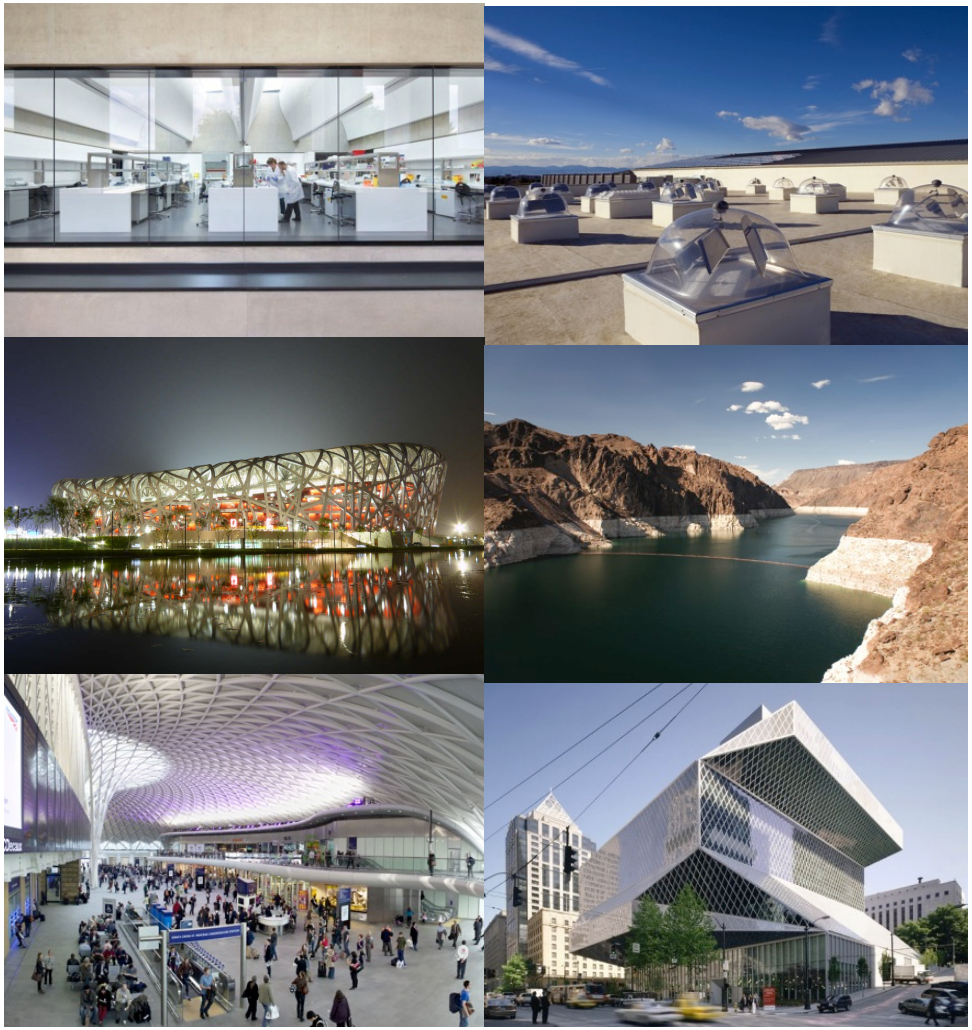


Project Risk Management and Best Practices

-Joseph Dennis, Arup Americas
General Counsel

ARUP

Joseph Dennis, Arup Americas
General Counsel

Mr. Dennis has served as General Counsel and Officer to the Board of Arup's Americas Region since 2006. Arup is one of the world's largest independent engineering firms with over 14,000 employees worldwide with a multi-disciplinary practice including structural, civil, geotechnical, mechanical, electrical and various specialty consulting. He has responsibilities for serving the 1,200 Americas staff group located in New York, Los Angeles, Chicago, Boston, San Francisco, Seattle, Toronto, Montreal, Sao Paulo, Bogota and Mexico City. Mr. Dennis leads a five attorney team in managing a diverse legal portfolio that includes dispute resolution, contract negotiation, intellectual property, collections, corporate matters and risk management.

In addition to his responsibilities at Arup, Mr. Dennis is also an active committee member of the legal counsel forum to the American Counsel of Engineering Companies as well as a Board Member to both the NYCAIA/ACEC Contracts Committee and the NYC AIA/ACEC Risk Management Committee. Mr. Dennis has also previously served as the gratis General Counsel to the Council on Tall Buildings and Urban Habitat.

