

Technology Agreement Reviews, Technology Exceptions, and Procurements

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Why is my
exception
taking so
long?

This
software is
free...can't I
just use it?

What's a
EULA?

My
exception is
approved!
Am I done?

Why can't I
just put
technology
on my PCard?

Agenda

- What's a Technology Agreement and why is review required?
- How are Agreements and Technology Exceptions related?
- What does “review” include?
- Common Risks & Challenges
- Frequently Asked Questions
- What's Next?

What's a Technology Agreement?

There are many types of agreements governing our technologies

Some Types of Technology Agreements

- Software: End User Licensing Agreement (EULA) or other license agreement
- Hardware: Purchase agreement + likely includes software terms
- Click to Accept agreements for mobile or workstation apps – on any City equipment
- Technology agreements typically include additional vendor terms such as terms of use, privacy policy, acceptable use policy, etc.
- Fiber/Connectivity Agreements, IRNE IGAs

Multiple documents could be involved

- EULAs, terms and conditions, hyperlinked documents like Privacy or Acceptable Use documents

Why is Review Required?

- The applicable terms and conditions create a binding agreement between the contractor and the City – a key difference from when you “accept” an agreement at home
- This is true even if the terms and conditions are accepted electronically, referenced on a contractor quote, a hyperlink, or by some other means
- City Code requires review
 - City Attorney Review: PCC 3.10.030(B) - City Attorney must review and approve as to form “all written contracts . . . or other legally binding instruments to which the City is a party”
 - BTS Review: PCC 3.15.090(B)5 "In cooperation with BRFS, reviews and approves the purchase of all technology software, hardware, on premise or hosted systems and professional technology consulting services."
 - Procurement Rules: PCC 5.33.060 A – Bureau Directors may execute goods and services contracts under 10K, so long as they "...not be artificially divided or fragmented so as to constitute Procurements under \$10,000."
 - HR 4.09 Appropriate use of City Resources is "Authorized by the appropriate authority and such use is not in conflict with local, state or federal laws or regulations, City Charter, City code, City administrative rules, and any bureau specific procedure, or regulation."
 - This rule includes the potential for personal liability

Why is Review Required?

- Review is required even when software is free
 - Just because the software is free doesn't mean the terms will be acceptable or without significant risk
 - Even free software can include extensive terms and conditions with multiple vendor documents that must be reviewed
 - Code makes no exception to City Attorney or BTS review even if it is free
 - Potential for audit findings or financial liability if “free” software isn't removed after trial period
- BTS review is required unless a [BTS Exemption](#) is granted. Currently only two: Supervisory Control and Data Acquisition (SCADA) and the Office of Transportation Traffic Management System.

How are Agreements and Technology Exceptions related?

We know there has been confusion about what an approved technology exception means

In the past, it's meant that BTS does not have technology concerns about a proposed technology

