

THE CASE FOR CONTRACT STANDARDIZATION



BY BRENT LEFTWICH

Streamlining the process offers widespread benefits across all industry sectors

When you walk into any McDonald's around the world, you know what to expect. If you ordered a Big Mac and got a sandwich instead of a burger, you'd be confused—and probably disappointed. That consistency of product and brand is the cornerstone of the McDonald's business strategy, and one of the main reasons why it is ranked seventh on the Forbes list of most powerful brands.

So when it comes to service contracts, the right of way industry would benefit from taking a page out of the McDonald's playbook. On the face of it, the McDonald's example may seem like an oversimplification. However, in the current environment, think about this: if you asked 40 different right of way companies to provide a sample of their service contract, you'd get 40 different variations in return. You would find a similar situation if you asked a pipeline or utility company for their right of way sample contract. And even then it would be an adjusted version of an engineering or construction contract. Not exactly the right fit.

In the absence of a standardized or model right of way contract, procurement managers are using generic construction or engineering contracts when securing right of way services. Using them as a foundation for our own contracts is not benefitting any of us. While construction and engineering have similarities, they do not adequately address the complexities of the right of way industry. Additionally, specific concerns such as insurance requirements and indemnity provisions can vary from state to state. Redlining contracts can mitigate some inaccuracies, however, this is an inefficient process for both parties.

Merging Standardization with Innovation

Contract standardization has become vital to our profession, as it offers significant advantages. Unfortunately, in a world where the new and different is highly valued, the term standardization has become verboten. The concern is that standardization limits innovation.

Yet, when applied effectively, it can become a transformational driver.

Recognizing this, the Right of Way Consultants Council (ROWCC) decided to address this important challenge and take action. As an industry group comprised of 43 service companies, the ROWCC represents a wide-cross section of industry leaders and premier service providers. Since its inception, the group has worked collaboratively to develop and promote standardization in the right of way industry.

The Council believes that standardization and innovation must co-exist for all sectors of our industry. It became a priority for us to develop a standardized service contract template for the private sector. Whether we work on pipelines, transportation or electric and alternative energy projects, meeting our internal business objectives is essential to the long-term growth of the industry as a whole. Public agencies can also benefit from a more standardized personal services agreement for right of way services.

Top 10 Benefits

Standardization helps to increase productivity and efficiency, since it defines expectations, clarifies contractual terminology, increases transparency, reduces deviations and creates accountability. Adopting a standard form right of way service contract provides numerous advantages to both parties, including:

1. Cost Reduction. With the standard form contract, parties don't need to negotiate or renegotiate a new contract for each transaction, thereby lowering the overall transaction cost for both.

2. Improved Efficiency & Productivity. Standardization reduces time spent on drafting, editing and comparing contracts. It also streamlines and centralizes procurement processes and procedures. With less time required for contract development, management has more time to focus on innovation and building stronger relationships with service providers.

3. Greater Transparency. Standardization is essential to maintaining transparency, accountability, impartiality and fairness in the procurement process. It helps to prevent corruption issues such as bribery, price fixing and the awarding of contracts without competitive bidding.

4. Addresses Key Issues. When contracts are adapted from previously used general contracts, the potential is high that important issues will be missed. The ROWCC standard form contract is thorough and addresses virtually any issue that is likely to arise in a right of way project.

5. Streamlines the Comparison Process. The standard form contract makes it easier for procurement managers to compare contracts because they do not need to familiarize themselves with a variety of alternative contracts. When everyone conforms to





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the same language, differences are clearly delineated.

6. Ensures Uniform Language.

The standard form contract provides greater certainty regarding the definition of right of way industry contractual terms. When an industry standard document is widely used, the contract terms are generally well understood by all parties involved. This creates fewer misunderstandings. Also, a commonly accepted contract will be interpreted similarly by the court should a contract dispute arise.

7. Scalability. Adopting an industry standard form contract allows for faster and more efficient reuse of the documents and language for future contract cycles, regardless of project size or scope.

8. Risk Mitigation. When utilizing the standard form contract, right of way service companies cannot be held to requirements or provisions that do not apply to our industry. From a client company perspective, procurement managers can better ensure all legally required elements of the contract are satisfied.

9. Automation. For both parties, standard form contracts are more readily integrated into enterprise contract management systems. Procurement teams that encourage closer alignment between sourcing and procurement ensure better

compliance to contract terms and conditions by both parties.

10. Contract Compliance.

Confirming that procurement and purchasing managers are utilizing industry-approved contracts significantly enhances their ability to ensure compliance with all terms of the contract for all parties involved.

Keys to Project Success

Many organizations think about standardization as a necessary evil, with the benefits limited to cost reduction and efficiency. However, the ROWCC believes that focusing on the similar and the shared can provide a strong platform for innovation, scalable transformation and growth.

Utilizing the ROWCC standard form right of way services contract can be the key to a successful project. By establishing the expectations, requirements and the rights and responsibilities of both parties from the outset, it offers numerous advantages for both parties while raising the industry's level of professionalism across the board.

Although our overall goal is to see all pipeline companies, electric and utility companies and public agencies commit to utilizing this standardized contract, we recognize that this could take some time. Our hope is that all right of way companies and agencies will thoroughly

examine their current contracts and contracting practices. At a minimum, we encourage the adoption of the most vital and mutually beneficial sections of the model contract for the greater good for all parties to the contract.

The Right of Way Consultants Council was created out of a desire for professionals in the right of way consulting industry to exchange ideas and information efficiently and to develop and promote standards for the industry. The ROWCC Standard Form Right of Way Services Contract, along with the ROWCC Standardized Right of Way Job Titles, is available to all Council member companies to share with their clients. To learn more, visit www.rowcouncil.org. ♦



Brent Leftwich is the CEO & President of Contract Land Staff, LLC, one of the nation's leading consulting companies. He has over 38 years of experience in the oil and gas, real estate, pipeline, utility, transportation and telecommunication industries. Contract Land Staff is one of the founding members of the ROWCC.