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2018 NASWA WORKFORCE SUMMIT
& UI Directors’ Conference
Plus IT/Legal Issues Forum

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IT Contracting for the State Workforce Agency

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Abbott: I'm telling you. Who's on first, What's on second, I Don't Know is on third--
Costello: You know the fellows' names?
Abbott: Yes.
Costello: Well, then who's playing first?
Abbott: Yes.
Costello: I mean the fellow's name on first base.
Abbott: Who.
Costello: The fellow playin' first base.
Abbott: Who.
Costello: The guy on first base.
Abbott: Who is on first.
Costello: Well, what are you askin' me for?
Abbott: I'm not asking you--I'm telling you. Who is on first.
Costello: I'm asking you--who's on first?
Abbott: That's the man's name.
Costello: That's who's name?
Abbott: Yes.
Writing or Reviewing Contracts

Basic written contractual elements need to be clear:

• Payment amount;
• Term;
• How do you get out of it if things go south?
• Mutuality of Obligation – what are the parties doing?
• Legal names of entities;
• Signatures of someone with authority;
Writing or Reviewing Contracts, cont.

- If we disagree, what happens (court? Where? What law?)
- Limitation of Liability?
- Indemnification?
- Your state requirements – usually in regulations.
- Insurance requirements?
- Independent contractor?
- Warranties?
Information Technology Contracts

• Many will change the boilerplate. (know your state requirements and use them).
• The business people have to review it, even if they don’t want to.
• Lawyers should read the SOW, even if they don’t want to.
  • Is the Statement of Work clear?
• For products, specifications:
  • Design specifications;
  • Functional specifications
  • Performance specifications
• Confidentiality provisions – will they see PII, security measures or trade secrets?
  • Several states have Non-disclosure Agreements for Contractors to sign.
Software Development Contracts

• Many will change the boilerplate.
• The business people have to review it, even if they don’t want to.
• Lawyers should read the SOW, even if they don’t want to.
  • Is the Statement of Work clear and specific enough?
  • What is the methodology (waterfall, agile, scrum, kanban).
  • Do you want reports?
  • Do you want staffing guarantees?
• Intellectual Property Rights.
• Options:
  • Time and Materials;
  • Fixed Bid.
• Are you paying for expenses or travel?
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Other terms to consider for software development contracts

- Opportunity to accept/reject
- Acceptance Criteria
- Intellectual Property Indemnification
- Training and support services
- Maintenance
- Warranties
Project Management is Key

- Attorney should be integral partner in project
- Organization and everyone on the same page
Resources

- NASWA Attorney Group
- Informal Email Group
- ITSC Website [www.itsc.org](http://www.itsc.org)
Questions?
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