

# ◆ P2P Newsletter ◆

Public to Private

Information for the Purchasing Professional and Our Business Clients

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## Inside

P2P Goes Electronic. There are now 3 ways to obtain the quarterly Newsletter. Use page 8 to change.

P2P is a publication of the certified woman-owned Nevada corporation of International Consulting & Contracting (ICC) headquartered in Las Vegas, Nevada. P2P is provided to all clients and subscribers on a quarterly basis with a goal to provide information and ideas to professionals and businesses in the public and private sectors. Annual subscription is \$10.00. Seminar participants may receive a free issue. Clients and seminar coordinators receive a complimentary annual subscription. For more information please contact Donald L. Woods, CEO, 1501 Frandosa Lane, Las Vegas, NV, USA 89117; (702) 254-6606; Fax (702) 254-7067; E-mail [dlw@anv.net](mailto:dlw@anv.net); Web <http://www.donwoods.com>  
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## Contract Incentive Clauses (Bonuses)

**I**ntroduction. Incentive clauses or contract bonus wording conjure up images of a dangling carrot in front of an eager horse, and certainly the predecessors to this concept have been around for decades. Similar examples show up in management salary negotiations, construction projects, and there is even a form of consulting wherein the provider is only paid a fee based upon a percent of the amount saved in auditing transportation costs, utility invoices, and other similar overhead costs.

History aside, today's purchasing and supply professionals must address the problem of inserting the clause into agreements for supplies and services. If a professional purchaser wants to include this concept in his or her arsenal of contracting tools, then he or she should be aware of issues such as source of funds, criteria, reasonableness of incentives, and contract language.

Internally, the suggestion for providing a bonus normally comes from a person, who has little experience with the nuances of the concept but has a great deal of ownership in the project at hand. To that user department official or upper management representative, the idea of a reward for obtaining the desired results seems to be a win-win situation.

And remember, if an agreement is to have a liquidated damages clause, it does not mean that the parties must necessarily have to have a corresponding incentive clause. In fact, no incentive clause is even required.

**Kinds of Incentives.** The most common types of incentives are the express and the implied clauses found in contract documents. By "express" I mean the wording in the contract specifically addressing the description and amount of the incentive; whereas, the "implied" provides an inference to the supplier that if certain standards are met the supplier will benefit. For example: An annual contract with five, one-year renewable options infers that as long as the contractor is meeting or exceeding expectations, the contract will be extended annually.

Incentive clauses may also be classified as "negative, punishing or penalizing" for undesired acts; or as "positive", which rewards exceptional behavior. Examples of the negative would include: liquidated damages, withholding payments, promise to or actual blackballing, and threats or actions to invoke the breach clause. Positive incentives include the bonus (more money), share of savings, longer terms or more contracts.

**Source of Funds.** Whenever there is an incentive clause, the purchaser must make sure there are funds available to cover any possible incentive reward. Preferably this extra money should be included in the contract or purchase order. The catch is that the obligor, owner or board of directors (private sector), or the elected officials (public sector), may view these extra funds as a waste of assets. Therefore, top management support must be secured in advance because improvement of the provider's quality, customer service, faster delivery or other such measurable goals is arguably already required by the agreement.

Ideally, it would be better to have the parties find ways within the agreement to save costs and then let the supplier share in a percentage of the savings. But this, too, can create suspicion about the pricing of the contract.

**Criteria.** Is there really a benefit to the owner or purchaser for the supplier reaching that goal? Take delivery time for example:

*(Continued on page 2)*

## Incentive Clauses (cont. from pg. 1)

- How and who determined the specified delivery time?
- How and who will do the measurements, calculations or decision?
- How and who has the authority to approve that delivery time and its enforcement?
- What is the true value of the product being available sooner?
- Is there an opportunity for collusion or unfair influence on the outcome by one of the parties?
- Is a monetary incentive really necessary to obtain this goal?

With the contractor already bound by specific terms in a contract, it might be difficult to support a payment for a "desirable" result. And at contract formation, there may have been a misconception, or lack of attention, so that the goal was too lax and therefore guaranteed the contractor/supplier the extra funds.

