How to Draft Contracts That Survive (and Avoid) Litigation

ALFA Business Litigation Practice Group
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Overview

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

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

• Technical Competency & Experience
• Key Personnel
  – Right to select
  – Right to retain
  – Right to replace
Disentanglement

- Disentanglement
  - Cooperation
  - Fees
Questions?

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