# The "REN" Approach… To Contracting Best Practices

Frank Harvey, Arizona State University

NAEP 2020 DECEMBER 01-04
FUSION WEEK
Changing with the Times

# Agenda

- OVERVIEW AND OBJECTIVES
- THE “REN” APPROACH
- CONTRACT OBLIGATION MANAGEMENT
- TIPS & TRICKS
- FUSING EVERYTHING TOGETHER
- LIVE Q&A

# Overview and Objectives



# The Presenter

Frank Harvey

Senior Procurement Contracts Specialist

Arizona State University

Tempe, Arizona



# What brings us here?

**Objective**: We want to simplify our mindset about contracting for procurement departments to efficiently administer and manage contracts

Many do not know where to start with negotiating a contract

Additional work is done on the back end, thus delaying negotiations

Obligations are not effectively communicated and can result in delay or breach

A blind negotiation is a recipe for disaster

# Goal: To Shake Hands, Not Throw Fists



Yes



No

# The “REN” Approach



# What is the "REN" Approach?



- A methodology for negotiating contracts based on economics
- Shifting the contracting work to the beginning of negotiations
- Assessment of Needs, Wants and Waste
- Consideration of external factors

# The Three Components of REN

Research → Evaluate → Negotiate

# R → Research

- **Before negotiations**, conduct **research** on the scope of the contract
- Helps to avoid blind negotiations
- Ask the tough questions
- There is no "one way" to conduct **research**
- Benefits:
  - Saves time down the road
  - Transparency
  - Leverage



Statements of Work

Supplier's Website

Privacy Policy

Information Security Reviews

Previously negotiated agreement

Supplier's Form 10-K

# Where can you look?

# Form 10-K

10-K 1 amzn-20161231x10k.htm FORM 10-K

**UNITED STATES**
**SECURITIES AND EXCHANGE COMMISSION**
**Washington, D.C. 20549**

## FORM 10-K

**(Mark One)**

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
**For the fiscal year ended December 31, 2016**

**or**

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
**For the transition period from to .**

**Commission File No. 000-22513**

# AMAZON.COM, INC.

**(Exact name of registrant as specified in its charter)**

| **Delaware** | **91-1646860** |
|---|---|
| **(State or other jurisdiction of incorporation or organization)** | **(I.R.S. Employer Identification No.)** |

**410 Terry Avenue North**
**Seattle, Washington 98109-5210**
**(206) 266-1000**
**(Address and telephone number, including area code, of registrant's principal executive offices)**

**Securities registered pursuant to Section 12(b) of the Act:**

| **Title of Each Class** | **Name of Each Exchange on Which Registered** |
|---|---|
| Common Stock, par value $.01 per share | NASDAQ Global Select Market |

**Securities registered pursuant to Section 12(g) of the Act:**
**None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

| | | | |
|---|---|---|---|
| Large accelerated filer | ☒ | Accelerated filer | ☐ |
| Non-accelerated filer | ☐ (Do not check if a smaller reporting company) | Smaller reporting company | ☐ |

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

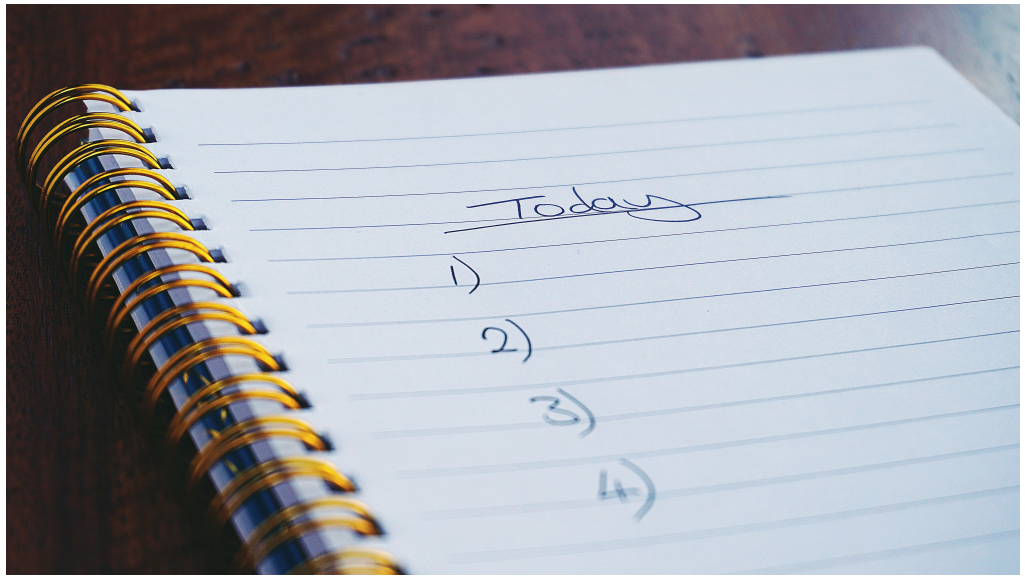
| | | |
|---|---|---|
| Aggregate market value of voting stock held by non-affiliates of the registrant as of June 30, 2016 | $ | 280,129,378,534 |
| Number of shares of common stock outstanding as of January 25, 2017 | | 477,170,618 |