**Reasonableness of Incentives.** The Uniform Commercial Code and contract case law may lack detailed treatises on this subject, but one theme is reoccurring: "The value of an incentive must be reasonably related to the value of the benefit to the other party." And just like the reasonableness in the liquidated damages clause, this should be measured at the time the contract was entered into. This means that both parties should have qualified experts prepare the measurements as well as amounts of compensation to be earned via the incentive clause.

**Conclusion.** During discussions for using incentive clauses to obtain improved quality goods and services, on time deliveries, excellent customer service, etc., the purchasing professional must be able to explain the pitfalls of utilizing these clauses. And be able to draft comprehensive and enforceable contract language when the decision is to proceed.

### REFERENCES

Woods, Donald L., J.D.,C.P.M., "Incentive Clauses In Contracts", NAPM 84th International Purchasing Conference Proceedings Manual, May 1999, pp 179-81 (Discussion of Benefits and Pitfalls)

Woods, Donald L., J.D., C.P.M., "Incentive Clause Caution", Purchasing Today, October

1998, p. 16 (Summary of Potential Problems with Bonus Clauses).

Pye, Carolyn, "Putting Performance on the Line", Purchasing Today, May 1997, p. 47 (Supplier Bonuses for Improved Services)

Pye, Carolyn, "Blazing the Trail for Bonuses", Purchasing Today, January 1996, pp. 28-30 (Internal Bonuses for Cost Savings).

## Leading Concepts

**On-line Internet Bidders' Lists** that also allows each supplier to keep it updated:  
Orange County, CA

**Out-sourcing a Purchasing Function** for conducting an RFP for employee benefits:  
City of Tucson, AZ

## Successes

**A**n attendee of one of Don's workshops adopted a procedure that relied on the faxed signature of suppliers being valid and enforceable to reduce the number of protests and complaints about receipt of bid notifications and addendums.

Utilizing information from one of Don's seminars an attendee mailed the 3-question survey to all of his suppliers and learned that he was not focused on the real problems of his customer service.

## Road Warriors

**F**or those of you who must travel, but are unable to take along your computer, you may want to check out the following products:

POP MAIL by <www.hotmail.com> to read your e-mail from remote locations. It's a free service by Microsoft, and there are no long distance charges for logging on to your server account. At your remote location, you will need an Internet programmed accessible computer from a hotel, library, client's office, relative or friend. See detailed setup instructions at <http://brucej.hypermart.net/mail/hotmail.htm>.

DYNAM IP by <www.pc-oncall.com/pcawinternet.htm> remotely starts up and operates a PC at your office or home from your travel location. Yes, you can have it send files, etc., to your current location. Requires some software, less than \$100, and a brief phone call to turn the office/home computer on. But as soon as the computer acknowledges your authorization code, hang up the phone, and use the remote computer to manipulate your office/home computer. There are no service charges.

## PCARDS (All Sites Active at Press Time)

If your organization is going through the Purchase Card implementation process and you need samples of manuals, policies and procedures, you might check out the following web sites:

- <http://www.state.ak.us/local/akpages/ADMIN/dof/pcard/pman.htm>
- <http://www.usask.ca/purchasing/pcard/manual.html>
- <http://www.fms.treas.gov/tfm/v1p4c450.txt>
- <http://wilsoncreek.ais.unc.edu/msd/pcard/prod01.html>
- <http://www.fas.harvard.edu/~fasadapt/pcard.html>
- <http://www.citadel.edu/search> (use "purchase card")
- <http://w3.arizona.edu/~fso/pcard/index.html>
- <http://www.umich.edu/~finops/PCard/>
- <http://www.oba.uillinois.edu/uiBUY/pcard/>
- <http://co.stanford.edu/payments/disbursements/creditcards/pcard/manual/index.html>
- <http://www.fiu.edu/~purchase/pcard.htm>
- <http://www.nima.mil/poc/contracts/PCard.htm>
- <http://www.business.gatech.edu/depts/PURCHASE/ps/pcard/pcard.htm>
- <http://class1.purc.uconn.edu/pcard/userman.html>
- [http://www.fau.edu/admin/fiscal/purchase/pcard/man\\_indx.htm](http://www.fau.edu/admin/fiscal/purchase/pcard/man_indx.htm)
- <http://www.unh.edu/osr/unhlocal/pcard.html>

Please note that by posting the manuals, the entities, suppliers and users have ready access to the information and there is only one document to keep updated.