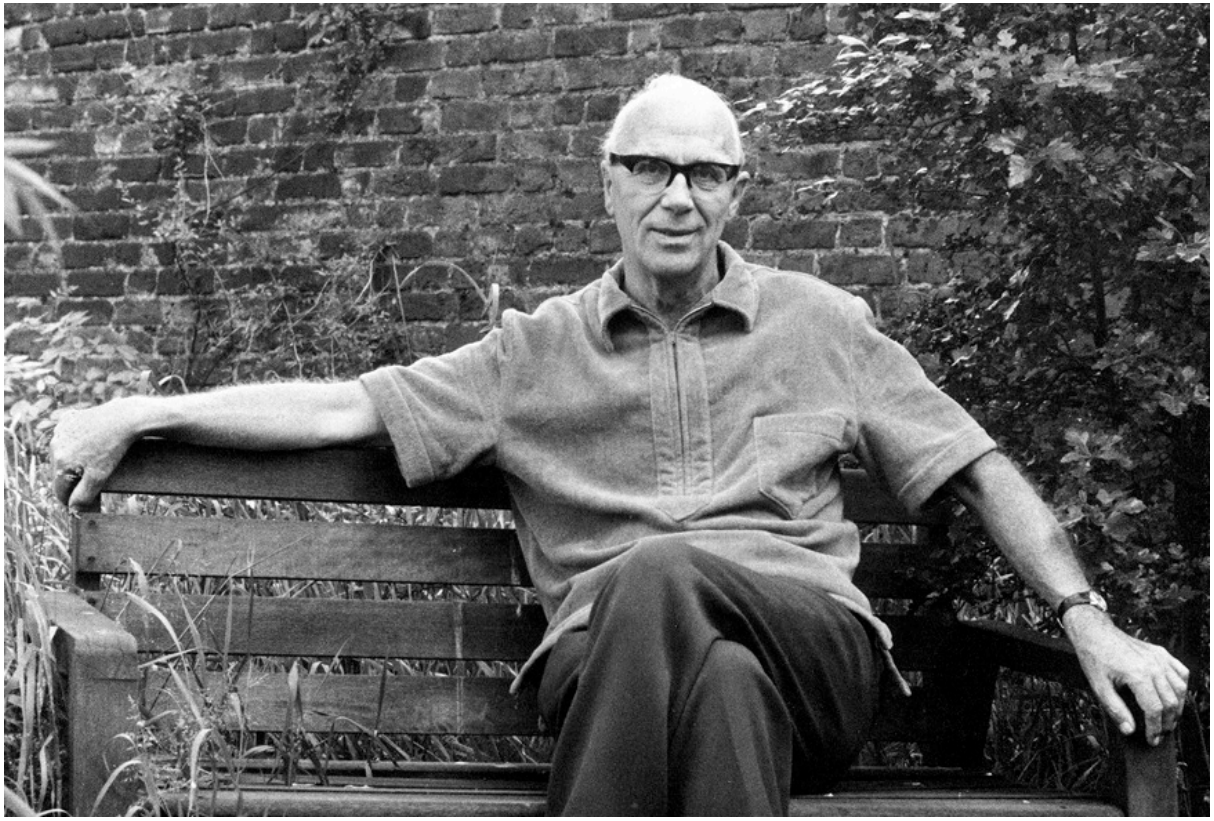
Prior to joining Arup, Mr. Dennis served for five years as the General Counsel and Corporate Secretary to Syska Hennessy Group ("Syska") which is an ENR top 100 design firm and a national leader in consulting, engineering, technology and construction. Earlier Joseph was associated with the New York City based law firms of Gaines and Fishler and Goldberg Corwin & Greenberg where he specialized in the representation of design professionals owners, developers, general contractors and sub-contractors in commercial transactions and litigation.

Mr. Dennis is a graduate of Emory University and Hofstra School of Law and is admitted to practice in the federal and state courts of New York and New Jersey and to the Supreme Court of the United States.

Who is Arup?

- A global, integrated, multidisciplinary firm of professionals working together for our clients to tackle complex building, design and systems issues
- Over 13,000 engineers, designers, planners, management and business consultants and economists
- 85 networked offices in more than 35 countries

Arup has come a long way since the firm was founded, yet we stay true to Ove Arup's original values. Our unique trust ownership structure means our people are free to pursue the firm's vision rather than chase short-term shareholder returns. This is how we maintain our distinctive culture and intellectual independence.



