3 days to accomplish, but save some until the end so the vendor cannot say just say:
  - “Sign and we will do the schedules later”  
because if you complete the base contract they will never get the schedules done.
- The performance schedule takes the longest, but is critical to meet customer expectations.
- This is the time to determine how the system actually performs, negotiation of a performance schedule focuses contractual metrics, so the Vendor must perform.

# Closing the Deal

- Usual course of dealing is to have some onsite meetings at the customer site
- Many phone meetings
- Vendor on site meeting
  - Usually one meeting to see the headquarters to verify company culture will work with buyer culture
  - One negotiation meeting
    - This allows access to the top staff at the organization both technical, business and legal
    - Maximum 3 days
    - Meet the project team that will work on the buyers project
    - Meet the help desk, service staff and executives
    - This should not be viewed as being in enemy territory

# Research

- Due Diligence on Vendor
  - Dun and Bradstreet financial report
  - Gartner review
  - Sec filings
  - Reference checks



# Bonding

- Consider a performance bond
  - May help achieve performance
  - Comfort factor if there is a failure
  - Depending on structure of Bond, Buyer may be out of the loop on any disputes over damages

Good Luck!



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