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Sponsor/Provider Contracting: Where Do We Go From Here?

Over the course of twenty years in the clinical research business, I have had the pleasant and sometimes unpleasant experience of negotiating almost every contract type known to man (or woman in this case). We have moved from a simple, time and materials agreement to complex, labor intensive, relationship-driven agreements. The question is what have we learned from all these different contracting methods?

I submit we have not learned enough. Many companies have attempted to consolidate and standardize their contracts. The “one-size-fits-all” agreement, be it fixed price, fixed unit price or even risk-sharing contracts does not work. Contracts must be tailored to the project type. A Phase I project has different business issues and costing requirements than a Laboratory Agreement, a Phase IV project or a pre-clinical toxicology study.

We have focused on standardizing legal language to the point where some of it does not even make sense in the agreements we are sending out every day. A Provider recently commented to me “I just assume anything that has nothing to do with my services is not applicable, so I ignore it”. If there is language in our agreements that is not applicable to the services we are buying, it should be deleted, before the negotiations begin.

Costing has driven contract types during the last decade. By tailoring the contracts to the way in which a Provider is to be paid, we have missed the opportunity to create a more meaningful relationship between the Sponsor and the Provider. Even so called “relationship-defining” agreements (Preferred Providers) spend many pages outlining all the things a Provider will offer the Sponsor, at no charge, and require substantial discounts to obtain this status. Very few Sponsors make it clear what the Provider is getting in return; most still require competitive bidding, and there are no guarantees of even the smallest volume of work to offset the costs of going through the process to be selected in the first place.

So what is the answer? I recommend a set of standardize templates, one for each project type. This gives the Contract Manager a starting point for tailoring the agreement to meet the needs of the project, Sponsor and Provider. Costing and discounting should also be fit the project type. Whenever possible, these contracts should be Master Service Agreements, simplifying the process for future work. We have become too rigid in our thinking, taking our desire to reduce the time for the contracting process to a level that impacts the quality of the document itself and often harms the relationship before the project ever begins.

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