BTS hasn't been including legal or procurement review in the past



There are three components to a full approval to buy/use technology

Technology review

Legal review

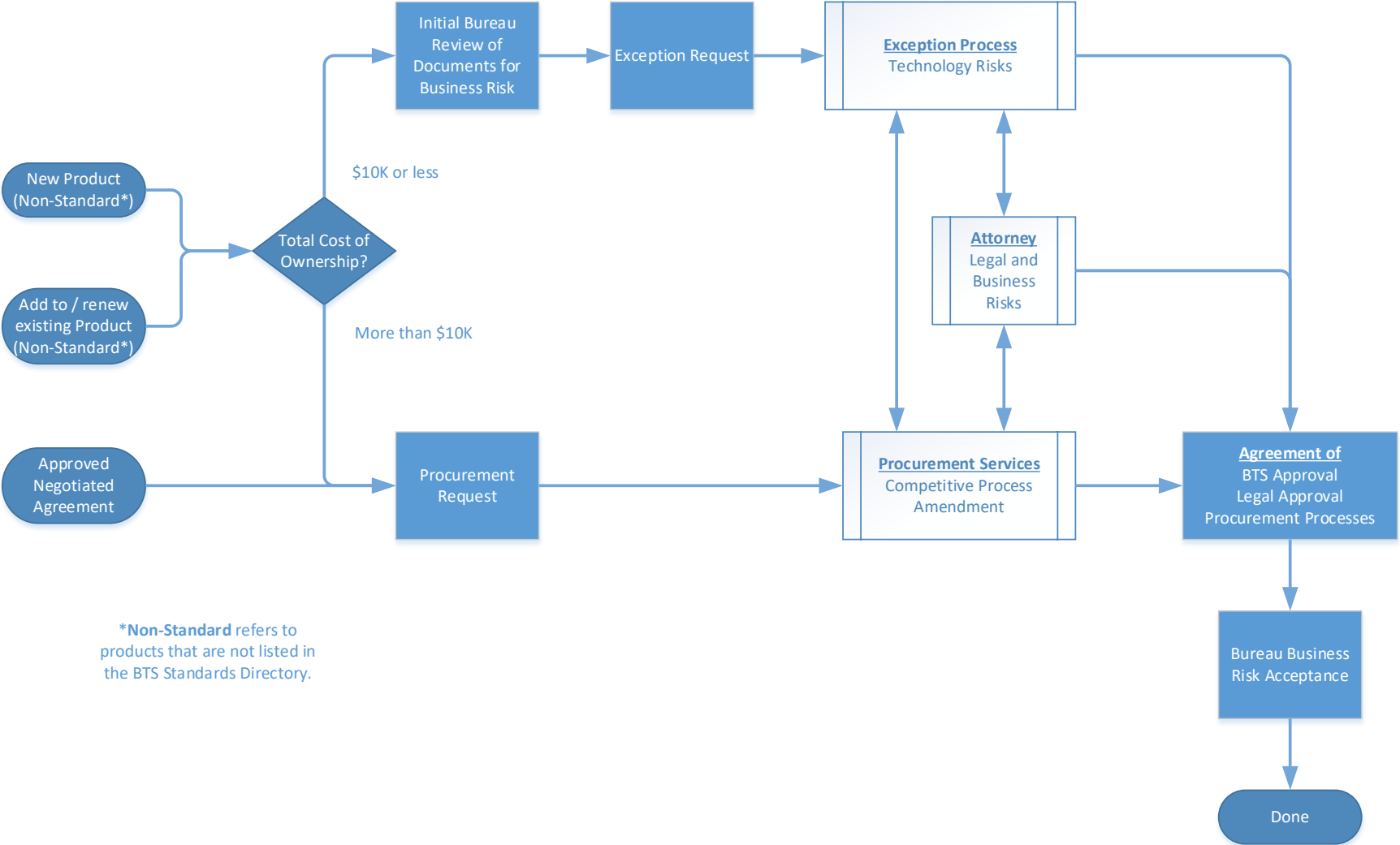
Procurement Authority



Reviews for technology fit and legal requirements as well as proper procurement are needed before new technologies come into the City

BTS has been trying to do work on behalf of bureaus – this leads to long review times and is not sustainable

Updated Technology Agreement Review Process Flow Chart



What Does “Review” Include?

- Bureau must review agreement terms to ensure terms are consistent with bureau goals/needs and to identify areas where negotiation with the vendor may be required

Technology Fit reviews for things like:

- Compatibility with our overall environment
- Information Security
- Reduce the number of similar purchases for duplicative functions
- Understand and set expectations regarding technology support

City Attorney must review agreement and approve it as to form

- City Attorney may identify legal or business risk issues that require Bureau Director approval/acceptance of risk
- City Attorney will identify any issues that would prevent legal approval as to form

Procurement Review reviews for things like:

- Procurement may have a master agreement already in place
- Procurement may be able to leverage an existing state price agreement
- Procurement code has dollar thresholds that are being violated by fractured purchases

Common Risks & Examples of technology risk issues

- There are three common risk types
 - Technology
 - Business
 - Legal
- Technology-related risks
 - Information security-related risks
 - Are we including sensitive information? Are we storing data in places we can't control?
 - Bureaus can only accept technology risk for their bureau
 - Network security-related risks
 - Use of poorly designed software can make networks vulnerable to attack

Examples of business risk issues

- What promises/warranties does the contractor make about performance of the software?
- What are the City's remedies for downtime/software problems?
- Is the scope of the license consistent with the bureau's business needs? (e.g. only City employees are permitted users but City contractors need usage rights)
- What are the City's termination rights?
- What are the contractor's data security policies and how is personal information protected?

