



GUEST ESSAYS

Negotiating With a Client's Representative Requires Different Tactics

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Effective negotiating requires that parties understand each other's goals, aspirations and underlying concerns. Some of these can be ascertained indirectly: clients can gain a preliminary understanding of what's important to design professionals through reading their statements of qualifications and other marketing collateral; design professionals can gain insight into a client's perspective through reading their request for qualifications, talking to design professionals that previously worked with the client, or through third parties that know the client. No matter how much prior research is done, however, it is only when parties meet in person to negotiate that they can fully understand what drives each other. To design professionals, this means negotiating with a client's key decision-maker.

How, then, can a design professional negotiate effectively when a client assigns a representative such as a project manager, construction manager or lawyer to negotiate on its behalf? This is a common occurrence among multi-headed clients such as governmental agencies, public entities and large corporations. Representatives are also often assigned when a client's decision maker is too busy or has other reasons for delegating.

When a design professional realizes that a client assigned a representative to negotiate on its behalf, the first thing it should do is encourage the key decision maker(s) to also participate in the negotiations. Contact the decision maker(s) directly and explain why your team needs to listen first hand to his or her goals, aspirations and underlying concerns. Describe how your workplan and fees can be more responsive to their needs if they expressed them directly to you.

If, however, you must negotiate solely with a client's representative, keep the following in mind:

Representatives often inadvertently misrepresent the actual decision makers (see "Don't Rely on Others: Know The Real Decision Makers" in the March, 2002, issue of *Negotiating Strategies*). Even worse, representatives sometimes deliberately filter the information or sever the direct lines of communications between the client whom it is representing and its selected design professionals.

Representatives have differing levels of authority. Some are authorized to negotiate most of the terms. Others have limited authority and are not able to make exceptions to a client's boilerplate or guidelines without the key decision makers' approvals.

Representatives usually have different objectives than the client whom they are representing. Most representatives are first and foremost interested in their own job safety and therefore make conservative decisions. Many feel the need to look good to their clients and are overly aggressive in their role as client's advocate. Construction managers, for example, might push hard for low A/E fees thinking that will reflect positively on them. Some representatives use their position as the client's representatives during a negotiation to establish their own authority and protect their project position, influence and scope of services.

To address these and also look out for your own interests, consider the following tactics when negotiating with clients' representatives:

Ask the representative to describe the client's goals, objectives and concerns as well as his own. Even though the representative might apply his own filter, you will gain at least some understanding of what is most important to the client.

Ask the representative about the extent of his authority. Establish ground rules about when the ultimate decision maker and/or other stakeholders might need to be consulted in order to reach agreement. If the representative does not have the authority to modify indemnity language, for example, agree that discussions about those provisions will be deferred until the final meeting wherein the decision maker will be present.

Keep the client's decision maker informed about the progress of your negotiations. Following each meeting, send the representative and the decision maker a summary of what was discussed, your understanding of the client's perspective about each item, the outstanding issues and the next steps. Don't tell the representative that you are sending a copy to the decision maker. He is likely to direct you not to do this. Let him find out later when he receives his copy. Make sure you send the decision maker his copy directly - don't let anyone intercept it.

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The representative is less likely to abuse his position if he knows that you are keeping the decision maker apprised of the content of your discussions. Also, sending summaries to the decision maker provides him an opportunity to clarify anything that does not accurately represent his perspective.

Make the client representative look good. In your progress summaries, show how your team will respond to the client's goals. If an early occupancy date is crucial, for example, list the milestone dates your team has committed to in order to meet the client's timeline. Also, describe any concessions you made. This will make the representative appear to his stakeholders that he is protecting their interests. Package the information so that the client thinks its representative did as good of a job negotiating as possible. For example, if you know the client was targeting A/E fees of \$100,000 and your final proposal is \$120,000, separate your fees into \$90,000 for basic services and \$30,000 for expanded services. This will allow the representative to report that he kept your fees for basic services to less than targeted and you will have an easier time reaching final agreement.

Give the representative talking points to justify their recommendations. The client's representative must be comfortable defending your fees before he is willing to agree to them. Include in your fee proposal a list of justifications (see "Fee Proposals: Keep Them Simple, Offer Choices" in the April, 2002, issue of *Negotiating Strategies*).

Finally, keep in mind that you have more latitude than you might think when negotiating with a client's representative. The representative has an incentive to reach agreement, otherwise he risks not looking good to his client. If a negotiation fails, the representative might be blamed for having done a poor job negotiating or for selecting a design professional who was not suitable.



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