Remember to include an orientation session for new users as well as continuing education and reports for all users and management.

## ICC Strategic Alliances

ICC and its alliance partners market the following goods and services:

- GPS Vehicle Tracking, & Electronic Surveillance Countermeasures - world wide
- Commercial Low Voltage wiring and cabling for telephone and computers - State of Nevada.
- Software engineering, design, implementation and specification writing. western 9 states.
- Computer hardware, peripherals, shelf software, networks and consulting - Southern Nevada
- Temporary employees - State of Nevada
- Police and safety equipment -world wide (No firearms)
- Management studies and solutions - world wide
- Seminars, workshops and key note addresses - world wide
- Providing boilerplate bid documents, specifications, and project management - nationally
- Outsourced Purchasing, Contract Administration, and Management Services - nationally
- Opportunities to submit proposals on major state and local government contracts - nationally
- Modular office furniture moving & sales - Southern Nevada
- E-Commerce and automatic cash transactions

If you can utilize our assistance, please contact Don Woods at 702-254-6606. If there is a bid or RFP document currently active in one of these categories we would appreciate a notification via fax 702-254-7067 or e-mail <DLW @ anv.

## Description of Some Seminar Topics (updated 12-15-97)

**D**on Woods' Seminars provides all of the topics in the accompanying list (see page 5) for the entry level buyer (basic), but most of the topics are also designed for the intermediate to advanced buyer (professional). Many of the topics are also presented in a highly technical, theory orientated format for the very experienced buyer or purchasing executive (expert). Many entities currently use our training manual or presentations to train their staffs. Here are some descriptions of a few of our presentations.

### **4-Hour Presentation on Construction Bids**

This fast-paced basic course introduces attendees to standard bid document organization, procedures for conducting a bid, problems to look for, and how to make sure the project does not embarrass them later. We recommend the 8 and 16 hour seminars to obtain detailed discussions and the "how to" procedures and forms.

### **8-Hour Presentation on Acquiring Professional Services**

During this introductory course the experienced attendees will be introduced to the best documents utilized today to acquire professional services, such as architects, consultants, doctors, and auditors. We will also explore the methods to use to write a great SOW (Statement of Work), understand and incorporate binding contract language, and the monitoring of the contract for project success. When combined with the negotiations seminar, it makes a great two-day seminar.

### **8-Hour Negotiations Seminar**

The course covers the theories of negotiations, the practical methods to utilize, and how to prepare for and satisfactorily conclude formal negotiation sessions. During the day, there will be class participation exercises to emphasize techniques and methods. Attendees who complete the class will have a better understanding of how to deal successfully with other people, be great negotiators, strengthen their ability to accomplish the goals of their employer and themselves. The ideas presented are designed for owners, department heads and project managers, while a 16-hour seminar is available for the experienced purchasing professional.

### **Customer Service in Local Government**

This 4 to 8 hour presentation provides a

method of eliminating customer complaints while increasing efficiency and employee morale. Attendees will receive step-by-step ideas to implement an in-house program. It is designed for every level of leader, but also educates the staff member on how to achieve customer service excellence.

1. Improve your management techniques.
2. Know the real problems.
3. Team building and participation.
4. Responsive results.

### **Great Specifications**

This 8-hour presentation will focus on technical and performance specification development for commodities and service or maintenance type bids and contracts. Each attendee will be exposed to the latest successful procedures, check-lists, specification sources, and methods of involving the users and suppliers to achieve great documents. The course is specifically designed to include the new and experienced buyer, as well as the buying team leader or supervisor. All information presented can be used on the job the next working day.

### **Uniform Commercial Code**

This 2 to 8 hour presentation compares the UCC to contract law and explains why the code is applicable and important in any buyer's business day. Attendees will gain the knowledge to immediately utilize the information and will have a checklist for quick referencing. This basic course provides both the entry level buyer and the advanced purchasing agent a comprehensive understanding of how

to take advantage of the laws developed especially for the buyers and sellers of goods or commodities.

