COVER STORY
Leadership—Leading or Following?

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What Do Followers Need from Leadership?

Cory Harms, M.S.
Associate Director of Purchasing
Iowa State University
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2014–2015
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August 4-5, 2014  
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July 29, 2014

NAEP Competency Model  
September 9, 2014

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October 5-8, 2014  
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Albany, NY

Great Lakes  
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New England  
October 19-22, 2014  
Falmouth, MA

District II  
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Carolinas  
November 15-19, 2014  
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Letter from the CEO

A Path to Success

Doreen Murner
CEO, NAEP

It is finally summer. After the long, seemingly never-ending winter we have arrived at a time and place to take a breath. Use this time to recharge and rejuvenate yourself personally and professionally. Visit family. Take a vacation. Walk down a new trail or path near you. Read a book. Learn something new.

Now is a great time to dive into that particular subject that was always of interest to you. Now is a great time to branch out and learn more about something new. If you don’t do it now, then when? We’re never too old, too young, too inexperienced or too anything to continue our education. In fact, it has been noted that when you decide to stop learning, that is when you start getting old.

“Live as if you were to die tomorrow. Learn as if you were to live forever.” —Mahatma Gandhi

NAEP offers continuing education opportunities to help you extend your professional and personal learning. This August, we have two world-class institutes—on Supplier Diversity and on Strategic Procurement. Each offers specific learning objectives taught by some of the best thought-leaders in higher education today. They are quick, easy ways to dive into a procurement subject of interest. On those summer days when it’s too hot to go outside, download the Green Procurement Study or the Innovators Forum reports on Technology and Human Resources to glean some best-practice tips. Before you jump into the pool, jump into the new contract library portal, NAeProcure, to search and compare higher education procurement contracts. (And tell your favorite vendor they need to jump into the pool, opps, portal, too!)

NAEP will be learning through the summer as well. We are working diligently to bring you a new and improved website and online content management system. Once launched, you will find an easier to use, more intuitive website with robust capability. It will be easier to register for meetings, update your profile and find information like sample RFPs, the new Interview Guides, or the Competency Template. This new website will launch in the fall and it is something that I am excited about, as NAEP continues to grow.

And speaking of the fall (wait, where did summer go?), it’s never too early to start thinking about your regional meeting. Building your local peer-network is invaluable. Your local colleagues and vendors are just a call or click away with an answer to the challenging question you might have.

Until next time, I’ll see you taking the path less traveled or…or…or…or…or…or…or…or…
With the steady trend of decreasing enrollment numbers and fewer federal funds being directed toward higher education, our procurement budgets are shrinking across the board. As our belts are cinched in even tighter, we are required to do much more than simply save money. Revenue generation strategies are becoming a necessity, and our eyes and ears must always be open for new ways to provide suggestions that will help support our organizations financially. While we can borrow some ideas from the corporate world, we must develop our own strategies that fit within the parameters of the higher education industry and our institution’s policies. Rebates are a common method of revenue opportunity for this cause. However, we must consider how we can balance taking advantage of them while still providing the highest level of service and savings to our customers.

Rebates are the old standby for higher education revenue generation because they are easily built into almost any contract. If your institution does allow for rebates, you should consider adding them into as many supplier contracts as possible. Rebate dollars are generally tied into suppliers’ marketing budgets and are already earmarked for your institution. In turn, asking for these dollars to be delivered via a rebate may mean that procurement will need to take a more active role in promoting the supplier. However, this doesn’t have to be as nefarious as it sounds. In most cases, we are already actively promoting our contracted suppliers because of the value and cost savings that they provide. It is possible to increase the worth of a valued supplier’s rebate structure without any negative impact on the customer by simply limiting availability of items from non-contracted suppliers, taking advantage of on-site supply centers and freezer programs, and rethinking how payments are generated.

One popular rebate plan is typically negotiated into an institution’s credit card program and is essentially designed to generate revenue with no negative consequences. The credit card industry is highly competitive and rapidly evolving, meaning that card providers must constantly focus on developing innovative and cost effective ways to maintain market share. Arranging quarterly meetings with your card provider may bring to light new possibilities that add efficiencies to both procurement and payment functions, with the additional rebate dollars being the icing on the cake. For example, card providers are now taking advantage of synergies with the banking industry to move beyond payments using card numbers and into full-scale electronic banking. These changes could mean a larger trend in outsourcing roles that were historically performed only by payment services organizations, as credit card payments will occur as seamlessly as ACH payments, even providing the alternative of printing a check.

These innovations may be welcomed more easily if you invite institutional oversight relative to how rebate dollars are distributed. At the end of the day, our primary calling is to serve the customer, even though we are challenged to do more with less. The advantage of rethinking our current rebate practices is that it can allow us to do more with what we already have in front of us.
There are times when I wonder how I got to this point. What path did I follow to become President of NAEP? Was I just lucky, foolish, or did people believe I could make a difference? As I think about it, it probably was a little of all three. I was lucky enough to be associated with great leaders who inspired me, like Nancy Brooks, John Klopp, Dick Scharff, and countless others whom I met through NAEP. I may have even been foolish enough to say “Yes” one too many times and wound up in this position. But, in my heart, I like to think it was because my peers respect me and are confident I will be a good leader for NAEP. Whatever the reason, it has been my privilege and pleasure to be a part of the leadership of this organization for the last four years.

