

Negotiate MSP Agreements Like a Pro

#staffinglaw

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Understanding the Landscape

Be politically savvy, especially about your leverage:

- What is the customer trying to accomplish with the MSP?
- What unique contributions do you make to the program?
- What is your market share?
- Who are your advocates?

Ask the MSP blunt questions:

- Use supplier forums and QA sessions *and* set up individual calls w/POCs
- How can I be of most value to the program?
- What works most effectively with the MSP?
- How can I increase my market share?

MSP Contract Structures

- **Prime/Sub**
 - Contract with MSP only
 - MSP terms vs. customer terms
- **Administrative services**
 - Maintain contract with customer
 - Add admin agreement with MSP

Key Terms

- **Financial**
 - Rate structure
 - Payment terms
 - MSP/VMS fees
 - Discounts/rebates
 - Guarantees
 - Taxes
- **Risk shifting**
 - Compliance with laws
 - Indemnification
 - Insurance
 - Liability caps
- **Description of services**
 - Roles (staffing firm, customer, MSP, contractor)
 - Safe work site
 - Rates
 - Conversion/right to hire
- **Operational (rules of engagement)**
 - VMS or other system
 - Pre-engagement screening (drug, background, education, prior employment)
 - Customer contact

Indemnification

- **Defined**—a promise to defend and hold harmless a party to an agreement against future claims or losses relating to an agreement
- “Indemnify”—we’ll pay for it
- “Defend”—we’ll defend you at our cost if you get sued
- “Hold harmless”—we won’t blame you
- Indemnification clauses do two things:
 - Place responsibility on the promisor—okay
 - Transfer risk—not okay
- Should be a limit for damages caused by client’s negligence, acts, or omissions

Limitation of Liability

- **Defined**—a contract provision that limits the amount of exposure a company faces in the event a lawsuit is filed or another claim is made.
- The more robust the clause is, the more protection it offers.
- Make it mutual so it applies to both parties.
- The limitation may set an upper “cap” on the total amount any party is liable to pay for any type of claim.
- **Example**—“Neither Party shall be liable for special, punitive, indirect, incidental, or consequential damages arising out of this Agreement or the exercise of its rights hereunder, including loss of profits arising from or relating to any breach of this Agreement, regardless of the theory of liability (including contract, tort, negligence, strict liability, or otherwise) and regardless of any prior notice of such damages, except as a result of a party’s willful misconduct, a breach of the confidentiality obligations. Nothing in this section is intended to limit or restrict the indemnification rights or obligations of either party hereunder with respect to third party claims.”

Negotiation Tips

- Use your customer advocates, especially if you provide something unique or integral to what they do
- Build a relationship with the MSP—request a conversation and get a sense of their goals and where there is flexibility (and where there isn't)
- Find ways to create win/win/win for you, the MSP, and the customer
- Prioritize your asks
- Understand what the MSP can change and what they can't (or won't)—flow down terms in a prime/sub relationship are hardest to change
- Explain why your ask is important and what you've seen in other contracts
- Be flexible and creative

Negotiation Tips

- Push back on any contract terms that violate the law.
- Educate your salesperson as to why certain issues could hurt your firm.
- Have a list of must-haves and, if you can't successfully add them, then gauge the risk against the size of the overall contract.
- Don't be afraid to ask (you don't get if you don't ask).
- If clients raise the same concerns over and over, the MSP may eventually change its contract.