### **Surety Bonds**

This 4-hour seminar is one of the most comprehensive presentations about contractor bonding ever presented in your area. You will have the opportunity to review standard bid and contract language as well as several bond forms. The presentation will culminate with presentations by the local bonding companies. It will also allow the attendees to compare, shop and sign up for a bonding portfolio.

### **Best of Best - 1 day**

"Best of the Best" is only offered to leaders in the purchasing function. Each session will have a limited number of attendees who have been screened and pre-prepared for the meeting. This round-table, symposium, brainstorming format is designed for the particular region with an emphasis on current trend concept implementation, managing more efficiently and the exchanging of ideas that are being implemented by innovative practitioners around the country. Attendees will be provided the tools necessary to adopt the new ideas.

### **Purchasing's Future**

This advanced presentation explores the concepts associated with the purchasing profession now and in the near future. You will examine teamwork, TQM, management theories, as well as the skills that will be mandated in just a few short years. All public and private purchasing professionals planning for a successful career will garner many useful

*(Continued on page 5)*

ideas and tools to start using immediately.

**Advanced Specification Writing**

Beyond basic bid documents there is an exciting field for the expert purchaser who wants to efficiently and effectively buy sophisticated items and services utilizing concepts that are leading edge today. This seminar concentrates on the techniques, and specification terminology for complex purchases and contracts that will take the attendee into the strategic level of purchasing. The contents are designed for the experienced purchaser, the buying team leader and the manager who ultimately supervises the Purchasing Department or function.

**Buyer Training**

Don Woods has been providing in-house training to new buyers and employees for more than 14 years. These programs are specifically tailored to each business or public entity and include all of the techniques absolutely necessary for successful purchasing professionals and their internal customers. Our customization includes your policies and procedures as well as the basic purchasing concepts and techniques so vital to a successful operation. Many of the basic courses listed in Presentation Topics are addressed in the classes. If you would like to have a leading edge purchasing staff, call today for a free consultation.

Those wanting a more advanced program for existing staff should contact us immediately to reserve a date on the 1998/1999 agenda.

**Public Purchasing Leaders**

What does it take to become a successful manager/leader of a governmental purchasing operation? In this seminar we cover background, training, education, philosophies, procedures, techniques, networking, brainstorming, follow up, empowerment, responsibility, trust and communication skills needed to make you one of the most effective supervisors in the United States.

**Advanced Purchasing Best Practices**

This is an in depth education presentation for the EXPERIENCED buyer, and will address current issues now confronting the purchasing profession. While this is primarily a lecture course, all attendees will be asked to participate in discussions about current best practices. As always, there will be checklists, sample forms, generic procedures and other information that can be utilized on the job the

next day. This seminar will also be of interest to innovative leaders, purchasing supervisors and their managers, elected officials and CEOs, cross-functional teams, and in-house customers of the purchasing department. Areas include: cross functional contract management, solving supplier problems, insurance & bond monitoring, professional service administration, and construction project coordination. (Note, this course can be customized to emphasize additional topics)

**Presentation Topics**

(basic to advanced)

- ◆ Best Practices
- ◆ Bid Boiler Plates
- ◆ Bids (RFB & IFB): Commodities, Construction, Hardware, Health, Insurance, Maintenance, MRO, Professionals, Services, Surplus Disposal
- ◆ Bond Monitoring
- ◆ Buyer Training
- ◆ Construction Project Management: For the Contractor, Buyer and Owner
- ◆ Contract Administration
- ◆ Contracting Maintenance
- ◆ Creative Brainstorming
- ◆ Cross Functional Teams
- ◆ Customer Service
- ◆ Escalation Clauses
- ◆ Evaluating your Customer Services
- ◆ Excellent Business Practices
- ◆ Fax, Legal Aspects
- ◆ FOB (Transportation)
- ◆ Future of Purchasing
- ◆ Health Providers