Being the President of NAEP is special. I am proud and honored to be chosen, but being the NAEP President does not really make me special in any way. It doesn’t make me more of a leader than any other Member; it doesn’t mean I am more knowledgeable or more important than any other Member; and it doesn’t mean my opinion should matter more than any other Member. It does create a higher level of responsibility for me in relation to the Membership. I need to advance this organization and the purchasing field to make things better for the Membership. I need to be responsive to your opinions, questions, and comments. I need to focus on what is best for NAEP and for you. Most importantly, I need to inspire within the Membership a love for this organization and a commitment to its success. That is probably the most difficult and most rewarding part of this position.

The success of our organization relies on the Membership, not only to be Members, but to be active Members. That doesn’t mean just going to Regional or Annual Meetings. It doesn’t mean asking or answering a question on the listserv, doing a presentation, nominating a peer for an award, volunteering to help at a meeting, or joining an NAEP committee. It means doing several or all of these things—continuously and regularly. It means actively participating in the success and vitality of NAEP.

Our organization is at a crossroads. We need to decide what direction we want to go to remain vital and successful. If we continue to do what we are doing as Members, NAEP will continue to survive, but it will not thrive. Members cannot be a part of this organization and not contribute. NAEP counts on its Members to be active and contributory. This is what makes us great. We gather strength from the diversity of knowledge, experience and opinions of our Membership. I am asking, perhaps even demanding, that our Membership become more active. We need to get more Members involved in NAEP both regionally and nationally. We need better regional and national meeting attendance, more volunteers for committees, more authors for articles, more award nominations, more presenters—just more of everything.

We have many Members who do multiple volunteer duties for this organization. They do it out of love and support for NAEP and its Members. They do it...
because of the satisfaction and growth they feel by being part of NAEP. They also do it because there is a need and not enough volunteers to fill the void.

Imagine the success and excitement we could create for our organization if every Member did one more thing for NAEP. What could the thousands of us do if we each got one more Member to attend a meeting, if we each nominated a colleague for an award, if we each volunteered to present, wrote an article, or joined a committee? What if we each got one school to join the association—just one? Think of the impact we could make. Think of the impact we can make. That we must make.

So, what am I, as President, asking you to do? Am I asking you to lead or to follow? I am really asking you to do both. Every Member has the chance and the choice to lead. I am asking you to lead your colleagues by example, to demonstrate to your university how important it is to be part of NAEP, to support its mission, and to use its resources to make your staff better. I am also asking you to follow. A leader cannot be the leader for every task, come up with every idea, or lead every project or committee. A leader has to choose the times to lead and choose the times to follow. I am asking you to follow me in this vision of a better future for NAEP. I am asking you to follow me in this effort, as I have followed others before me. I challenge all of us to do better, to do more, to be a part of NAEP, not merely watch from the sidelines or to look at NAEP as just one of the professional organizations you belong to. I want you to choose to be a part of NAEP, an active part.

If this strikes a chord with you—good or bad—if you believe in this vision, or if you want to volunteer for something right now, to write an article, or just tell me I am wrong, please email, call me, Tweet, or Facebook me, and let me know. I hope and expect to receive hundreds of contacts. When one of us needs help, someone always pitches in.

Stand up and be counted. Stand up for this Association. Make it better through leadership and volunteerism. I eagerly await your comments, questions, suggestions and ideas.

Here’s how you can reach me:
- On Twitter: naepresident
- Email: president@naepnet.org
- LinkedIn: Post a message in the LinkedIn Group “NAEP - National Association of Educational Procurement.”

Cory Harms, M.S., is Associate Director of Purchasing at Iowa State University. He took office as NAEP President in May 2014. He is a Past President of the MINK (Missouri, Iowa, Nebraska and Kansas) Region and serves on the NAEP Editorial Board. He has presented at both regional and national NAEP meetings and has spoken for the Missouri Association of Public Purchasing (MAPP). Email: ciharms@iastate.edu.

What if we each got one school to join the association—just one? Think of the impact we could make. Think of the impact we can make. That we must make.

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State funding for higher education has diminished significantly in the last 30 years and, even more significantly, since the recession of 2008. With these cuts, colleges and universities have to be even more vigilant protecting the funds they spend on construction and capital projects. Each institution is now fighting for a diminished amount of resources from its state and looking at public/private partnerships, philanthropy, and other creative options to support these new construction projects. The Commonwealth of Virginia is no different from the rest of the country. Virginia reduced higher education funding by approximately 53 percent from 1980 to 2011.

Although public funding may have decreased, universities and colleges are still expending a significant amount on new facilities to enhance campus life, as well as research, teaching, and athletic endeavors. These projects, in turn, help attract a brighter and higher quality student to campus. Focus on the costs of these projects naturally has increased, as funding has become tougher. Public visibility of the tax dollars utilized on these construction projects is shining additional light and scrutiny on these expenditures. For these reasons, universities and colleges are also utilizing new approaches to ensure cost control in order to perform the appropriate fiduciary duty for their state’s taxpayer. One such method being utilized is the construction contract audit.

Virginia Tech recently implemented construction contract audits to enhance the oversight of its projects, as part of an ongoing desire to implement best practices in its construction program.