Ove Arup

Arup Worldwide

Arup is present in 6 regions: Africa, the Americas, Australasia, East Asia, Europe and Middle East

More than 13,000 employees based in 85 offices in more than 35 countries

Arup Americas

More than 1,000 staffs and
10 offices

ARUP

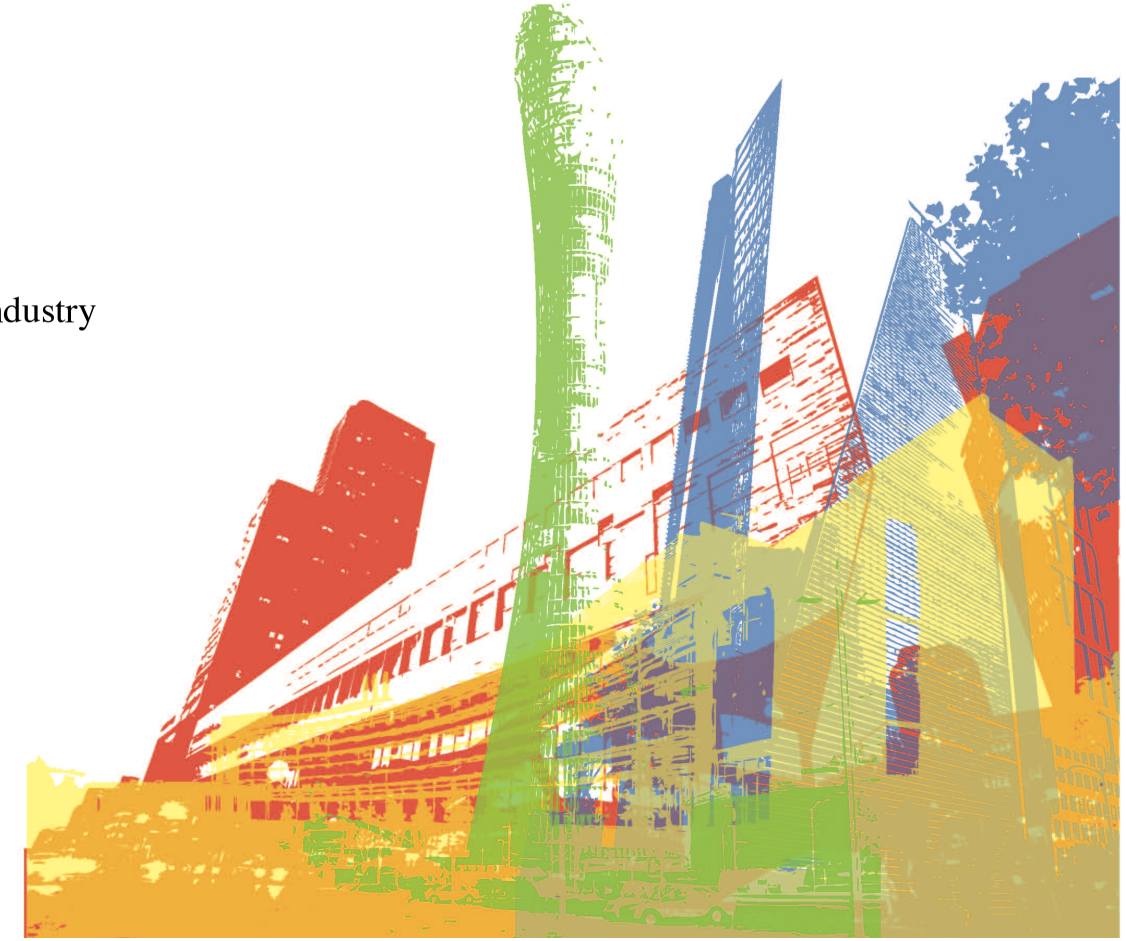
Buildings

Our multidisciplinary teams offer clients all the engineering skills needed for the design and construction of building projects:

- Structural engineering
- Mechanical, electrical and plumbing engineering
- Façade engineering
- Specialist skills
- Sustainability

Representative Businesses

- Arts & Culture
- Aviation
- Commercial Property
- Education
- Energy
- Government
- Highways
- Hotels & Leisure
- Maritime
- Rail
- Residential
- Retail
- Science & Industry
- Sports
- Waste
- Water