- ◆ Insurance Monitoring
- ◆ Insurance Solicitations
- ◆ Leadership Techniques
- ◆ Liquidated Damages
- ◆ Managing a Purchasing Department
- ◆ Negotiations
- ◆ New Buyer Training
- ◆ Obtaining Local Government Contracts
- ◆ Organizing your work for efficiency
- ◆ Philosophies for the Future
- ◆ Policy Manuals
- ◆ Procedure Manuals
- ◆ Professional Services, RFQs, RFPs
- ◆ Prompt Payment for Suppliers
- ◆ Purchasing Techniques
- ◆ Reengineering Purchasing Solicitations (RFP & RFQ): Consultants, Auditor/Accountants, Computer Integrators, Insurance, Health Providers, Bond Sales, Professionals, Software, Instructors
- ◆ Slow Pay Solutions
- ◆ Solving Purchasing Problems
- ◆ Specification Writing
- ◆ Std. Contract Language
- ◆ Std. P.O. & Bid Clauses
- ◆ Starting Into Business
- ◆ Strategic Planning
- ◆ Support Staff Fundamentals
- ◆ Support Staff Training
- ◆ Surety Bonds
- ◆ Training New Buyers
- ◆ Training Users to Prepare Specifications
- ◆ Uniform Commercial Code
- ◆ Utilizing TQM Concepts

**Free Registration for coordinating a presentation in your area on a topic of your choice. Contact Don at (702) 254-6606**

# Coop Update

(Part 1 of a Three-Part Series)

**F**or several years Don has been advocating the utilization of cooperative purchasing to obtain the benefits of larger quantity discounts, saving staff time, and having the appropriate expertise to make the bid/project successful.

Currently, many employers think that their buyer or purchasing department should be able to "buy" anything and everything. This concept puts a burden on the in-house staff, its management, and the human resources department (personnel) due to the multitude of products and services needed. For example, in a small purchasing organization, a particular buyer may be conducting a bid for computers one day, construction the next, office supplies the following day, and will be expected to "administrate" all of the previously awarded bids, including solving all problems and disputes arising from existing contracts.

This philosophy also dictates that an appropriately trained and experienced employee be hired, or that resources be expended to educate existing staff. Once an expertise is developed, there must be additional funds allocated for continuing education, networking with similar experts, and monitoring ever changing concepts within that field of expertise.

When there are several purchasing organizations within a jurisdictional or geographical area, there is a replication of expertise and expenditures of staff resources.

In the past we have informed our readers about the "Northern Nevada Purchasing Council", a coop that enjoys the ability to award contracts on behalf of their fellow members through an interlocal agreement very much like a "Joint Power Authority" (JPA). At this time we would like to introduce you to the "Front Range" in Colorado.

Twenty-five school districts in an area stretching from Denver to the southern Colorado border (hence the "Front Range of the Rocky Mountains") have developed an embryo organization to cooperatively bid requirement contracts. Officially known as "Cooperative Educational Purchasing Council (CEPC), the members officially meet once per month to brainstorm and approve asset allocation based upon pre-approved goals and mission statements.

Needs are discussed and the school with the most qualified staff or buyer will "sponsor" the project. All of the other members will subsequently submit their requirements as well as the particular nuances they have had with prior contracts of this product or similar bids. That means the staffs of 24 schools are acting as consultants to the sponsoring school's "expert" to develop an exceptional bid document, while optimizing larger quantity discounts.

This emerging organization is already having a major effect in the way school district purchasing is being conducted in Colorado.

My contact for this article was Liz Dunaway at Douglas County Schools:  
[lizdunway@ceo.cudenver.edu](mailto:lizdunway@ceo.cudenver.edu).



## About Don

**D**onald L. Woods, J.D., C.P.M., parlayed his law degree into a very successful 20-year career in management, purchasing and contract administration. At Clark County he was responsible for a staff of 26, and was the chief negotiator for the County. Prior to that, he managed private law firms and had other management positions in the Fresno County D.A.'s office.

Don has been an instructor at the University of Nevada in UCC and Contract Law classes, and is the author of many articles in national publications for private and public entities.

He is a noted national speaker and presents continuing education seminars on a variety of subjects such as basic and advanced courses in total quality management techniques, purchasing skills and concepts, winning at negotiation, how to write agreements, managing methods, and how to be successful at selling services and goods to others. He has received numerous awards of recognition for his contributions to his professions and for his training programs. As a consultant, Don provides audits or reviews of existing business practices, facilitates brainstorming and visionary ideas, creates leading edge management philosophies and conducts in-house training for corporations and governments.