**Contract Compliance Monitoring, An Essential Element of Cost Control on Capital and Construction Projects**

by Kimberly Dulaney, Virginia Polytechnic Institute and State University
Curt Plyler, Fort Hill Associates, LLC

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Term contracts were awarded as a result of an RFP and competitive negotiations coordinated by the Procurement Department.

Virginia Tech introduced construction contract auditing on two very large projects on the campus: the Center for the Arts ($95MM) and the Signature Engineering Building ($93MM). The results of the audits encouraged the University to take a more proactive approach by conducting preconstruction contract reviews on future projects, in addition to the traditional interim and closeout audits. The University recently began its first preconstruction contract review on the Upper Quad Residence Hall ($60MM).

Specialist firms are now being employed by many universities and colleges to monitor spending on their construction projects. These schools, in many cases, have spent thousands of dollars in attorneys’ fees to develop a fair pricing arrangement with their contractors. However, these contract terms have little meaning if the school does not closely monitor the contractor’s compliance with these compensation terms and conditions. The lack of appropriate monitoring can lead to the owner paying the contractor for items the contract would deem “non-reimbursable.” These noncompliant payments are typically referred to as “contract leakage.” Contract leakage, though, is not necessarily a symptom of fraud or collusion. For example, a member of the contractor’s staff is responsible for preparing the application for payment from the contractor to the owner and is unaware of the exact contract terms. If there is doubt as to whether an item should be billed, the staff member may decide to include it in the billing and see if the owner requests a deduction. However, the owner’s staff member may be equally unfamiliar with the contract terms. The owner’s staff member may then decide to approve payment based on the fact that a project manager (PM) has provided his/her signature authorization. While the PM is responsible for reviewing the contractor’s application for payment, there are many other items of higher priority taking up the PM’s time. The noncompliant item in the billing seeps through, culminating in the process previously referred to as contract leakage.

Contract leakage can be relatively minimal to a

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large percentage of the contract value, but the following actions can reduce your exposure:

- Ensure the contract terms do not contradict one another and are not ambiguous in meaning. For example, if the contract states a $2 per hour uplift is to be applied to craft labor to cover the cost of small tools used on the project, there should not be additional

Contract Compliance, continued from page 12

- Review change orders to modify the scope of the original contract. A check should be performed to ensure the change order was not included in the original scope of the project.

- Review the individual transactions billed to the project. On a guaranteed maximum price contract (GMP or GMAX), payroll burden and benefit costs are routinely recovered using a convenience multiplier or “all-inclusive” labor wage rates. For example, the contractor may employ a 45 percent markup to its workers’ base hourly wages to recover these burden and benefit costs. At the conclusion of each year, the owner should determine the actual costs incurred by the contractor and compare to the multiplier or the all-inclusive wage rates.

In most instances, a payroll burden and benefits multiplier or an all-inclusive wage rate is based on conservative assumptions. For example, the multiplier may assume all employees contribute to their retirement account and/or receive health insurance coverage through their employer’s plan. In reality, though, some employees may not be contributing to a retirement account, or their health insurance may be covered under their spouse’s plan. These variances would indicate the contractor’s actual burden and benefits costs are lower than the amount being billed using the multiplier or all-inclusive wage rates. A best practice would be to insert contract language allowing an audit back to actual costs where multipliers or all-inclusive wage rates are being used for convenience and eliminating any intent to lock into the project (GMP or GMAX), payroll burden and benefit costs are routinely recovered using a convenience multiplier or “all-inclusive” labor wage rates. For example, the contractor may employ a 45 percent markup to its workers’ base hourly wages to recover these burden and benefit costs. At the conclusion of each year, the owner should determine the actual costs incurred by the contractor and compare to the multiplier or the all-inclusive wage rates.

For each component of the multiplier or wage rate. Thus, a clause providing for an audit back to actual cost should present minimal risk to the owner of a variance in the contractor’s favor. Any contract can be subject to leakage if not properly administered. Audits can be performed on time and material GMP, lump sum (also known as fixed price or hard bid), and CM-at-risk contracts. A contract compliance specialist is recommended for owners engaged in ongoing construction projects for years to come. A third-party specialist firm is recommended when a major expansion is about to begin or is already underway, but is unlikely to be repeated within the next five to ten years. The owner employing a specialist firm will utilize the audit findings to monitor future projects or engage the specialist firm again to monitor billings at various stages of its next project. The specialist firm’s work with the next project will often begin with a preconstruction review. This approach attempts to identify conservative estimates employed by the contractor to price out the project that could later be construed as an agreement for future billings. In addition, contradictory contract language is identified and modified at this stage. The preconstruction review represents a best practice because it identifies leakage points before they occur, instead of requiring a messy reconciliation at project conclusion. A construction contract audit is a prudent course of action to ensure your school’s funds are being deployed in an appropriate manner for your building projects. The benefit is more than a short-term return of funds to your campus. A construction contract audit program will build a knowledge base in your organization going forward to mitigate these risks and prevent their occurrences.

Kimberly Dulaney is an Assistant Director and Contracts Manager for Virginia Polytechnic Institute and State University, where she negotiates and oversees a variety of contracts. Prior to joining Virginia Tech in 2010, Kim was Director of Procurement at the University of Indianapolis, a midsize, private university. She serves on various committees both within and outside of the university and is currently a Member of the NAEP Editorial Board. Email: kdulane@vt.edu.

