

**"CONTRACT
NEGOTIATING
TECHNIQUES"**

by

Robert R. Pagnotta

Partner

HIS Professionals, Inc.
173 Island Road
Mahwah, NJ 07430
(201) 529-4243

CONTRACT NEGOTIATIONS

- **Goals**
- **Negotiating Strategies**
- **Hardware Issues**
- **Software Issues**
- **Interfaces**
- **Implementation Plan**
- **Price Negotiations**
- **Payment Terms**
- **General Terms & Conditions**

NEGOTIATING STRATEGY

**A Vendor Will Only Give You
Their Best Deal
When They Believe
They Are Losing**



CREATE THAT ATMOSPHERE !!!

NEGOTIATING TACTICS

- "It's a Buyer's Market " - ask for it!
- Start Negotiating with the RFP...
and Continue *Throughout* the Selection Process.
- Negotiate *High* Up the Vendor Organization
- Emphasize *Negatives* in Vendor Discussions:
 - You get their best deal when they think they're losing!
- Keep Your *True* Feelings To Limited Staff Members
- Allow Sufficient Time for Negotiations
- Keep At Least 2 Vendors in Running at End
- Take Control Away From Current Vendor
 - Review existing contract thoroughly
 - Issue Notice of Non-Renewal Promptly
 - Negotiate Extension at *Your* Option
 - Invite Them to Bid (No Matter How Bad !)
 - Start Discussing Conversion Procedures (eg, tapes)

HARDWARE ISSUES

- **OVERALL GOALS:**

Obtain The Equipment Required

To Perform All Needed Functions

For The Next 3 - 5 Years.

- **CAPACITY ISSUES:**

- Response time guarantees
- Production capacity guarantees
- Increased hospital volumes & effect on system capacities

HARDWARE, continued

RESPONSE TIMES:

- **Guarantee 1 to 3 seconds**
 - 90 % of the time
 - 9 to 5, Monday to Friday
- **Make sure you understand calculations !**
- **Duration of Guarantee : 2 - 5 years**
- **Remedies:**
 - 60 to 90 days to correct
 - They bring in additional hardware
 - Return monies paid
 - Support payments stop
- **Frequency of Occurrence (& remedies)**
- **Work with them on:**
 - Volumes
 - Number of terminals
 - Production cycles
 - Ad Hoc reporting

HARDWARE , Continued

- **Production Capacities**

- Daily Schedules
- Month-end Schedules
- Daily Down-Times
 - Back-Up
 - Degree of Shut-Down
- Remedies
- Frequency of Occurrence

- **Increased Hospital Volumes**

- What happens if:
 - If volumes increase by "x"?
 - Number of terminals increases?
 - Retention Cycles extend?
- Work through complete scenario:
 - Terminal Controllers
 - Multiplexors
 - Remote capabilities

HARDWARE, Continued

OTHER ISSUES:

- **Specify Whether New or Used Equipment**
- **Establish Warranty Period**
 - Back Up Equipment?
- **Specify Equipment Installation Details:**
 - Wiring, Physical Planning, Time Frames
 - Who Pays for Freight, Insurance, Repairs
- **"Lemon" Clause**
 - Replace equipment if down too often
- **Maintenance Standards**
 - Response Time to Calls
 - Time to get equipment running
 - Remedies, if they don't perform to these standards

SOFTWARE ISSUES

Overall Goal:

- Obtain the System That Performs:
 - As Per the Sales Pitch
 - When Actually Installed
 - Responsive to Future Changes

Definitions:

- The System Must Perform in Accordance With:
 - RFP Feature Checklist
 - User Documentation
 - All *Documented* Sales Promises (Letters)
- Establish Acceptance Testing Criteria
 - Using Actual Hospital Data
 - Tied to Final Payment
- Establish Remedies for Non-Performance
 - Refund of All or Part of Monies Paid
 - Penalties Over Time Until Corrected

SOFTWARE ISSUES

- **Define Difference Between Error ("Bug") Enhancement, and New Releases.**

- Can't be left to post-contract discussions
- Can't be unilateral definition by vendor

- **Errors:**

- Must be corrected within 60 - 90 days
- Remedies:
 - Stop payment of maintenance fees
 - They pay "x" dollars for every day past "y"

- **Enhancements**

- How estimated, costs for estimating!
- Options on Accepting

- **New System Releases (Not Upgrades)**

- Within 2 years = no charge
- Within 5 years = pay install fee only

SOFTWARE ISSUES, Continued

- **Source Code**

- Obtain rights from the outset
- If Not, then Escrow Agreement;
Hospital receives if:
 - Company enters Chapter XI
 - Company stops supporting product
 - Company/product bought/sold

- **Long-Term Software Maintenance Agreement**

- eg: CPI cap on future increases

- **Must Support All Future Federal & State Regulations**

- All Systems, not just Patient Accounting
 - eg: Payroll taxes & GL external reporting

- **Licensed Systems**

- Their contract with supporting vendor

- **Right To Process Other Hospitals**

- Mergers & Aquisitions Growing!
- Who Knows Five Years Away ?
- Save for "Give" **IF** You're Sure Not Needed