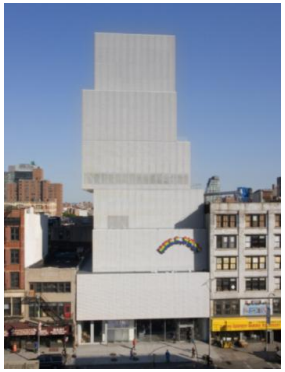


One of the world's largest and most successful international consultancies

Acoustic consulting
Advanced technology and research
Audio visual and multimedia
Bridge design
Civil engineering
Commissioning
Electrical engineering
Environmental consulting
Façade engineering
Fire/life safety consulting
Geotechnical engineering
IT and communications consulting
Lighting design
Masterplanning
Mechanical engineering
Project management
Structural engineering
Sustainability consulting
Theatre consulting
Transaction advice
Transport planning
Tunnel design

Arup University

Projects

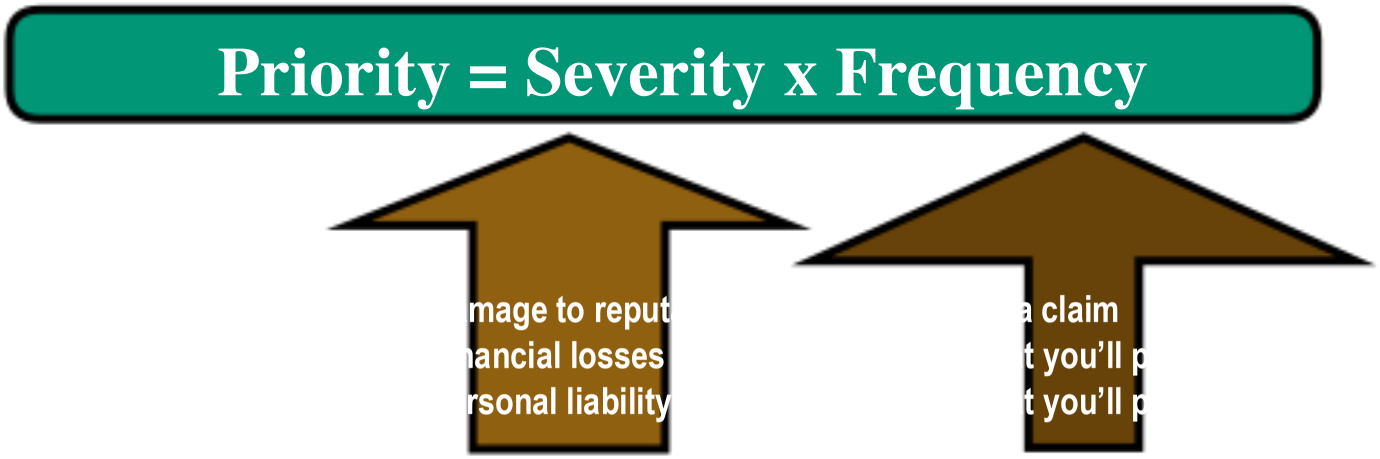


Risk Management

Risk Categories

Prioritizing Risk

Claims Phase



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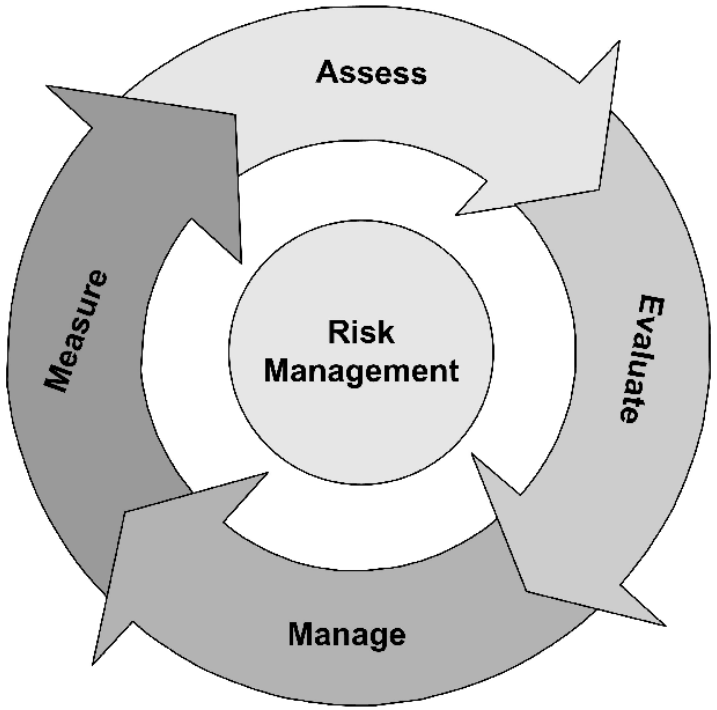
Pre- Bid Decision Making

