

Surviving and Thriving During Contract Negotiations

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by Beth Hjort, RHIA

Employer economies, staffing shortages, and advances in technology lead to the demand for outsourced functions, and there are a plethora of vendors happy to meet your facility's needs. Yet negotiating an outsourcing contract can be an intimidating proposition. Managers spearhead change internally every day, but doing it externally, without direct authority, can be more difficult. It doesn't have to be.

The first step is to narrow the vendor selection through networking, RFPs, vendor interviews, and reference checks. Contractual development begins when you find a service provider you can trust and you have confidence that the vendor you have chosen is going to stay in business.

Ideally, HIM professionals would originate contracts for services because they can be assured all issues will be addressed. Practically, you may find yourself reacting to contracts put in front of you by vendors. However, much opportunity lies in the contractual formulation and negotiating phases. A well-orchestrated contract can make the difference between peace of mind and daily headaches. Building a solid, symbiotic relationship through the negotiation process can yield many benefits.

Contracts are a critical part of the outsourcing process because over time, the details can grow foggy. As you create and fine-tune the necessary details for an accurate record, also recognize the opportunity to build trust relationships with the service provider. Look at the agreement as an opportunity for you and the vendor to grow your businesses together. Isolate the criteria that mutually serve you, the hiring party, and the outsourcer. The most successful outsourcing arrangements are those that create a win-win situation for all involved.

Know What You Need, Know What You Want

Knowing all the issues up front is impossible, but a systematic approach gives you the best structure for handling the inevitable. Carefully measure your intended outsource function, then determine the elements and objectives that cannot be compromised and those that are negotiable. Greater flexibility will lead to greater freedom in the outsourcing process.

Pay attention to interpersonal dynamics while negotiating. It's important to like the owners and employees of your vendor because they will be managing part of your operations. You should expect a relationship based on honesty, respect, and equity. Consider creating a relationship team composed of key individuals from both sides of the outsourcing relationship. Orient the vendor to your setting and operations for better understanding of the process they will be replicating.

Enter the negotiations knowing what services and fee structures competitors offer. Sometimes higher prices will be justified by the service package; be able to make that choice comfortably with additional information gathered during the prospecting stage. Consider a short-term contract if the function is one you wish to expand and the outsourcing arrangement buys you time for development.

Know What to Expect

A vendor will most likely have settled into a type of contract that has proven beneficial for the type of service offered. Familiarity with the various types of contracts will give you a framework in which to approach review of the proposal. Ask for a copy of the draft agreement in advance of meeting dates to ensure adequate time for review and earmarking of all important segments for negotiation.

Typical contracts are:

fixed price: A fixed fee is agreed on for defined products/services. The price is adjusted and the contract amended for additions/changes.

time and material: A fee rate is established for time involved. The vendor bills for actual materials and time. A caveat with this type of contract is "runaway charges."

hybrid: Though somewhat more complex, this one employs features of both contract types. All services are administered for a pre-set price and additional service time can be added for mutually set rates.

Typical elements of a contract include:

scope of work: What's within and outside the scope of contracted work? This is the section that will take the most time in development to avoid interpretive misunderstandings later on and begs for all-inclusive language so that additional fees aren't added for forgotten steps. Leave nothing out, because initial pricing springs from this portion of the understanding.

Keep your list of objectives in mind as you develop and negotiate this section. Consider equipment, software, telecommunication, data backup, and archiving needs. What custom functional specifications and regulatory compliance factors are needed? Include the vendor's detailed work plan for accomplishing the work if feasible. Be sure it reflects your expectations: include dates, frequency, and expected turnaround time when applicable.

deliverables: This section addresses the exact product or service that will be provided. Explicit detail is critical. Include reference to the life of equipment through disposal. If the product is documentation, cover formatting specifics (both document and computer formats), conformance with industry standards, multiple copies, backup, and maintenance. If the service is network-related, list contributing details.

terms and conditions: This is the largest portion of the contract because it contains the legal considerations for unanticipated turns of events. Termination elements are included here.

service level agreements: When an ongoing service operation is provided, this section addresses inherent details like response times, quantity, training included, and intended adjustment to change in volume. Express each in measurable terms for ease in determining conformance to expectations.

The point-by-point discussion will be complete when you are comfortable that all factors have been satisfactorily addressed. The expectation for thoroughness, adequate language, and appropriate modifications is directed at the hiring party. Don't be afraid to ask for an additional meeting if you need time to think or confer with colleagues and administration.

Contract Caveats

In the quest for thoroughness, balance must also be sought. An overspecialized arrangement with a vendor will limit future negotiations because other vendors will be unable to produce a competitive bid.

It's important to be in mutual agreement with the vendor about how to handle unanticipated future changes or issues. These points involve the softer issues of business relationships. Further, work with your organization's purchasing department for any predetermined contractual phrases or requirements.

If applicable to your outsourcing arrangement, make sure the written agreement includes start and stop dates or duration of contract, renewal procedures, manner in which bills will be itemized, quality management methods and feedback, handling of errors and corrections, fees for telephone line usage for voice or data transmission, conflict resolution, penalties for not meeting deadlines, change of service personnel if prudent, provision for periodic system review for improving and developing the process, continuity provisions and plans if team members leave before completion of the contract, and if applicable, an approach for moving present employees into operations.

Healthcare contracts should include a confidentiality clause. Your concerns should be adequately covered.

Finally, avoid making unreasonable demands. Let your intuition guide you away from the difficult-to-deliver if it's not one of your necessary elements.

The Last Step in Negotiations

Retain an attorney familiar with your business for final contractual review *after* negotiating and *before* signing the contract. An attorney will spot what you didn't and will apply common law principles governing service contracts. Alert him/her especially to any areas of concern that surfaced during the talks.

If you are tempted to bypass this step because of high counsel fees and delays, consider that your organization will be parting with large sums of money over the duration of the contract. You'll save time and money in the long run if you catch errors or problems before the contract is signed.

Contractual development and monitoring forces HIM professionals to develop their lateral leadership skills, fine-tune negotiating skills, and settle into a comfortable place with managing without line authority. Combine your operations knowledge with an effort to understand both sides of the business relationship. It will take you far in finding the healthy balance necessary for a successful and enduring experience.

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