**DOCUMENTS INCORPORATED BY REFERENCE**

The information required by Part III of this Report, to the extent not set forth herein, is incorporated herein by reference from the registrant's definitive proxy statement relating to the Annual Meeting of Shareholders to be held in 2017, which definitive proxy statement shall be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year to which this Report relates.

# E → Evaluate

- Where do we stand?
- What is important? What is not important?
- What is our position on the terms and conditions?
- What is our plan for approaching these negotiations?
- What do we need? What do we want? What can we go without?





# Needs, Wants and Waste: Red Velvet Cake

# Needs, Wants, Waste

## Needs

- Must haves
- Hard-stops
- Required contract language
  - Statutory provisions
- Is this something that can cause us to walk away?

## Wants

- Like to have
- Added bonuses or protections
- Bells and whistles

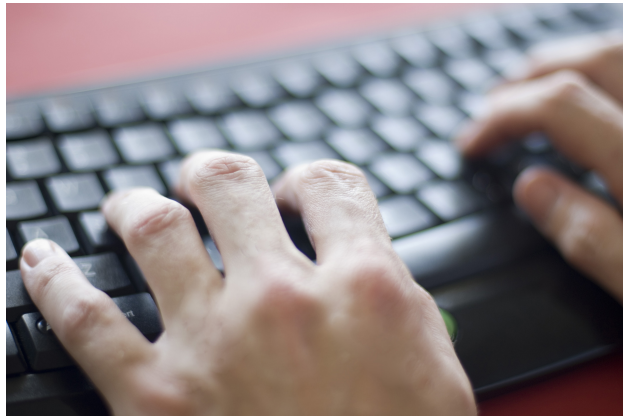
## Waste

- Immaterial
- Do not affect the contract
- Filler (take up real estate within the contract)
- Non-applicable

HIGH ← Priority Level → LOW

# N → Negotiate



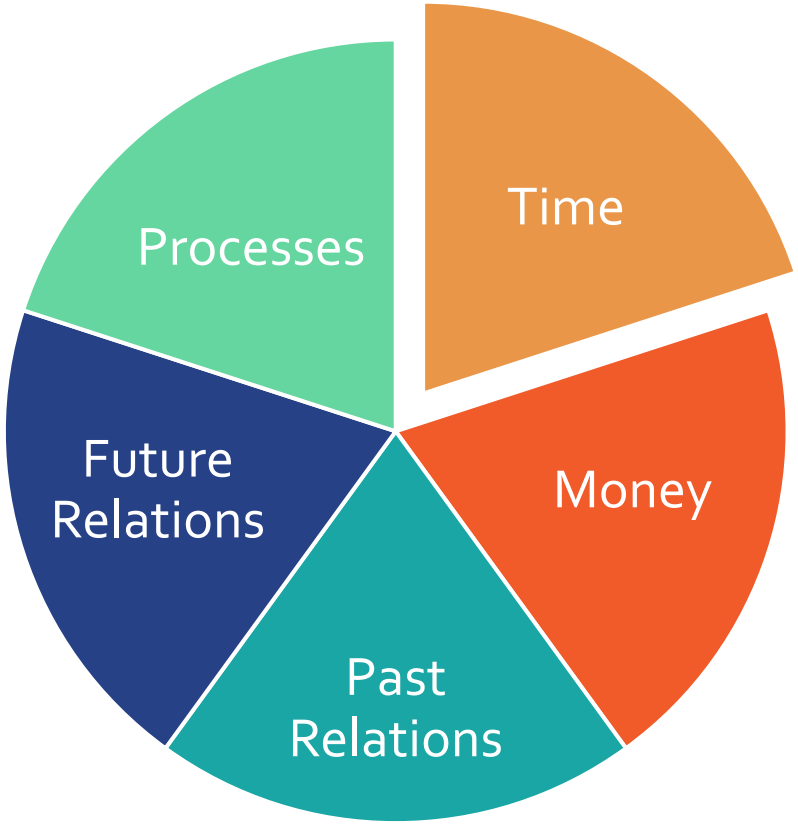




# N → Negotiate

- Prioritize your discussions and get the most-important items done before addressing the less-important items
- Make sure to consider any influences that can affect your negotiations
- Know when to concede or walk away






# Influences

Hardstops?

