Contractor Issues

In the previous lesson we discussed various opportunities to contract services. Last week we discussed construction planning design and construction, another big opportunity for contracting. So we need to find out about some of the “issues” we might run up against when we use a contract service.

We all know that a contract is an agreement to do something for someone for some price. Let’s review the three elements that are necessary for a contract formation: offer, acceptance, consideration.

Offer: One legal definition says that “An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” Huh? What that means in terms that I can understand is, if I offer you something, you understand that if you agree with my offer, we have a deal.

An offer can come in many different forms. It could simply be a price posted on an item in a store. You, as the potential buyer, understand that if you agree to pay that amount stated then you can walk out of the store the proud owner of that item. The offer could also be a response to a solicitation for bids. If someone is advertising for a cleaning service and you submit a bid, you expect that you will have a contract if you are the lowest best bid. The offer generally has its clearest understanding in the form of a contract where all the terms and conditions are clearly stated.

In order for an offer to be legally binding, it has to be clear. Say you submitted an “offer” for the cleaning service that said, “I will clean your offices every week on schedule, unless my other work interferes.” Is this a clear offer? Would the other person actually know when you would be working? Not necessarily, so that is not a legal offer. If you submitted an offer that said, “I will clean your offices every Tuesday night between 8:00 p.m. and midnight,” is that a little clearer? Yes, that would be an offer.

Acceptance: In order for a contract to be formed an offer must be accepted. Keep in mind that “acceptance” is accepting just what is offered, not modifying it in any way. Any changes would make it a counter-offer which would then have to be accepted by the original offeror. This back-and-forth dickering is common in real estate transactions. The key point in an acceptance is that there has to be a “meeting of the minds.” Both parties need to agree on what is offered and
accepted; otherwise a contract is not in place.

**Consideration:** The third element necessary is consideration. The contract has to have some value to both parties. Normally, consideration is money, but it doesn’t have to be, it just has to be something of some value like property or other items. It is common for government agencies who can’t give away property, real or otherwise, to sell something for “$1.00 and other valuable considerations.” So everybody wins. Without consideration, there is no contract.

We could do a whole semester on the problems that could arise because of contract language, terms, etc., but I don’t want to do that. We’re going to focus on issues that may arise with a **contractor**, not the **contract**.

(1) Restatement (Second) of Contracts, § 24.

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