

# The Art of the Deal

***The devil is in the details when it comes to negotiating vendor contracts.***

**by Vince Ciotti & Bob Alcaro**

**M**any IT projects, such as strategic planning, system selections and implementation, have become a science in the sense that there are a well-defined, discrete number of steps one should go through to yield an optimum outcome:

- When planning, you must interview all stakeholders, issue a request for information (RFI) to potential vendors, align IT initiatives with the organization's overall business/marketing plans, budget IT capital and operating costs, etc.

- With system selections, you should first conduct demos (highest cost to the vendor), then call telephone references (using a scored checklist), and finally make site visits (without a vendor chaperone). Each step will cost more time and money as you narrow the field.

- Implementations, too, have a world of their own: planning, building, training, testing, go-live, post-live audit, and finally updating resumes and contacting head-hunters ...

Negotiating contracts, however, is much more of an art than a science: getting the right (lowest) price and best (fair) terms and conditions is a delicate matter.

This is especially true in these post-Enron days, when the Sarbanes-Oxley (SOX) Law has given vendors an excuse to refuse many of the past contractual protections hospitals used to be able to insist on. It is ironic that the SOX law was passed to protect us from corporate greed and malfeasance, yet now vendors are invoking it during contract negotiations to refuse giving up any remedies or warranties that jeopardize their revenue stream.

Since the "art of the deal" has become much more challenging, here's a quick list of techniques that might



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help you negotiate a modicum of protection from non-delivery, cost overruns, and other IT risks. Using the old journalistic six questions, let's review the "who, what, when, where, why and how" of contract negotiating:

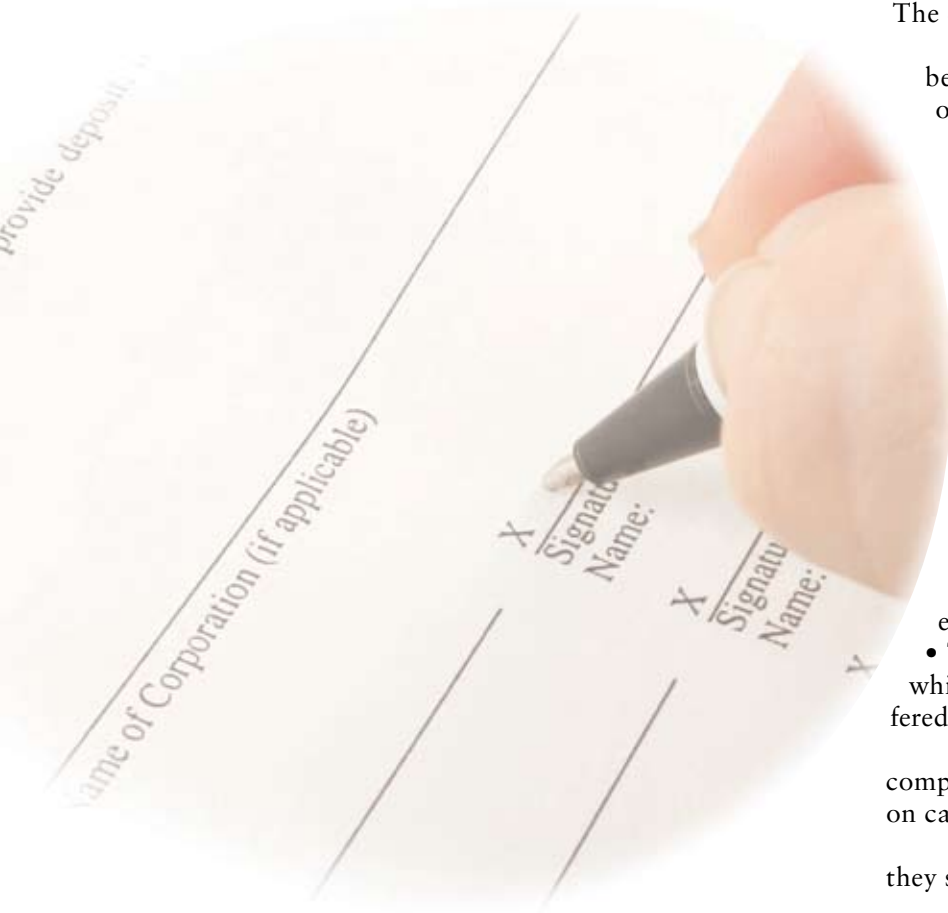
- Who should do the negotiating?
- Equal levels of the organizations: managers to managers, vice presidents to vice presidents, executives to executives. Don't give their low-level field reps access to your C-suite — insist on equals.
- Don't ever negotiate with sales reps, who have little authority to discount prices or change terms, but only relay your requests back to corporate executives who have the real authority.
- Control users — physicians, nurses, and department heads often unwittingly serve as inside salesmen, telling vendors how they are doing and diluting your negotiating clout. Get everyone in a room and read them the riot act: "loose lips sink ships."
  - What — contract issues to negotiate?
- Issue "mandatory contract terms" with your RFI or request for proposal (RFP), requiring vendors to concede up front "gimmees" like graduated payment terms and using your HIPAA Business Associate Agreement (not theirs).
- Draw up a list of every issue you have with their agreement, and create a list of all of the items missing in their contract such as response time guarantees, remedies/warranties or right of refusal for implementation personnel.
- Audit every new contract document they provide against this original issues list and keep score to show them how (poorly) they are doing