- Go / No Go Decision
- Avoid Risks by Making Intelligent and Informed Choices:
  - Market
  - Business / Discipline
  - Client (Type / History)
  - Project Team Capabilities
  - Contract Structure
  - Special Risks



- Bid Review Checklist / Agenda
- Avoidance of risk with unacceptable technical or reputational risk

Know Your Client

- Who is our client?
- Is the client new to your firm?
  - *Credit check*
  - *External sources*
  - *Claims history*
  - *What entity are we contracting with & where is it registered?*
  - *Do we need a parent company guarantee / mobilization $?*
  - *Multi headed?*
- Is your client inexperienced?
  - *Include 'exclusions'*
  - *Ensure client understands proposal*

Risk Avoidance by Client Type

Developer

Contractor

Architect

Public Client

Homeowner

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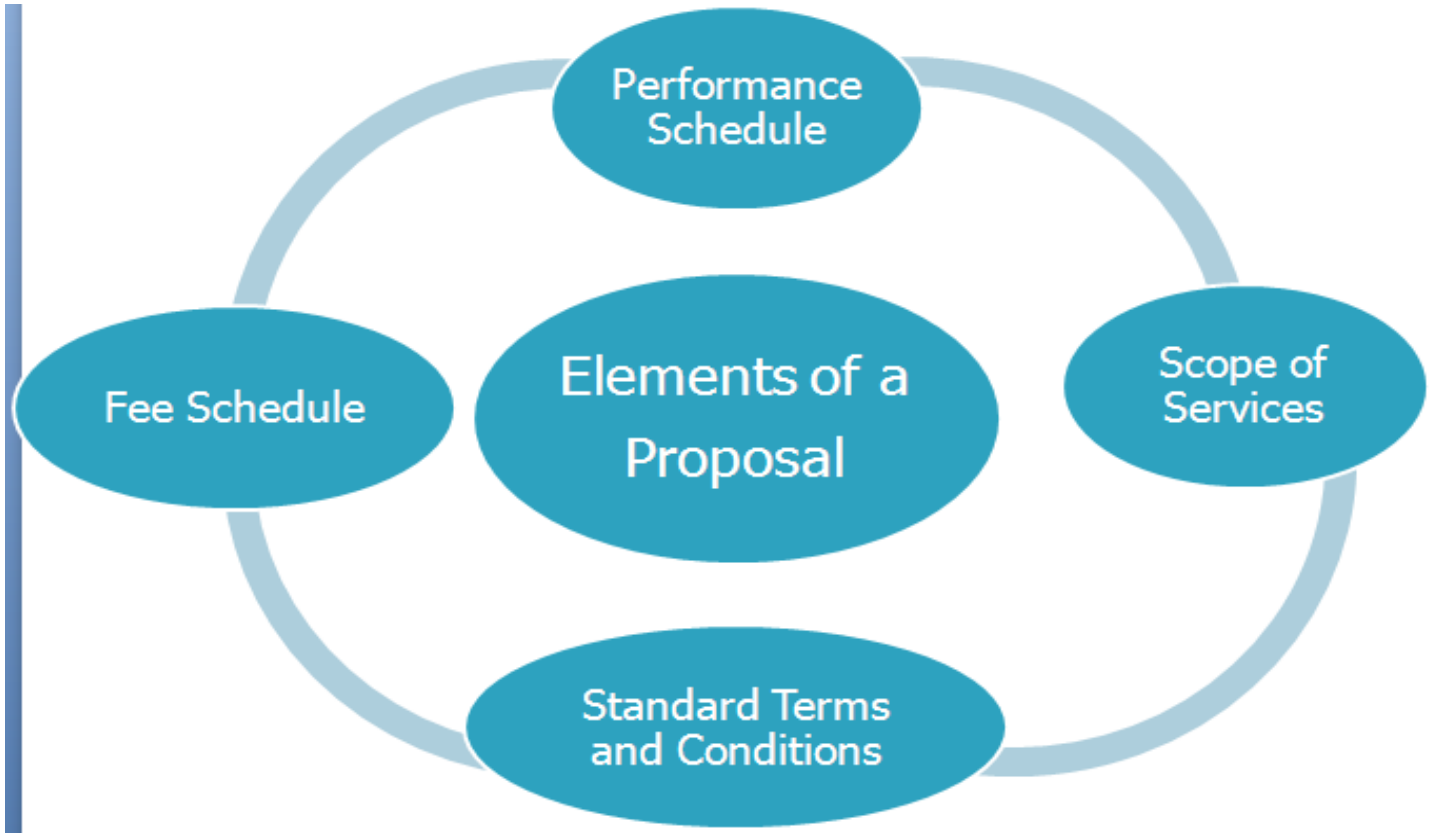
Risk of Not Having a Written Contract