Examples of legal risk issues

- Choice of law and dispute resolution outside Oregon
- City is required to indemnify the contractor
- City is required to destroy/return all contractor confidential documents upon termination of license (contravenes public records law and archiving requirements)
- Contractor does not protect the City for third party intellectual property infringement issues
- City ownership of data is required
- Data is held in a location outside the US (different privacy policies may apply)

Common Procurement Challenges

- All procurements must go through review/process before executing
 - Don't just send an invoice!
 - Pcards – generally not allowed for technology purchases
- Using appropriate process – Breakpoint at \$10,000.01 cost over life of the software
- Splitting – in bureau, across bureaus
- Subscriptions – billing frequency; account management
- “Hidden” tech – it's part of a good or service
- Renewals – not given enough time to process; previously skipped review processes
- Contractor compliance with City requirements

How will we be asking for bureau help to speed things up in the future?

- Check with procurement experts first – ensure you have a proper procurement method for the product before seeking an exception request.
 - If not, be prepared to consider other products and potentially seek competition.
 - Who can help: Your bureau procurement contacts, BTS Technology Procurement & Cellular Services, OMF Procurement Services
 - Potential contractors can tell you if they have a recently competed government contract
- Gather licensing/agreement docs (including all hyperlinked documents) and submit **Word** copies of all docs with your exception/procurement request
- Review licensing/agreement docs for business fit/risk understanding before you submit request – working on a checklist to help
- Be ready to review/approve other risks identified as others review in the process
 - Bureau Director must approve identified legal or business risks if terms are not negotiated with contractor

Frequent Questions

- Why should my bureau director care about this \$10 software?
 - Bureau Directors have the authority to accept business risks and legal risks (with a few exceptions) for THEIR bureau.
 - Does the software process personal information or credit card data that could result in significant liability for the City if there is a data breach?
 - Are the license terms appropriate for what the bureau is trying to accomplish? (e.g., you may use the software for your “personal” use).
 - Will the City retain ownership of any City data stored in the software and is there a clear process to retrieve the data once the license agreement is terminated? (Comply with public records and archiving)
 - Does the license agreement require resolution of disputes in the Isle of Man? Bureau will be paying for outside counsel to defend a lawsuit in that jurisdiction. City cannot advise on contract interpretation or represent clients in a jurisdiction where we aren't licensed.
- Can risk acceptance authority be delegated by bureau directors?
 - Yes, but it should always be in writing.

Frequent Questions

- Do I have to go through this process before I use this technology?
 - Yes, see code. This includes software pilots and downloading trial licenses.
 - Legal note: Remove trial licenses when finished. They come up in audits and the City could pay for license violation.
- My bureau's exception was approved, and the technology was procured! Are we finished?
 - Want to use the same technology for a different reason? New uses/information classifications/software capability can require new review (BTS AR 2.18)
 - Plan for renewals/maintenance – need processing time especially at yearend!
- Does this apply to mobile apps?
 - Yes, mobile apps carry the same risks and requirements as any other application.
 - As part of the EMM project, BTS is developing mobile app governance
- How long does this all take??
 - There are many stakeholders involved. This can take several weeks (even months), though we do our best to keep things moving.

What's Next?

Advice to Bureaus

- Make a purchasing plan before you submit a request
 - Identify ongoing purchases, such as software maintenance and subscriptions
 - Consider if other Bureaus are purchasing these same products
 - Start several months in advance for any renewal that requires review
 - Expect extra time to get agreements in place where possible
 - Talk to vendors about compliance and procurement authority

Upcoming Process Changes

- More process improvements to the exception and hosted system forms to get better information up front
- Will be asking for bureau help to gather and review agreement documents
- Will be expecting bureau director (or designee) review/acceptance of business risk

Challenges

- Resource constraints: 3 Enterprise Architects, 2 lawyers, 1 CISO, limited Procurement staff
- Please give the process enough time

Summary Themes

- These processes are in place to protect the City and our community members
 - Ensure the technology we use will fit our environment and security needs
 - And... that we know what you're talking about when you call the HelpDesk when it breaks!
 - Ensure that legal obligations made on behalf of the City don't introduce unknown or unnecessary risk
 - Ensure that we're making purchases in compliance with public procurement rules and using community resources most effectively
- We're working to connect processes and add more efficiency and clarity
- Your partnership is essential and valued

Thanks!

Any questions?

Start with your [Technology Business Consultant](#)