Unwilling to negotiate?

Best Alternative to Negotiated Agreement?

Deadline passed?

What are the risks?

Too many red flags?

# Concede or Walk Away?

# Contract Obligation Management





“Failing to prepare is, generally speaking, preparing very well to do the wrong thing”

- Sam Harris (Neuroscientist)

# Contract Obligation Management

- **Prior to signing the contract,** it is important to understand the terms and conditions of the contract and your obligations under the contract
- Avoid:
  - Delays
  - Breaches
  - Late invoice payments
  - Termination of the contract
- Designate a "Contract Manager" who will be responsible to managing the obligations under the contract

# WMS: The Three (Obligation) Musketeers



| W | M | S |
| --- | --- | --- |
| Will | Must | Shall |

# Example: Payment

*3. **Payment**. "Company X will deliver the Software Licenses to University within 24 hours from the date the Agreement is executed. After delivery and acceptance of the Software Licenses, Company X will submit an acceptable invoice to University. Invoices must be itemized, reference the Agreement or purchase order number, and include sufficient detail to document the invoiced amount. Unless otherwise specified, University shall pay Company X for the Software Licenses delivered net-45 days after receipt by University of an invoice meeting the requirements of this Section 3."*

# Synthesize The Obligations

- Breaks down obligations of the contract into a manageable, easy-to-read form
- Identifies:
  - Task
  - Who is responsible for completing the task
  - When does the task need to be completed
  - Action plan for completing the task

# Contract Obligation Plan

**Supplier: Company X**
**Responsible Contract Manager: John Smith, Director of Compliance, Department of Economics**
**Execution Date of Contract: July 1, 2021**

| Task | Responsible Party | Due | Company X Plan of Action | University Plan of Action |
|---|---|---|---|---|
| Deliver software license | Company X | July 2, 2021 | • Company X sends software licenses to John Smith and technical team member | • John Smith sends receipt of delivery to Company X within 24 hours |
| Send invoice to John Smith | Company X | After receipt of delivery received by Company X | • Company X sends invoice to John Smith | |
| Verify invoice meets requirements | John Smith | Upon receipt of invoice | | • John Smith to verify the invoice meets the requirements of the agreement<br>• John Smith to reach out to Company X to either confirm receipt or request compliance. |
| Pay invoice | John Smith | 45 days after invoice received | | • John Smith to send invoice to financial services department for payment |

# Tips and Tricks



# Guardrails

- Playbook for managing contract negotiations
  - Alternative language to utilize in the event a supplier takes exceptions
  - Describes who can approve certain contractual exceptions
- "If a supplier takes this exception, then try this…"
- Benefits
  - Helps to expedite contract negotiations
  - Fewer requests for exception reviews to internal approvers (legal, risk, information security, etc.)
- Recommendation: Work with your internal approvers (legal, risk, information security, etc.) to draft guardrails for contract negotiations

# Internal Calls

- Excellent way to prepare a game plan for contract negotiations with your negotiation team
- Ensures everyone has all of the necessary information to properly evaluate contracts
- Prior to ANY counsel call, you should have an internal call with your negotiation team to ensure everyone is on the same page
  - Risk team
  - Legal team
  - Security team
  - Requesting department
  - Procurement

# Conditional Language for Purchase Order Terms

- If your purchase order contains terms and conditions, include conditional language in the terms and conditions to emphasize when a term or condition applies
- “This provision applies if…”
- If the condition is met, then the provision applies. If the condition is not met, then the provision does not apply
- Helps to narrow scope of negotiations to provisions that apply to the scope of the transaction

# Fusing Everything Together



# In Summary…

- (i) Conduct research; (ii) evaluate what is needed, wanted and wasteful; and (iii) negotiate effectively (REN).
- Know when to walk away (and if you can).
- Before signing the contract, make sure you understand your obligations under the agreement (will, must, shall).
- Create guardrails to help expedite contract negotiations.
- Have an internal call with your negotiation team to ensure everyone is on the same page.
- Conditional language in your purchase order helps to keep negotiations focused on the material issues.

# Live Q&A




Thursday, December 3, 2020

4:30 PM-5:30PM Eastern Standard Time

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