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How to Draft Contracts That Survive (and Avoid) Litigation

ALFA Business Litigation Practice Group
January 20, 2010

Diana J.P. McKenzie
Partner and Chair, Information Technology & Outsourcing Practice Group
Hunter, Maclean, Exley & Dunn, P.C.
200 E. Saint Julian Street
Post Office Box 9848
Savannah, GA 31412-0048
Direct: 912-238-2627
Cell: 847-370-1121
Fax: 912-236-4936
Email: dmckenzie@huntermaclean.com



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Overview

- Best Practices
- Project Scope
- Price & Payment
- Time
- Warranties
- People
- Disentanglement



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Best Practices

- RFP Process
- Vendor Due Diligence



Project Scope

- Precise articulation and definition of project scope
- Customer baselining
- Governance through a formal change-order process
 - Implement the governance framework both within and outside of the contract
 - If done right, governance can ensure both proper recordkeeping and proper decision-making



Price & Payment

- Discounting – How much is enough?
 - Watch out for low ball bids
- Payment Terms – Revenue recognition versus leverage
 - All Fees Clause
 - Ancillary Services Clause



Time

- GANTT Charts – Must show Customer and Vendor Dates
- Milestones – For key events
- Process – Remain on schedule
- Make sure every obligation of Vendor has a time component



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Warranties

- Response Time
- System Availability
- No Frequent or Material Error
- No Sunsetting / 90% Similarity
- Scalability
- Cooperation



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People

- Technical Competency & Experience
- Key Personnel
 - Right to select
 - Right to retain
 - Right to replace



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Disentanglement

- Disentanglement
 - Cooperation
 - Fees



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Questions?

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