at earning your business.

- Give them a specific target price to win the deal, based on research at neighboring hospitals, experienced consultants who have negotiated with these vendors before, or commercial pricing services.
- When — to negotiate?
  - During the selection process, when vendors still fear they might lose — not after you announce a “vendor of choice,” which in essence ends any chance to negotiate favorable prices and terms.
  - Use the vendor’s answers to the mandatory contract terms in your RFI or RFP to help narrow the field if they won’t concede. Be firm up front, when you have them worried about surviving the cut.
  - Time negotiations for their fiscal year-end if possible (ask for each vendors’ fiscal year-end

in your RFI), or at least a quarter-end, when hungry stockholders are eager for good news.

- Calendar year-end is always good for marketing types, whose commission checks are usually tied to W-2s. Will you be their Scrooge or Santa Claus?
- Where — to negotiate?
  - Not at their corporate headquarters, where Taj Mahal office buildings with towering Ficus trees in the lobby give them the psychological advantage of flaunting their successes.
  - Plus, by investing your time and money to travel to their offices you tell them you are leaning their way and lower their fear you might take your business elsewhere.
  - Make the vendors travel to your hospital to negotiate, to get some of their skin in the game, especially vendor executives who might give away even more just to show local sales reps how they can “close the deal.”
- Why?
  - To obtain maximum discounts. This is tough to do unless you have selected two “winners” and are negotiating with both of them concurrently. The devil’s in the details in pricing:
    - Be sure the high discounts you are being offered aren’t really being taken off of an inflated list price.
    - Check out those processing or ASP fees over 10 or 20 years (how long did you keep your last system?) and an old-fashioned purchased in-house system might look far better.
    - Negotiate an annual CPI increase that reflects the pathetic annual increase (decreases?) you get from Medicare, Medicaid, and HMOs.
    - Watch out for items rarely included in the vendor’s agreement, such as travel costs — ask for the same travel expense limits they use on company business: no first or business class, advanced air fares, economy rental cars, etc.
  - To change the many boilerplate terms which might cost you more money than proffered discounts in the long run, such as:
    - Payment terms based on actual accomplishments like testing or go-live, not just on calendar dates.
    - Response time guarantees whereby they share in the pain if the hardware configu-



ration they quoted was inadequate.

- Hold-backs, whereby you keep a minimum of 10 percent to 20 percent of license and implementation fees until after live.

- Right of review and refusal of implementation personnel, to keep rookies out of your hospital (and never make this review mutual, as some vendors do. Remember, you're paying for them, not vice-versa).

► How to negotiate?

- Through a series of meetings over several weeks or months, not just one magical afternoon when you consummate the deal, shake hands and rush off to a celebratory dinner.
- Strenuously, to learn about their corporate culture and how they will treat you as a client when you make serious requests or when you have differences of opinion.
- Auditing their new contract drafts thoroughly to see if any previous concessions have been "accidentally" dropped from the latest iteration (the "compare" feature in Word automates this nicely, so be doubly careful with vendors who won't provide an electronic document).
- Try to compromise rather than accept their "no" responses. Few clauses are written unilaterally, so be willing to meet them in the middle, but keep your half of the middle. If they are unreasonable during negotiations, imagine what they will be like during the implementation after you've signed.

**It's a long ride**

You hope to spend a decade or more with the "partner" vendor you are negotiating with.

Just like pre-nuptial agreements in a marriage, how willing your future partner is to negotiate fairly and put things in writing up front can tell you a lot about what the relationship will be like.

Better to call off the wedding if they prove recalcitrant in negotiations, than suffer through the pain, expense and misery of a divorce.

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