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Purchasing is all about agreements and contracts. We have memorandums of agreement, purchase order agreements, contracts, vendor agreements, etc. We are very careful about what we sign and what it says. That is why click-through agreements for software and other services can give us the heebie-jeebies. All of this work that we do is to protect our campus—and it can all be for nothing when one of our users clicks on the little “I Agree” button. Luckily, we are usually not the only ones concerned. We can enlist the help of our IT and legal departments to get the word out, to use more care when clicking, even if no cost is involved.

Your University Counsel will most likely have concerns about these types of agreements. Paula DeAngelo, Associate Counsel for Iowa State University, discusses the potential enforceability of these types of contracts, some strategies for negotiating these contracts and provides some tips on mitigating risks. [CH]

Paula DeAngelo, Associate University Counsel, Iowa State University

Most questions that I receive as an attorney regarding click-through agreements pertain to (1) their enforceability, (2) authority of employees to sign them, and (3) the terms themselves.

Enforceability
Questions about enforceability of click-through agreements generally arise after an employee at the university has already accepted a click-through agreement and things have not gone well. Decisions by courts regarding the enforceability of click-through agreements have mainly focused on whether the user has validly assented to the terms of the click-through agreement. What determines whether assent was validly given can vary among jurisdictions, but courts tend to consider what opportunity the user had to view the click-through agreement before assenting to it, the user’s ability to access the site without first assenting to the agreement, and the clarity of the assent language. Courts have also ruled that language that permits providers to unilaterally change the terms of the click-through agreements caused the arbitration
clauses contained in them to be unenforceable because the user was obligated to arbitrate while the provider, in theory, could unilaterally change the click-through agreement to avoid arbitration. At this time, I am unaware of any cases that have addressed whether such language impacts the enforceability of other terms found in click-through agreements, but it is certainly a development to watch.

Authority to Accept

Another issue related to enforceability is whether the user had authority to enter into the click-through agreement when doing so on behalf of the university. Universities often have rules or policies that identify the employees who may contractually bind the university. When the procurement office becomes aware of services that many employees may wish to use, it can try to negotiate with a provider for a university-wide agreement with language that states its terms will supersede or control over the terms of individual click-through agreements. Procurement offices might also consider following what one company successfully did to avoid being contractually bound to a click-through agreement agreed to by its employees. It sent an email to the provider stating that only certain executives had authority to bind the company for legal issues and that acceptance of a click-through agreement by its employees was not a valid acceptance by the company, because its employees were not authorized to accept it. Relying on this email notice, a federal court ruled that a company employee who subsequently accepted the click-through agreement did not contractually bind the company. Sending such notices to all potential providers is not practicable, but if a university is aware of a potential problem with a specific provider, then sending such a notice may be prudent.

Terms of Click-Through Agreements

Reviewing terms in click-through agreements is no different than reviewing terms in other types of contracts, except that you rarely have the opportunity to negotiate the terms. As an attorney, my role in these situations is to focus on advising procurement officers and users of the risks involved. The risks will vary depending on the language in the click-through agreement, the type of service being sought, the type of information the university will give the provider or put on its website, the consequences if the service is no longer provided without warning or the information is lost, the amount of money the university pays for the service, and the source of funds. Some universities, such as the University of Iowa, have been proactive in analyzing these risks and have developed websites listing click-through and similar agreements along with the risk-level associated with each of them. Arming employees with such information before they hit the accept button might hopefully lead to wiser choices and better outcomes.

Continued on page 18
University Counsel is usually focused on the risks and enforceability of the agreements, but our IT departments tend to get involved once the software is already in use or waiting to be used. Their concerns usually relate to the security and connectivity of the software to the network, or potentially integrating with a Learning Management System (LMS). Jim Twetten, Director of Information Technology Services at Iowa State University, discusses his concerns with click-through agreements. [CH]

Jim Twetten, Director of Information Technology Services, Iowa State University

The young world of electronic click-through agreements has brought new challenges to higher education in the past decade, and the legal and policy catch-up in dealing with them has proven slow. From an information technology perspective, concerns can be broken down into three areas.

**Data Protection and Security**

particularly if the click-through agreements are with cloud-based commercial vendors, protection of data is of utmost concern. To bring the greatest benefit to instructors, the seamless and automatic data transition between commercial vendor and institution is required, and there are emerging tools and standards to facilitate this. But much of this type of data is protected by the Federal Educational Rights & Privacy Act (FERPA), and many vendors are either unknowledgeable of federal higher education laws or unwilling to commit to the associated risk. Some higher education consortia have attempted to make inroads to better contracts via the power of bulk purchasing and bulk agreements. This has proven effective on some levels, but has yet to persuade the largest vendors to negotiate. For these largest commercial entities, the desire to not manage multiple individual contracts is an obvious and understandable goal. But until their base contracts recognize U.S. higher education limitations, or federal law reacts to the issues of the global electronic world, higher education stands in a confused and confounding place. This is of little relief to faculty, who understandably simply want to teach with new innovative tools or realize the efficient benefits of these software integrations. in addition, many click-through agreements provide no relief or liability on the vendor if data is damaged or lost.

