



## MAKING LARGE TICKET PURCHASES

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I am a collector of what I call the "Official Rules". As a hobby, I maintain a collection of "laws" and "rules" such as those found in the book called "The Official Rules" which contains one of the greatest collections of Murphy-type Laws ever assembled.

You remember Murphy--he's the guy who said, "If it can go wrong it will." Mrs. Murphy was a philosopher, too. She noted in her First Law that-- "When you drop a piece of bread, it will always fall with the peanut butter side down".

I became interested in collecting these laws and rules recently when I realized just how profound they actually are. In my work I see these rules and laws in operation every day.

Just the other day a situation occurred which reminded me of Robertson's Law. Robertson noted that, "Everything happens at the same time--with nothing happening in between". That seems to sum up how my day usually goes. Another law I find particularly pertinent to my situation is known as "The Second Law of Bureaucracy". It says that:

Running a project in my office is like mating elephants:  
First, it takes a great deal of time and effort to get on top of things.

Second, the whole affair is always accompanied by a great deal of noise and confusion, the culmination of which is heralded by loud trumpeting. And finally, after all of that, nothing comes of the whole affair for two years.

Before I get on with the topic at hand, I'd like to share just one other particularly relevant "law" with you. We call it "Willson's Law" named after one of my friends and former associates who was responsible for supervision of a large uniformed Guard force. "Willson's Law" says that, "Under the most careful conditions of training, indoctrination, and close supervision, the security guard will ultimately do as he damn well pleases!"

I chose to introduce this topic-- Improving Contracts with Suppliers of Security Goods and Services-- (particularly large ticket purchases)-- with a discussion of these "laws" because very few other topics bring to mind as many of the "Official Rules" as does this one. Let's take a look at the subject, and as a "rule" or "law" comes to mind, I'll share it with you.

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Before I start, I'd like to clear up a few definitions so that we are all talking about the same thing.

Let's talk about "quality". We all want to make purchases of "quality" merchandise, and one of the most important factors involved in making the large- ticket purchases, is the purchasing of good quality merchandise at a reasonable cost and under favorable conditions.

What is "quality"?

Would you say that quality is the measure of the "goodness" of a product and can be defined as "fair," "good," "excellent," etc? Would you say that the "better" or "more efficient" or "more reliable" the product, the better it's quality?

Well, if you feel that this is the measure of quality you are not in agreement with some manufacturers. A high ranking ITT executive offered a definition of quality which may be of interest to you. I've heard it echoed by a national account representative for a leading alarm and access control system. He said that: "Quality means the conformance to the requirements set forth in the specifications. And that's all it means". If you start confusing quality with elegance, brightness, durability, packaging, etc., you will not be in agreement with some vendors and manufacturers.

If you are going to seek "high quality" in your purchases, you better be sure you are in agreement with the vendor or manufacturer. And the only way to

do this is to define what you feel is quality, and define your expectations of the product or service in the specifications that you include in your contract.

This brings to mind Tylk's Law. You remember Tylk, don't you? Tylk said that "assumption is the mother of all foul-ups". The only way to avoid the foul-ups is to avoid the assumptions. Outline your assumptions in black and white. Put them into the specifications! Another law also comes into mind. It's called Parson's Law of Security Equipment and it goes like this: "A piece of electronic security equipment is housed in a beautifully designed cabinet, and at the side or top is a little box containing the components that the designer, manufacturer, or security director forgot to include in the original contract specifications."

Every Security Department, large or small, makes what I call "large ticket" purchases from time to time. A "large ticket" purchase as I define it falls into three categories. They are:

1. A purchase with a very large cost or price,
2. A purchase which consumes a relatively large portion or percentage of the security department budget, or
3. A purchase, regardless of the size, which tends to commit a large portion of the budget to a particular vendor, product or service over a period of time.

The first two categories are self explanatory. The third can best be described using the example of the



purchase of 60 portable walkie-talkies radios to be purchased over a three year period. The purchase of the first 20 radios, batteries, and chargers, although only a \$25,000 purchase, somewhat commits the department to purchase all 60 radios from the same product line to insure uniformity of service, components such as batteries and chargers, for ease in inventory control, etc. The relatively the small price tag is , in the long run, a major purchase.

After considerable experience in both the private and public sectors, I have observed that neither the well-staffed and highly-budgeted government agency nor the small corporation is always willing or able to commit the time and energy necessary to assure that the agency or corporation gets the best possible deal in making a purchase.

