



CONTRACT TRIAGE

How to determine if a contract is worth accepting or not

IS THAT CONTRACT WORTH SIGNING?

Triage

Before you do anything else with that contract...

Put it through triage. Medical practitioners perform triage when they are assigning degrees of urgency to admitting wounds and illnesses.

When you review a contract to assess if it contains too many deal-breakers, which left unchanged, would leave your business vulnerable, you are performing contract triage.

Before you take the time or expense to pay a lawyer to review your entire contract, use this simple method of contract triage to determine if it's even worth it.

I've negotiated thousands of contracts amounting to billions of dollars in my 30-year career. **From my experience, these are the four biggest considerations you have to study to determine if a contract is even worth discussing:**



Scope of Work ('SOW')

The Scope of Work is not what your bid says; it's what the contract says. Subcontractors that assume without checking that exclusions, unit pricing, and other special terms from their bid make it into the actual contract are poised to lose their shirts. Make sure the contract SOW matches your intended SOW.



The Regret Question

Once you have even a couple projects under your belt, you know what a near-miss or even an actual disaster feels like. Before signing another contract, look back on your experience and ask yourself "What would make me regret taking on this project that I would do just about anything to get out of it?"

Your answers to that question, based on your experience or the experience from others handed down as cautionary tales, should serve as a guide. If you can't reduce the risks you know to be real and considerable, it might be time to look for another opportunity.



IS THAT CONTRACT WORTH SIGNING?

Triage



Schedule

Schedule violations are one of the most common reasons for subcontractor termination. What's more, delay damages and acceleration costs are often for the basis of the largest backcharges and adverse claims against subcontractors.

Frequently, those terminations and claims could have been avoided if the subcontractor: (1) insisted on a schedule that made sense at the beginning of the project; and (2) refused to sign a contract that incorporated an out-of-date or unrealistic schedule. Never sign a contract with a schedule you know to be unreasonable just because the GC promises that a new schedule is in the works. Make no mistake – what you sign is what you're bound to.



Damages

What's the worst that can happen...if the worst happens? In other words, what can the other side hold you liable for. Sure, you're going to be expected to pay for damages that may arise from the negligent performance of your work. But what else could you be on the hook for? Sometimes the best opportunities become the biggest risks solely because the word "damages" can include outrageous liquidated damages, economic damages such as lost profit, and consequential damages which can be astronomical all by themselves. Make sure you know your downside even while working to realize your upside.

"It's only boilerplate - hardly worth looking at."

That's just what they want you to think. Not only that, the GCs want you to believe the terms are take-it-or-leave-it. That's just not true. The fact is that most every word in a contract can make or break your company, and you can absolutely make changes to reduce your risk.

If, however, you run into one of those rare GCs that, regardless of approach, stick with their take-it-or-leave-it approach, perform your contract triage, evaluate your risk, and know when to tell them "Thanks, but no thanks."



PROTECT YOUR BUSINESS TODAY.

Want more training on contract review and negotiation?

Check out our online courses & live workshop opportunities.

 firstruletraining.com

