

Get Rid of Specification Loopholes – Little Openings with Big Consequences

Presented by

Betsy Bratton, CPPB, VCO
Statewide Contract Officer
Department of General Services
Division of Purchases and Supply

FORUM 2009
Mapping Strategies in Uncertain Times





Ambiguous Newspaper Headlines

- *Police Begin Campaign To Run Down Jaywalkers.*
- *Safety Experts Say School Bus Passengers Should Be Belted.*
- *Squad Helps Dog Bite Victim.*
- *Juvenile Court To Try Shooting Defendant.*
- *Man Struck By Lightning Faces Battery Charge.*



Ambiguous Newspaper Headlines

- *Grandmother Of Eight Makes Hole In One.*
- *Giant Police Exercise To Guard President.*
- *Miners Refuse To Work After Death.*
- *Red Tape Holds Up New Bridges.*
- *Kids Make Nutritious Snacks.*



Specification Loopholes – Little Holes with BIG Consequences

- Loopholes are an ambiguity or omission in the text through which the intent of a contract or obligation may be evaded, intentionally or unintentionally.
- Loopholes are the effect of specification writing pitfalls.
- If you avoid specification writing pitfalls, you can avoid opening loopholes through misinterpretation.



Consequences of Loopholes

- Wasted Effort
- Rework
- Increased Cost
- Contract Changes
- Lost Time
- Work Stoppage
- Delays
- Finger Pointing
- Confusion
- Disorder
- Turmoil
- Embarrassment
- Re-procurement



Spec Writing Pitfalls That Cause Loopholes

- Omission of information
- Inaccuracies
- Clichés
- Acronyms
- Assumptions
- Conflicting information
- Writer's blindness
- Use of unclear pronouns
- Use of vague and ambiguous language
- Use of passive voice



Pitfalls (cont'd)

Use of unclear pronouns

- Example: Agency A is soliciting proposals from vendors to provide lawn care services. They will be responsible for providing all lawn maintenance equipment.
- Clearer: Agency A is soliciting proposals from vendors to provide lawn care services. The contractor will be responsible for providing all lawn maintenance equipment.



Pitfalls (cont'd)

Use of vague and ambiguous language

Ambiguity means that a single reader can interpret the requirement in more than one way or that multiple readers come to different interpretations.



Pitfalls (cont'd)

Example of ambiguous language:

- The Contractor shall provide **a sufficient number of** employees to provide janitorial services during the event.
- Clearer: The Contractor shall provide **ten** employees to provide janitorial services during the event.



Pitfalls (cont'd)

Example of ambiguous language:

- The flange shall be fastened by gluing and clamping or riveting.
- Clearer: The flange shall be fastened by gluing and clamping or **by** riveting.



Pitfalls (cont'd)

Some examples of ambiguous words:

- "RUN" – has 67 different meanings
- "ANY"
- "INCLUDE"



Pitfalls (cont'd)

Use of passive voice:

Simply stated, passive voice is:

The subject of the sentence is not active, but is, instead, being *acted upon* by the verb (is *passive*).



Use of Active Voice

Use of Active Voice

Simply stated, **active voice** is:

The subject of the sentence performs (*ACTS ON*) the action expressed in the verb.



Active and Passive Voice Examples

Examples:

Active Voice: Marilyn mailed the letter.

who *did* *what*

Passive Voice: The letter was mailed by Marilyn.

what *did* *who*

Passive Voice (worse): The letter was mailed.

what *did*



Active and Passive Voice Examples

Specification Example

Passive Voice:

The project timeline deliverable must be completed by November 30, 2009.

Active Voice (clearer):

The contractor shall complete the project timeline deliverable by November 30, 2009.



Active and Passive Voice Examples

Specification Example

Passive Voice:

The following documents must be submitted.

Active Voice (clearer):

The Contractor shall submit the following documents.



Active and Passive Voice Examples

Specification Example

Passive Voice (with Ambiguous Words):

The work shall be performed by **competent** technicians who are employees of the Contractor and **familiar** with the specific equipment.



Active and Passive Voice Examples

Active Voice Without Ambiguities (clearer):

The Contractor shall provide factory trained and certified technicians to perform the work. Technicians shall be employees of the Contractor. Technicians shall have a minimum of one continuous year of actual field experience repairing the same make and model of equipment covered by this contract.