



In The Know

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For a Vendor Project: Don't Skip the Contract

There is a serious and potentially costly issue that exists when Boards put a vendor to work on a project without first negotiating a contract. "In the absence of a written contract, you are deemed to be working under a verbal contract, begging the question, exactly which terms govern your relationship with your vendor," says Lee Weintraub, Construction Law Attorney from Becker & Poliakoff. "As long as things are going well, this isn't a problem. But as soon as a hiccup appears (like a change order, delay, non-payment, or unforeseen site conditions) your rights are uncertain, and a lot of money is on the line."

Written terms should include specific items such as the scope of work to be done, the materials to be used, the start date, how long each day the crews are to work, the expected end date of the project. Contracts should also include the terms of what happens if it is not completed on time, where and when workers are to eat lunch and whether they can use the facilities (yes, that is important). Other important items to have included in the contract include the terms of payment, and proof of insurance (worker's comp, general liability, etc.). Without a signed contract, there is only supposition. A clear written contract increases certainty in relationships, and the ability to administer the project with clarity and confidence.

Weintraub advises, "If you were negotiating a written contract and never signed it, but you and your client act-

ed in accordance with its terms anyway, you may be deemed to have accepted that written contract even without a signature. Or not. Many factors go into this consideration and your relationship becomes too uncertain to assist in any cogent business planning while on the job.

As a Board Member, you have the fiduciary duty to ensure that you have considered all of the facts and issues before committing a job to a specific vendor. Take the necessary steps to ensure the terms of the contract, including payment terms. Make sure your manager is aware of the projects you are considering and committing to so that vendors are set up in the accounting system to facilitate timely payment when the job is completed. It might take a little longer to get the job going, but it will be worth it in the long run.

Steps to Negotiating Contracts

So how do you successfully negotiate a contract with the vendor? Once a need is identified and the team of people that will be working on the project is established, it is time to look at the first step of the process.

Research Vendors. Once the need is established, have the team working on the project look around and research different companies that can complete the job. Things to consider in this step include: reputation and capability of the vendor, cost compared to the competition, and amount of time involved for the company to complete the project. The internet can be a great resource for researching reviews and services offered.

Narrow Down Your Choices.

Once you have thoroughly completed your research, it is important to narrow it down to at least three options.

Request Proposal/ Vendor Interview. Once the vendors are narrowed down, contact them and describe in detail your need and expectations for the project. It is a good idea to have the vendor come in and present an in-person proposal to make sure that the vendor matches all of your criteria.

Review Terms of Agreement.

Once you have received all of the proposals, you can review them side by side and decide which vendor best suits your needs. The review requires attention to detail but will clearly identify differences in what vendors will provide.

Negotiate. Once the vendor is chosen, go back and negotiate any sticking points that you might have from when you went over the terms of the agreement and details of the job. Now is a good time to iron out all the details and ask any questions that you might still have, in order to gain clarity.

Solicit Second Opinion. It never hurts to have another pair of eyes look over the contract by someone who is familiar with contracts. If you do have a second opinion, it is important to make sure they are aware of the details of the job and the specific criteria that you have set.

Sign. When you have completed all of the steps, you are ready to sign the contract. At this time, both parties should have agreed to a start date for the job to begin. The date should be included in the terms of the contract.