- Administrative Headaches
- Loss of Key Provisions
- Expensive Motion Practice
- Insurability
- Disallowance of Revenue Recognition
- Non compliance with some BOE state code

Our Standard Contract is Airtight!

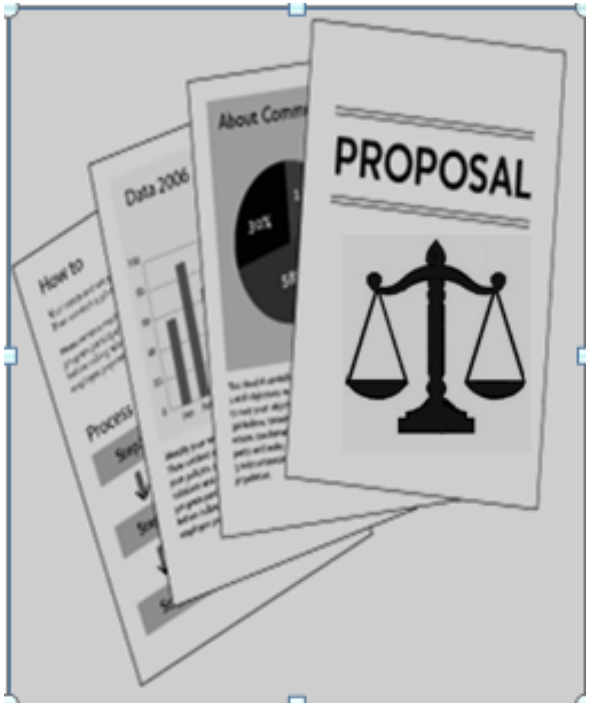
1. STC allows Arup to "always" have a written contract.
2. STC allows for appropriate legal resources for our smaller fee projects.
3. STC are generally ignored by a client at the bid stage. The client is usually much more focused on the fee and scope at this time. (This is a good thing!)

Risk of Ambiguous Proposal Language



Proposal Preparation

1. PD QMS Obligations
2. Common RFP Questions
3. Choice of Entity
   - Licensing Issues
   - Resourcing
4. Proposal Document
   - Scope of Services
   - Performance Schedule
   - Fee Schedule
   - Standard Terms & Conditions
5. Absence of A Contract



Special Risk: International

Pre-Bid Decision Making

- Risk Avoidance
  - Go/No-Go Decision

1. **[illegible] Choice**
2. **[illegible]rency fluctuations**
3. **Cash Flow Deficit (Mobilization Payment)**
4. **VAT /Withholdings**
5. **Local Codes / Standards/Customs (FCPA)**
6. **Permanent Establishment (Staff on Site)**
7. **Site Supervision**
8. **Bonds**
9. **Dispute Resolution**
10. **Prime Agreement**
11. **Type of Insurance**
12. **Specific Regions (Middle East/Latin America/Canada)**

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Standard Contract

USE THIS LANGUAGE IN THE PROPOSAL TO INCORPORATE OUR T&C's:

"Our standard terms and conditions are appended to this proposal and form an integral part of our Firm's agreement to provide services. These terms and conditions shall constitute the entire agreement unless and until another contract is agreed to and signed by all parties concerned. "