**Inability to Adequately Test New Software and Innovations**

Some commercial providers recognize the need for universities and colleges to test products and integrations prior to adoption, but an unfortunate number of vendors require the click-through agreement before testing can even occur. This upsets the balance of risk assessment. An initial review for any software is simple testing to determine ease of use, viability, and the evaluation of any data-security concerns. At our university, this is a preferred first step, in part to insure that subsequent procurement and legal resources are best utilized. But too often the click-through agreement is required even ahead of piloting or testing, and we have to engage procurement and legal mechanisms before we can understand whether the solution is even viable. The net effect is: it’s time to improve efficiency and gain greater control. It’s time to deploy Visa Commercial solutions. Visit visa.com/commercial to learn more.

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is that vendors who require click-through agreements prior to any testing inevitably see delays in the purchase of their product.

**Changing Agreement Language**

The same philosophy that requires click-through agreements also requires click-through updates of those agreements. While a university can be well positioned to evaluate an agreement or contract initially, it is much more difficult to handle agreement change once the software is in place. Inherently, agreed-to software starts to see users leverage the tool, and a user base grows. Many click-through updates are still “take it or leave it,” meaning that a user could suddenly be greeted on any given day with a need to agree to new terms that may or may not be advantageous. In some cases, failure to agree to new terms means being instantly blocked from the software tool. If such an update comes on a day where coursework and assignments are critical, the balance of risk assessment shifts away from the faculty member and institution. Faculty shouldn’t be expected to shift software-tool learning strategies midcourse, just because a vendor decided to change the agreement.

In short, the newer world of cloud computing brings third-party software that can be innovative to use and increase student competencies. Higher education institutions are often not positioned to innovate on their own, and thus rely on these cloud products to help them achieve their goals. But many vendors provide click-through agreements that ignore basic requirements of both institution and faculty. Vendors need to better understand constraints of higher education institutions, and lawmakers need to consider new legislation that recognizes that some laws were made under old paradigms, and that education has shifted.

A common theme of concern is the terms and conditions and the potential that they are not reviewed by the proper parties and that they may change over time without proper notice. Purchasing shares these same concerns. As purchasing people, we like to see the Agreement up front and make the necessary changes for it to fit our university. Jason Ferguson, an IT Purchasing Agent for Iowa State University, discusses his challenges related to working through these types of Agreements and terms that may need to be negotiated.

Jason Ferguson, IT Purchasing Agent, Iowa State University

One of the first difficulties I face when purchasing software is obtaining a copy of the end-user license agreement (EULA) from the supplier. Many times, the sales representative is unfamiliar with these terms or assumes customers will simply accept them as part of the click through when installing the software. The terms are occasionally included with the quote but may also be included as a reference to a link on the company’s website. In the case of the latter, I download the terms and ask that they be included as an addendum to the quote. This ensures that the agreed upon terms remain the same, even if the company changes the online document.

Continued on page 20
Once I have a copy of the EULA, these are the items I find most important:

**Automatic Renewal**

Nearly every EULA I've reviewed includes language that states the license will automatically renew each year. This means your institution must pay for another year of use, whether or not the department is still using the software. Given the large number of software licenses used at ISU, managing the renewals is an overwhelming process. I always ask that the language is changed to require consent by both parties to renew. This gives the department a trigger to determine if a renewal is needed.

**Maintenance and Updates**

In addition to renewals, it is important to understand what is included in the annual software maintenance fees that most software will require. Most fees should include access to technical support, updates, and upgrades. The difference between updates and upgrades can be important. An update typically means an incremental software change (for example from 5.0 to 5.1). An upgrade means a new software release and usually changes the version number (for example 5.x to 6.0). If upgrades are not included in the maintenance fees, you may find yourself paying the full software cost again.

**Confidential Information**

Most EULAs will contain language stating the company owns all code and data of their software and will require the end-users to hold this information as confidential. It is a good idea to work with the department to determine if its data will be stored by this software and, if so, what type of information it is. In some case, FERPA or HIPPA issues may need to be addressed. You may also need to ask if the end-user needs this data back after termination of the license. You may also need to provide all end-user data within a specific number of days after termination. You may also be bound by an open records or sunshine law that requires documents to be publicly available. This may require that we provide agreements to third parties, if requested. When reading confidentiality clauses, I look for or add language to address these concerns.

**Legal Issues**

If you are a state or governmental entity, you may have specific needs related to litigation, including having to refer cases to your state's Attorney General (as Iowa does). If a contract dispute goes to court, all court proceedings would be handled by the Attorney General's office. In the event that this affects your institution, you may want to change the language in these sections to address your needs. This includes changing the governing law to your state or remaining silent in the case the company will not change it. Another area to review is the indemnification language. It is typically best practice to not defend the company in the event of a court proceeding. Iowa has specific language in its code that I ask to incorporate into the EULA. You may check with your legal counsel for applicable language. It may also be beneficial for you to review the agreement for arbitration clauses. If you are not allowed to use arbitration or have any issues with it,
The number of click-through agreements seems to be increasing every year. It is important to get a handle on the ones on your campus and develop a strategy for dealing with their acceptance and the negotiation of terms. The authors hope that their insights will help you to create a plan for dealing with these types of contracts at your institution. [CH]

1 Kristina Kunz et al., Click-Through Agreements: Strategies for Avoiding Disputes on Validity of Assent, 57 Business Lawyer 401 (2001). This article contains an informative summary of various factors considered by the courts.