INTERFACES

- **Define Very Carefully**
 - Expensive to Negotiate *Later!*
- **If You Know The Other Vendor:**
 - Have Them Work Together
 - Define Their Respective Duties
 - Negotiate Written Agreements Simultaneously
 - Get Both Prices Fixed
- **If You Can't Identify Other Vendor:**
 - Establish What *First* Vendor Must Do
 - Describe Their Tasks In Detail
 - Obtain Their Cost Commitment
- **The Future:**
 - All must commit to support
 - Modify if other systems or hospital changes (volumes, remote locations, new instruments)
 - Projected Growth - should have no impact on performance guarantees

INSTALLATION

- **Work Plan**

- Must Be Part of Contract
- Worked out in advance
- Understood by your staff
- Option to Postpone/Cancel

- **Should Cover:**

- Who does What and When
- Include Training Program:
 - Where conducted, # of days & attendees,
- Conversion fees...
 - Automated (Detail vs Summary) vendor role, costs, etc.
- Testing; how conducted, who participates?
- Up front customization items
- Format for Monitoring Install Plan
- Status Meetings, Frequency, Attendees
- Interview/Screening Rights on Installers

- "If You Don't Ask For It Up Front...
...You Probably Won't Get It ! "

INSTALLATION, continued

- **Hospital Staffing Requirements**

- FTEs required, based on past experience
- Reveal surprises before too late
- Get their position *in writing*

- **Environmental Requirements**

- Room Dimensions, Power Requirements
- Cabling Details (Coaxial vs. Twisted Pair)
- Raised Floor, Air Conditioning
- Uninterruptable Power Supply
- Communications Lines & Modems
- Estimated Costs for Above

"The More You Can Get in Writing...
...the less you'll wish you had got in writing!"

PAYMENT TERMS

- Discuss After Discounts Obtained
- Vendors Want It All Up Front
 - You Want To Pay When System Operational or as work is performed, satisfactorily.
- Maximum Up Front = 10 % to 25 %
- Interim Payments Based on Concrete Progress
- Hold Back 25% - 50% until 30 Days After Operational
 - If they refuse, they may suspect install success too!
 - Allow Reasonable Caveats for Hospital Delays
- Build in "Withhold" Clause for Lack of Performance:
 - Software Doesn't Meet Specs
 - Modifications Not Delivered On Time
 - Installation Personnel / Classes Unsatisfactory
 - Hardware Not Performing
 - Slow or Inept Maintenance

PRICE NEGOTIATIONS

- **Common Discount Ranges:**

- | | |
|---------------------|-----------|
| - Software..... | 15% - 30% |
| - Hardware..... | 10% - 20% |
| - Installation..... | 10%- 15% |

- **Installation Costs**

- Establish Number of Days On-Site, Per Application
- Maximum Cap for T & E (specify local area rates)
- Avoid "Turnkey" flat fee (reverse incentive!)

- **Dig Out Hidden Cost Items**

- Education, Corporate Hq "Expert" VIsits, etc.
- Who pays to re-do poor work or for over-runs?

- **Negotiate Specific Rates for Special Work:**

- Less for Juniors than Seniors
- Customization, Ongoing Support, etc.
- Never "Prevailing Rates" !

- **Negotiate Future Purchases Now**

- Same Volume Discounts on Future Hardware and Software additions

GENERAL TERMS AND CONDITIONS

- **Define "Installation" on Your Terms**

- When All Training Completed Satisfactorily
- When All Software Modifications Completed
- Not Just When Software Delivered or Loaded

- **Define "Acceptance" Carefully**

- Hold back "x" % of Install and Software Fees
- Define Formal Letter or Acceptance Event
- eg: System Performs all RFP Specs

- **Documentation**

- Negotiate the Number of Copies Provided
- *Very* expensive after, cheap "give" before

- **Support Services**

- Phone: specify hours by time zone and day of week
- On-Line Dial-Up: who's nickel ?
- Number of routine service visits/calls (no charge)
- Allow Penalties for Non-Performance

- **Governed by the Laws of *Your* State**

General Terms, continued

- **Termination Clause**

- Define Carefully
- Establish Details on What the Hospital and Vendor Must Do Upon Termination.
- Establish *Price* of Your Options After Initial Term
- *NO* Automatic Renewals - They Must Notify You

- **Security Interests**

- **Software Infringements**

- **Warranties and Limitations of Liabilities**

- Direct Damages
- Insurance For Indirect Damages

- **"Prevailing Rates"**

- Define *Specific* Dollar Amounts
- Cap Future Increases (CPI)

RECAPITULATION

- **Start Negotiations With The RFP**
 - ask for their sample "boilerplate"
 - list your key demands early
 - contract clauses should be part of the evaluation process
- **Allow Sufficient Time for Thorough Negotiations**
 - allow months, not weeks
 - don't rush the most important step
- **Don't Over-Commit Prematurely**
 - keep two vendors in running
 - it's hard to negotiate when they know they won!
- **Think & Look Past Today**
 - most contract disputes occur 1 to 2 years later
 - think about future applications or systems
 - how about new facilities or services?

It's A Buyer's Market!

EPILOGUE

A Well Thought-Out and Worded Contract:

1. Outlasts ALL of the Negotiators:

- Vendor Sale Force
- Hospital Executives
- Consultants
- Attorneys

2. Benefits BOTH Parties By Clearly Defining Each Other's Responsibilities.

3. AVOIDS Lawsuits, since neither party would risk a suit in the face of a solid, detailed contract.