ATTACHMEI

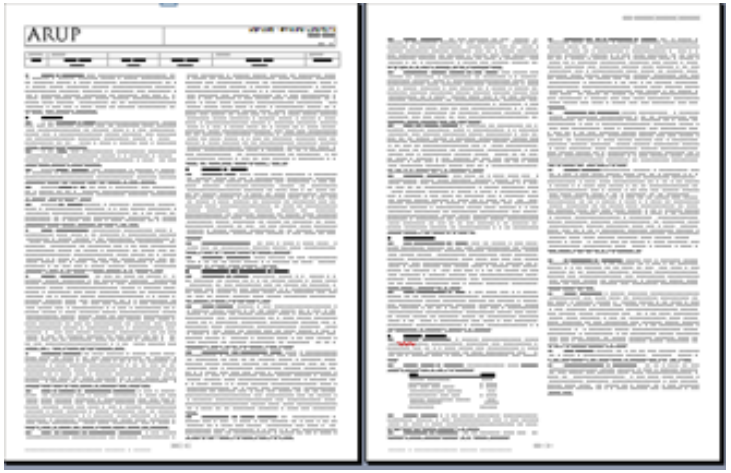
TERMS AND CO

Date	*Client*	*Project L*

1. EXTENT OF AGREEMENT: These Terms and Conditions supplement and govern all aspects of the obligations and liabilities between INSERT CORRECT ARUP ENTITY ("Arup") and the Client relating to the Project. Unless otherwise expressly defined, the terms used in this document have the same meaning as terms in the Engineering Proposal which this document supplements. These Terms and Conditions shall control and supersede all prior or simultaneous negotiations, representations and agreements, either written or oral. In the event that these Terms and Conditions are not fully executed, they shall nonetheless be effective and controlling to the parties so long as Arup has provided same to the Client and has begun work and not received written objections or modifications.

2. DEFINITIONS:

2.1. The term **"Instruments of Service"** means the plans and specifications



23

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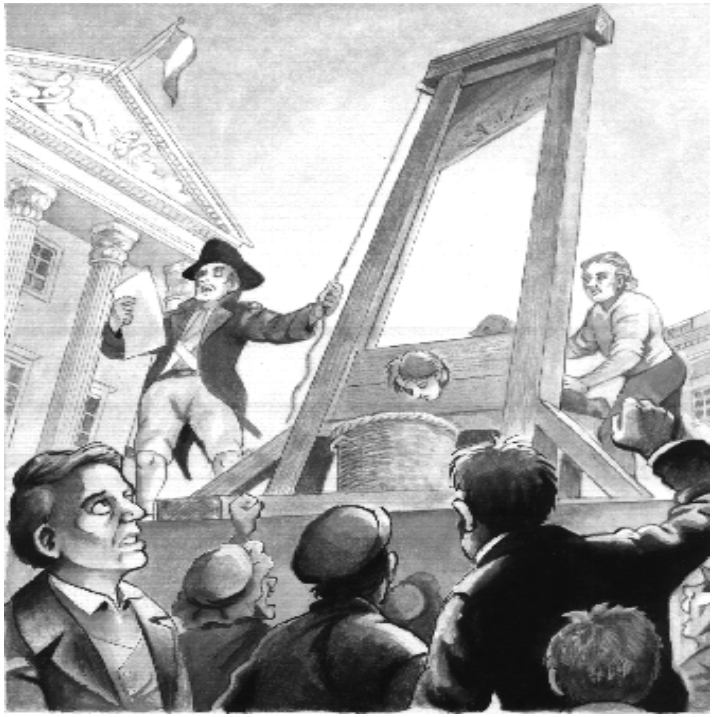
Negotiating Client Generated Agreement when your standard contract is rejected

Negotiating Strategies

1. Understand that you won't get anything if you don't ask!!!!
2. Timing of your negotiation is important. Negotiate the contract after you have won the work, rather than when you are bidding.
3. After the award is announced, publish any comments quickly and early in the process
4. Try to use Win/Win arguments where possible. "This clause as written is not in your interest Mr. Owner because it is not insurable."
5. In meetings and calls, listen to their concerns and suggest "compromise" language that addresses our objectives and theirs.

Conclusion

- General risk management is a key aspect to maintaining and flourishing any business or entity
- Successful risk management ensures profitable jobs/projects
- Be aware of risks associated with not having a written contract
- Successful tools that can help all businesses minimize risk in their respected fields involve:
  - Risk Avoidance
  - Risk Allocation
  - Risk Reduction



The Guillotine and the Engineer: