

VOLUME 2 NUMBER 1

JANUARY, 2002

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## SUBSCRIPTION INFORMATION

*Negotiating Strategies* provides essential negotiating information to the architectural and engineering professions. It is published six times a year by Strogoff Consulting, 142 Almonte Blvd., Mill Valley, CA 94941-3558. To subscribe, visit [www.StrogoffConsulting.com](http://www.StrogoffConsulting.com), call toll-free 1-866-ARCHENG, or email [newsletter@StrogoffConsulting.com](mailto:newsletter@StrogoffConsulting.com).

## What To Do When Clients Ask For Comments On Their Contract During The Selection Process

(From the January, 2002, issue of *Negotiating Strategies*)

It happens often, especially with seasoned clients or on projects for public entities. Along with the RFP, design professionals are asked to comment on the client's standard Owner/Design Professional contract. Sometimes formal responses are required as part of the design professionals' proposals; other times responses are solicited during an interview.

In replying to such requests, architects and engineers often choose the wrong strategy. Either they do not take issue with unreasonable provisions, which results in unnecessary liabilities, or they respond in too much detail, thereby risking not getting selected.

To protect your interests without jeopardizing your selection chances:

- Keep it simple. Don't write missives or cite case law when a single sentence will convey the essence of your concerns.
- Contextualize. Explain why a term is problematic in the most general terms.
- Encourage more dialogue. Offer to provide more detail if the client needs it before making its selection. Also, suggest that, once your team is selected, a face-to-face worksession will result in quick resolution about each of the major concerns. Reassure your client that you are confident about reaching agreement.
- Link comments to insurability, risk management or quality control. Clients identify with these issues and generally respond favorably.

For example, rather than responding in detail about why a proposed indemnification or redesign clause is one-sided, unreasonable or poorly drafted (or all three!), simply state in your response, "*We would like to discuss the indemnification provisions vis-à-vis our insurance coverage*" or "*We would like to discuss various cost control strategies that address your budgetary concerns and suggest some*

*alternative redesign provisions.*" In both cases, you have successfully opened the issue for detailed discussions at a more appropriate time and venue, preferably after you are selected.

If you are subsequently asked to provide specific comments, preface your comments with language such as:

*Attached please find our review of your draft agreement for Architectural/Engineering services. Most of our comments fall into the following categories:*

1. *Clarification of roles and responsibilities between your organization, the A/E team and the Contractor.*
2. *Aligning the A/E's services with items over which it has reasonable control.*
3. *Providing our team with greater ability to help manage your risks.*
4. *Consistency with available insurance coverage. Our professional liability insurance serves an important role in providing financial coverage for any of the A/E's negligent acts, errors and omissions. Throughout the draft, we have offered alternative language that is consistent with our insurance coverage and addresses your major concerns.*
5. *Clarification of Basic and Additional Services. In our experience, clarifying these lists helps ensure that less services fall through the cracks due to unspoken expectations about what is or is not included within the A/E team's Basic Services.*

Then, offer to meet with your client and their advisors. Again, reassure your client that you are prepared to work through the issues and reach agreement with them. ■