2 Grosvenor v. Qwest Corp., 854 F.Supp.2d 1021 (D. Colo. 2012); In re Zappos.com, Inc., 867 F.Supp.2d 1318 (S.D. Fla. 2010), aff'd 433 Fed.Appx. 842 (11th Cir. 2011). The issue in this case was whether the employee had apparent authority, meaning that even though the employee did not have actual authority the employee may have acted in such a way that a reasonable person would believe the employee appeared to have authority. For public universities, the concept of apparent authority may not apply to its employees. Restatement (Third) of Agency §2.03 comment g (2015).

3 National Auto Lenders, Inc. v. Syslocate, Inc., 686 F.Supp.2d 1357 (S.D. Fla. 2010), aff'd 433 Fed.Appx. 842 (11th Cir. 2011). The issue in this case was whether the employee had apparent authority, meaning that even though the employee did not have actual authority the employee may have acted in such a way that a reasonable person would believe the employee appeared to have authority. For public universities, the concept of apparent authority may not apply to its employees. Restatement (Third) of Agency §2.03 comment g (2015).

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What Do Followers Need from Leadership?

by Brian K. Yeoman
NAEP

This is our annual Leadership issue, as you’ve certainly noticed. We are fixated on the topic. Why? What are we looking for, and when we find it will we know it? I suspect there are no “gimme” answers. Nevertheless, I am going to go out on a limb that has one, and only one, proposition: What we want first and foremost is to be able to confidently trust our leaders.

Of course, we want transparency and participation, but what we yearn for most is trust. Trust, however, is very hard to find in today’s workplace. In part, one could argue that it began to be a rarified trait as the social contract that governs the workplace was transformed in the globalization of everything, including our employers in higher education. Many of us believe that today’s employers are completely aloyal. The root cause: global competition. The result: aloyal employees. Labor—and not just manual labor—is tremendously cheap in many places in the world. The massive transformation of business via outsourcing has, for many Americans, resulted in a family member, neighbor, or friend who has been rendered unemployed or underemployed for a long time. The stories are amazingly similar.

First, the cuts in health benefits, the small perks, then the hours. Then the Total Quality Management (TQM) and Continuous Quality Improvement (CQI) consultants engage in a large-scale change management effort. A report is written to senior management and then the rumors begin to fly. The rumors usually are not answered, regardless of the number of town hall meetings in which a lot of words are uttered but little meaningful information is actually shared. Empty guarantees are made that nothing will happen without engaging the workforce in dialogue.

This is typically followed by a press release—a few weeks later—announcing the outsourcing. Pick one: bookstore, mail services, copy services, printing services, food services, janitorial services, landscaping services, travel, student health, housing, and facilities maintenance. We know the targets because we are inevitably asked to do our...
part in getting the institution back to its core mission, and instill private-sector discipline in these non-core services. Then it happens; there is a new rumor that says purchasing has been identified as a possible target in the next round of reviews.

Trust sinks lower and lower as this process plays out. A blue ribbon committee is soon charged with examining cost savings from every angle. The defined benefit retirement program is identified as a target. Reducing the number of tenured faculty and increasing the number of adjunct faculty is suggested as something that needs exploration. In some instances, program closure and program consolidation are considered. Trust is sinking even lower, and now that the faculty is involved, institutional leadership can’t understand why trust is the issue.

Trust is a tricky concept to wrap one’s head around. We humans are good at knowing when it does not exist, but when we do have it, we often don’t recognize it nor appreciate it. That’s because trust is almost always layered—not injected—into relationships. The fact is that trust and trustworthiness are fundamentally essential in everything we do.

Trust cannot exist without trustworthiness. As Stephen Covey says, “You can’t talk your way out of what you have behaved yourself into.” Think about that. If someone does something to you that is duplicitous, no matter how that person tries to explain it, you likely will not trust that person again.

There is a disconnect between what leaders say and do, which leads to an environment of mistrust, which pits people against one another and against the institution. The primary manifestations are lack of integrity; information that is frequently late, useless, or wrong; misalignment of rewards and measurement systems; incompetence (whether real or perceived); and lack of compliance with systems that appear to make no sense. Leaders are torn between disclosing the entire truth and holding back certain realities in order to keep employees calm. They are attempting to salvage their careers while maintaining the trust and loyalty of their followers.

The tension between leadership and followers creates huge productivity challenges as uncertainty becomes the new normal. Followers lose trust in their leaders’ intentions because of hidden agendas and political maneuvering.

Followers just want the truth. They know that many of the old ways of doing things don’t apply anymore, so, more than ever, they need leadership to have their backs. Unfortunately, that is not coming along strongly. Leaders don’t have the sphere of influence they once had. Trust is rapidly eroding, and without leaders to sponsor and mentor high-potential followers, those followers must figure out the changing terrain on their own. They do, and they vote with their feet.

This important relationship—trust and trustworthiness—has some early warning signs:

1. **A noticeable lack of courage**—Leaders who don’t stand up for what they believe in are difficult to respect and trust. Stay

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in tune to what your leaders are doing and how they manage themselves. When your leaders lack the courage to enable your full potential, it becomes a challenge for you to trust their judgment, self-confidence, and overall capabilities.