Through International Consulting & Contracting he offers a business management service, but also makes his expertise available to new and emerging businesses or those firms having trouble making a profit.

Additional information is available on our web site <[www.donwoods.com](http://www.donwoods.com)>.

## Don's Schedule

9-1 to 9-5, 1999 NAPM Southwest Conference in San Antonio, Texas. Speaker  
 10-02 to 10-6, 1999 NPI Conference in Galveston, Texas. 2 hr. workshop on contract control.

## Current Scams

**T**he following was excerpted from MSN Money Central Web Site article By Steve Gillmor.

According to Mr. Gillmor, telemarketer's find three ways to prey on businesses without purchasing departments and we need to train our staffs to be wary of unordered merchandise and phony invoices. Please see <<http://moneycentral.msn.com/articles/smartbuy/scam/3069.asp>> for the complete article.

The article points out that churches, fraternal and charitable organizations, small businesses and maybe even governments, are being bilked. Anyone with nondurable office supplies that are frequently ordered --light bulbs, cleaning supplies, toner, paper -- that typically any employee can order on their own without going through the company procedures, can be targeted.

The author explained that office supply scams fall into three basic categories:

1. The phony invoice. Con artists use various ploys to get an employee's name and address, claiming "the accounting department lost the name" or asking for the name of the person in charge of Yellow Pages advertising. Then the unordered merchandise is shipped, with an inflated invoice timed to arrive after the goods have been opened or at the same time as other legitimate bills are expected.
2. The pretender. The caller pretends to be your regular supplier. If you ask about price, the seller may say, "It's the same as last time." Sometimes the scam artist claims he's conducting a survey on office equipment or updating company records. A variation uses high-pressure tactics to push the buyer into a quick decision, with the seller claiming prices are going up soon, a warehouse is overstocked or someone was forced out of business.
3. The gift horse. The caller tricks an employee into accepting a free promotional gift. Then, when the unordered merchandise arrives and the employee denies ordering it, the fraudulent seller hopes the company will doubt the employee and pay the invoice.

The article concludes with this advice: "Under federal law, if you get something in the

mail or get something delivered that you did not order, you can keep it for free." It's illegal to send bills or dunning notices for unordered merchandise, or to ask you to return it --even if the seller offers to pay for shipping.

NOTE: The article and these excerpts are copyrighted by Microsoft and cannot be reused without written permission. P2P has authorization to re-publish this condensed version for your edification, but please visit the above web site for the com-

## CAPPOLIST

**I** have seen several bulletin board type chat room or forums for exchanging information but this fledgling site has really hit pay dirt. Most of the exchanges are looking for sample bid documents or seeking existing contracts to join onto or piggyback. A few even ask for problem solutions. Many requester are receiving this, high quality information from experienced professionals on the same day the request is submitted.

There is a noticeable improvement in cooperation between the CAPPO membership, increasing sources of information, the rise in professionalism among the participants as well as better educated and informed staff. The only down side so far is the number of messages that need to be reviewed before the reader gleans a gem that can

be used. As these sites improve more innovativeness will probably solve these issues.

If you want more information, please contact Ray Ambler <[rambler@slovet.org](mailto:rambler@slovet.org)>. Please keep in mind how busy he is and respect his ability to

## WEBSITE RESOURCES

Research/Papers/Articles (search engine for any topic) <<http://www.napm.org>>

Purchasing Manual (Arizona State Univ.) <<http://www.asu.edu/aad/manuals/pur/index.html>>

Contract List (University of Western Ontario) <<http://www.uwo.ca/finance/purchase/supply.html>>

"How to Business with Us" guides (Tenn) <<http://www.state.tn.us/general/serv/purchasing/dobus.html>>

Benchmarking "Best in Class" (National assn of Educational Buyers) <<http://naeb.org>>

Mission Statements & Strategic Planning (City of Denver) <<http://infodenver.denver.co/us/govt.html>> Click on Purchasing

Online samples of bids (NIGP) <<http://www.nigp.org>> For members only.



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