

Strogoff Consulting's Architecture, Design & Engineering NEGOTIATING STRATEGIES

Practical, Proven Techniques for Negotiating Better Agreements and Increasing Profits

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"Some men look at things that are and ask 'why.' Others dream about things that can be and ask 'why not'." — Robert F. Kennedy

Make Your Contracts More User-Friendly

Who stipulated said that a contract must sound onerous, contain words not commonly found in most dictionaries at the time of the writing of this article, require a law degree from a duly accredited institution to interpret and be stripped of phrases in whole or in part that sound soft and fuzzy?

In most states, a contract, to be binding, must simply contain an offer, an acceptance and some form of consideration. In some states, contracts between licensed architects or engineers and their clients must also contain specific provisions such as a description of the design professional's services, a basis for compensation and a method for terminating the contract. Nowhere do any requirements exist that a contract must instill fear, be negative in tone or not be used as a marketing opportunity. So why not add language to a contract that places a client at ease, reaffirms why that client should retain you, and spurs a dialogue about each party's goals?

If properly crafted and negotiated, a contract strengthens a relationship and creates the foundation for a healthy set of dynamics for years to come. And rather than dreading the negotiating process and viewing contracts so glumly, design professionals should embrace each contract as the culmination of a successful marketing effort and the start of a close and rewarding working relationship.

Follow these guidelines to make your contracts more user-friendly:

Frame contracts from your client's perspective

Start each contract with summary of what your client hopes to accomplish, why that client is hiring you and what benefits you aim to provide. Include the most persuasive language from your written proposal or statement of qualification and incorporate some of

the passion and exuberance you had during the marketing phase. For example:

The Design Professional, based on its experience designing similar facilities and remodeling historic structures, is being retained to provide architectural and engineering services for: the renovation of the Main Street outpatient clinic to create more usable space; the upgrading of the communication and security systems to improve staff efficiency and patient safety; and the replacement of the mechanical and electrical systems to decrease operational costs. The Design Professional's design services shall include those services described below and as reasonably required to assist the Owner in obtaining state funding, obtaining a conditional use permit and applying for energy conservation tax credits.

Stop short of creating promises or guarantees that raise expectations you cannot meet or that increase your standard of care. Ask your lawyer, insurance agent or in-house risk manager to review your language but don't let them dilute the impact of your message. If they object to any of your language, instruct them to suggest alternative wording that achieves the same desired effect of enhancing your client's perception of your team.

Keep the tone positive and collaborative

State provisions in positive, not negative terms. For example, *The Owner shall provide required information within the timeframes specified below* is preferable to *The failure of the Owner to provide required information according to the dates specified in this Agreement shall be construed as a material breach of this Agreement.*

Preface the descriptions of your services with phrases that describe the goals. For example:

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MORE NEGOTIATING TIPS

Agree on an objective standard. Rather than argue about which party is right, suggest using a standard previously developed by a neutral and respected third party. For example, when discussing hourly billing rates, agree to accept the average billing rates published in a specific independent study.

Remove your client's deadline. If a client pressures you to accept a proposal by citing an unreasonable deadline, try asking, "I can't accept your current proposal but believe that we can easily work this out. What can I do to help remove the pressure of your deadline so that we reach an agreement?"

When reaching an impasse, ask your client for input. Try posing one of these questions:

"What else do you think either of us can do to move beyond this impasse?"

"Aside from (fill in with any deal breakers), what single concession do you need from me to bring this negotiation to an end?"

"If I could help justify our proposal to others, would you be willing to recommend its acceptance?"



Make Your Contracts More User-Friendly

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To help control construction costs, the Design Professional shall recommend alternative structural systems and identify relative construction costs for each.

or

To assist the Design Professional in meeting the Owner's expedited schedule, the Owner shall provide required information within the timeframes specified below.

Keep all advisors with "what may possibly go wrong" attitudes at bay until you complete your initial contract draft. And always screen your advisors' suggested language. If the language may be viewed by your client as contentious, rephrase it.

Keep the language simple and concise

Consider these two ways of stating essentially the same thing:

Notwithstanding events beyond its control, the Owner shall render timely decisions and notify the Design Professional, verbally or in writing, so as to avoid unreasonable delay in the process of the Design Professional's services under this Agreement and according to the schedule outlined below.

versus

Whenever reasonably possible, the Owner shall render timely decisions.

Delete superfluous words. In general, the fewer words the better. And if a party doesn't fully understand a clause, determine the intended meaning and replace it with simpler language. Contract language should be written at a 9th grade level and not require a law degree to interpret. ■

Negotiating *Blunder* of the Month Award

After getting unanimously selected for a new city hall project, the principal of an established architectural firm skillfully guided his client through two rounds of negotiations. The client accepted most of the architect's terms and voiced its delight with the architect's proposed project approach and schedule. The client even appeared relieved when the principal outlined his firm's proposed fees. But rather than simply shaking hands and closing the deal, the principal suggested that the client call the city manager of a nearby town with whom the architect's firm had recently worked. The architect wanted the client to feel that it was getting a good value.

Later that week, the client summoned the architect and expressed its dismay. It turned out that the city manager faxed to the client a summary of the architect's fees, which were almost 25% less than the principal proposed on this project. The client then insisted on the same percentage fee. Unfortunately, for the entire A/E team, the principal never checked the facts before providing this reference. Nor did the principal contact the city manager immediately after providing the reference to prepare him for the client's phone call. But he did succeed in lowering his fee by 25% and alienating one new and one previous client. ■