2. Advancing hidden agendas—Hidden agendas make it difficult to trust a leader’s intentions. Leaders who are too politically savvy are devious and inauthentic. You should want to follow leaders who are less about the politics and more about how to accomplish goals and objectives.

3. Egocentric—When leaders are self-centered, ego stands in the way of advancing others. Good leaders are great coaches and are always looking to help their employees grow and prosper.

4. Yes, reputation counts—Leaders must be aware that they are constantly being evaluated; they can never grow complacent. When they do, their reputations are damaged and their ability to retain the loyalty of their followers is eroded.

5. Do what I say, not what I do—People trust people who are consistent in their behavior. It is easy to question motives or judgment when behavior is inconsistent. Leaders who are consistent with their behaviors can be trusted.

6. Don’t get their hands dirty—Leadership has to touch the activities of the institution as much as they lead it. When leadership over-delegates and never gets its hands dirty, its competence is questioned by the followers. If this perception becomes widespread, distrust begins to rise. Leadership must establish the standards to maintain and improve workplace performance. How can that be done if hands are never dirtied?

7. Don’t trust the talent around them—When leadership doesn’t trust the surrounding talent and have its best interests at heart, trust becomes difficult. When leaders are not grateful for good performance, trust erodes. Leadership must earn the trust of followers and stop believing that titles, roles, and responsibilities automatically warrant it. It is a changed world on campus but I know, without doubt or hesitation, that you, too, can do great things.

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What I Have Learned in the Last 75 Years
Part Three: Mentoring

by Bob Ashby, C.P.M., CPCM
University of Nevada, Las Vegas (retired)

This is the third in a four-part series in which I, in celebration of my 75th year, try to condense what I have learned down to the four most important lessons, and then share them with you. As noted in the last two issues of the *NAEP Journal*, you helped me with the “condensing,” as I started out with seven topics. Revisit the Winter 2013 and the Spring 2014 issues to see all seven, which two topics have been discussed, and which of the remaining you’d like addressed.

The third most-requested topic was my personal favorite: Mentoring. First, I don’t believe any of us can succeed, whether in our personal or business lives, without some guidance and advice on how to grow and reach our potential. Second, I have been absolutely blessed, both in the past and the present, to have mentors help me succeed in spite of my shortcomings.

Recently, NAEP surveyed members to determine the interest and feasibility of developing a Mentorship Program. I hope you have taken the time to respond. It made me recall some of my mentors.

I grew up in a poor, rural town so small that the biggest event I remember was the installation of the only traffic light. The nearest lake was miles away and inaccessible to us kids, since our parents had farming chores on the weekend and had no time for such luxuries as lake swimming. But a certain schoolteacher said he would borrow the school’s lone bus, buy the gas himself, and take us there each Saturday. He detailed the rules, enforced them, and then made sure we got there and back safely. The parents and kids loved and trusted him. This mentor taught us to go the extra mile to help others, to be dependable, to honor our word, to look after each other, and to make sure no one person messed up the deal for the whole group.

I had no father at home, so when my mother died in my freshman year of high school my next door neighbors became my surrogate parents. They made sure I was never hungry, but they also made sure I knew I had to earn my own way. They encouraged me and made me proud that I was self-supporting and carrying my own weight. They gave me direction and supported my good decisions, while guiding me past my poor ones. With them by my side, I knew I would not fail but also knew that, if I strayed off course, they would pick me up, dust me off, and redirect my efforts. These mentors taught me that no matter what most people might do or what errors they might make, most just need someone to help them get back up, give them encouragement, and point them in a good direction. They strongly influenced how I have tried to live my life.

While I was serving as an enlisted man in the U.S. Navy, an officer showed me the difference between the lifestyle of an enlisted man versus that of an officer. He made me understand that without a college education I would always be digging the trenches, rather than managing the trench diggers. He gave this C-student the confidence and encouragement to realize that I could do anything, if I wanted it badly enough. I don’t think he even realized that he was mentoring me. This father-figure was just taking this bumbling young kid and imparting his knowledge, mentoring me. This father-figure was just taking this bumbling young kid and imparting his knowledge, giving me food for thought, and directing me on how to climb the ladder. Because of him, I earned my B.S. and MBA degrees and moved into management. More importantly, because of him, I always try to coach, encourage and mentor those who just need direction.

In the 1960s, General Electric (GE) was a prime contractor to the National Aeronautics and Space Administration (NASA). When GE hired me, my two bosses took me under their wings and impressed upon my young mind that this was not just another Engineering job but, rather, that we were on the “First Landing on the Moon Team.” Wow. That really gave me insight into my importance to the Team’s Mission. Even though I was just out of college, they made me feel like the brightest Engineer in all of NASA, and that the success of the Lunar Landing was as much on me as it was on the Ph.D. Aeronautical Engineers. I knew I was young and out of my league compared to those NASA whiz kids, but again, they made sure I knew that whatever task I was assigned was critical to the mission. What a lesson that was on teamwork. These mentors recognized that my talents leaned more toward writing, documenting and educating about what was happening rather than actually making things happen. With their insight, I recognized that I could be a great educator and writer. They took the time to move this square peg into the correct round hole. Because of them, I have taught at the university level, presented workshops, and written for various magazines and journals. Because of their mentoring, I’ve tried to look at my employees’ talents and potential and not merely at how they performed at their current tasks.

Growing up in a small, all-white town in the Midwest, I had minimal contact with minorities. One ship I served on in the U.S. Navy had 120 Radiarmen, but only one was African-American. He and I hit it off and did most everything together. If I, out of ignorance, told him a joke that was insensitive, he did not rant and rave but, rather, explained why it was inappropriate. He taught me that being raised...
What I Have Learned, continued from page 25

in an environment of prejudice was OK, as long as I tried to get past it once it was pointed out to me. He enlightened me so I would not embarrass myself when confronting others who might not tolerate my ignorance as well as he did. This mentor taught me to have tolerance for others and to understand that it was all right if others didn’t see things as I did. He showed me that life is a learning experience and that no one has a monopoly on the right way to act or think.

As an Engineer, I was a duck out of water when I joined the City of Albuquerque Purchasing Staff. The three other buyers could have made my life miserable since, on my first day on the job, I had no idea what a Bid, an RFP (or any other of our standard terms) meant. Those three ladies never let me panic when deadlines loomed, nor did they fail to help me when their own work got behind because of my ineptness. They understood that the success of the office depended on everyone succeeding. These mentors taught me that handling stress by ranting and raving accomplished nothing, but working together as a team accomplished everything.

When I developed cancer the second time, in 2009, the Leukemia and Lymphoma Society (LLS) asked me if I wanted to join a Support Group. I assured them that since this was my second bout of cancer I knew what to expect and, macho man that I was, I didn’t need a Support Group. They brought me down to earth saying, “You may not need the Support Group but maybe the Support Group needs you.” And another lesson was learned. We cannot always be the mentee; sometimes we need to be the mentor. When a newly diagnosed cancer patient is introduced to the group, I am introduced as the two-time cancer survivor who took up marathon running at the tender age of 71. It really encourages these newly diagnosed people, who fear that cancer has given them a death sentence, to fight through their illness and prepare for their post-cancer life. I annually attend an all-day workshop sponsored by the University of Arizona Cancer Center so I can learn what research is currently developing. I then discuss my findings with both my local and Internet LLS Support Groups. Yes, sometimes we don’t need to be mentored as much as we need to mentor others.

What is the bottom line to Mentoring? It is that we all have grown in our personal and professional lives because someone reached down and helped us up the ladder. But we have two hands—so while we are grasping the hand of the person who is pulling us up we should use our other hand to pull up someone behind us. Where would you be if you hadn’t had a mentor? Same place your business colleagues will be if they are not mentored by—YOU! In which category are you? Are you a mentee looking to be mentored? Or could you pay it forward and let some of us benefit from your mentoring?

Whichever you are, let me know, and I’ll be more than happy to help.

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Yesterday I had a fascinating call with an officer in a nationally known consulting firm that serves the higher education market. The call was set up by a representative of the firm who said that they are interested in the innovations we are making in our procurement and other support functions, and they had some ideas that I might be interested in. Of course, should have realized that this was just an inducement to get me to accept a call.

The call started with the question: “John, how much do you know about our firm?” I know I should have been nicer in my reply, but I just could not help jumping on this great setup. So I said, “I know that you swoop into higher education organizations, tell them what they already know, claim it will save millions, collect a check, and then leave.” I quickly added, “Of course, I may have oversimplified this a bit.” I don’t think the official was amused, as he continued to advise that they had done work at a number of major universities, had done great things, and helped higher education thrive during the Great Recession.

He then wanted to know what I knew about shared services. I replied that I am often asked about shared services, and most of the time people asking don’t define what they mean. At Arizona State University, major services are centralized. So there is only one purchasing department, one human resources department, one information technology department, and so on. For us, the use of shared services is more at the college level and mostly revolves around centralizing the people who make input to our centralized management systems. These are the people who enter budget information, requisitions, time sheets, and the like. And rather than centralize input and output people, we really should be asking why we have systems that require magicians to care and feed them—and then fix those systems.

Then, of course, the caller asked if I was interested in saving money. I did the best I could to keep from bursting out laughing. Most of the time I am not interested in saving money. I am interested in finding the best solution to the challenges we have. The best solution will open up possibilities to do a lot more in a much better manner. It may also save money, but that would be a consequence and not necessarily the objective. If all I wanted to do was save money, I would do a reverse auction on everything we buy. Including hiring consultants.

The caller then asked about our progress toward Procure-to-Pay. I advised him that purchasing was a separate function from accounts payable, but that we did not see this as a limitation, as we can both cooperate without one of us owning the other. I informed the caller about our payment system initiatives and our new travel program.

Detecting some frustration on the part of the caller, I suspect he then went back to his script and asked me if I would look at two white papers his firm had done. “Sure, why not?” I said. “Always looking for good ideas we can use within our environment and culture.” They might only tell me what I already know. That is what consultants do, but at least I will not have to pay them for it.

Is there a conclusion to this story? Not really. Only that if you are aware of the opportunities out there, of the things your peers are doing, then you do not really need a consultant. But if you do need a consultant or are just feeling lonely, I would be glad to give the caller your phone number.

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