The thing that all large-ticket purchases have-- OR SHOULD HAVE--in common is a contract. To enter into a large-ticket purchase without one is foolish. But believe it or not, in my experience, I have found that in many corporations and institutions, if a contract is used, it is almost always inadequate!

I have asked my colleagues why they don't take more time preparing for a major purchase by planning a contract which is in the best interests of their company, and the answer is usually that the consultation with an attorney is too expensive or that they don't have the clerical support necessary to prepare, draft, re-draft, negotiate and

re-negotiate a contract. That's amazing! Can you believe that a corporation making a \$20,000 purchase would not be able to afford \$500 in legal fees or the services--if necessary--or the temporary clerical help necessary to do the contract typing. The cost of preparing and negotiating a large contract should be a cost of doing business, and the corporation should be concerned if their Security Director does not engage actively in an effort to attain the best possible contract.

That brings to mind another one of the "Official Rules" we all live by. How true Agnes Allen's law is. Agnes said that, "Anything is easier to get into than to get out of". So often we get ourselves into a real bind because it is too much trouble to prepare a good contract.

What happens most often is that the vendor provides, along with the invoice or prior to that time, a contract for the corporation to sign. And BELIEVE IT OR NOT, the buyer almost always signs it! Now, I'm no fool, and I hope you aren't either. Let's not overlook the wisdom of Runyon's Law. Runyon said that, "The race is not always to the swift nor the battle to the strong, but that's the way to bet!" Anyone who accepts a vendor's contract without some reservation apparently does not know about Runyon's Law. Goodfader's Law says the same thing. Goodfader said that, "Under any system, a few sharpies will beat the rest of us". Friends, the deck is stacked against us as it is--I just don't see any sense in helping to stack the deck any further!



Let's look at a recent sale of a small access control system in which I was involved and see what difference there can be when the Security Director does his homework and negotiates a sound contract under the advice of his legal counsel. Let's face it--the vendor didn't write his contract with your interests in mind. About all that the vendor--supplied contract provides in your interest is the fact that at some time in the future--and not always in the near future, he will provide you with a product--and not necessarily the product the salesman showed or explained to you.

In the case in point, the product to be purchased was a small \$75,000 access control system involving another \$35,000 in sub-contractor installation fees. This was the final agreed upon price and was not the lowest bid. But it was the best product for the best price meeting the specifications desired. (You'll never hear me tell you to take the lowest bid, only the best product for your budget).

The first thing that I always do after listening to the sales representative and seeing the product in use is to request and review the specifications on each component in the system. Nearly every manufacturer has prepared specifications but you'll almost always have to ask for them. If they don't have written specifications, I'd give a second thought about dealing with the company or at least purchasing that product line. Why, even the government won't buy a product without specifications, and we all know that they'd buy anything at any price!

Next, I study and re-study the specs making sure that the components of the system do what the sales representative says they will do and contain the features advertised. Often, unintentionally, the most careful and honest sales rep will explain the system or product capabilities using the top of the line model while my budget will only permit middle of the line features. Make sure that you understand the specs of the product you are buying. I'm sincere when I say sometimes "unintentionally" a salesman will allow you to be misled about a product or service specification. But sometimes he just simply misleads you. You know, I hate to keep interrupting myself, but I can't help but think of several other "rules" that come into play. Comb's Law, named for one of my former associates, says that, "Every vendor has a product or a scheme that will not work." And I think of Scheck's Law which says that, "A good salesman and a good repairman will never go hungry."

It's enough to make you want to get a good contract attorney!

After you are satisfied that you are buying the product you thought you were buying, retain your copy of the specifications and make them part of the contract referring to them in the contract as an attachment.

Now it is time to study the contract supplied by the vendor or manufacturer, Using it as a basic starting point, don't be afraid to dissect it and re-write it. It is up to you to prepare a purchase agreement which



will reflect your interests. Remember what we said about assumptions. Don't make them. Plan out your project well in advance of the time you begin to prepare the written contract. Organize your thoughts. Remember Burn's Law which says that, "If the planning is wrong, the final product is not likely to be very good either". Be clear. Say what you mean to say. Don't rely on verbal agreements. Samuel Goldwyn once said that a verbal contract "is not worth the paper it is written on"! If you want something included, you must include it in the contract. Any child will tell you that the First Law of Christmas Morning is that "Batteries are not included". Anyone who doesn't know this should not be making large purchases for their employer!

I begin my contract with a statement of purpose. I incorporate all attachments and exhibits into the purchase order or agreement, and state firmly that if the provisions of the agreement sale conflict in any way the provisions of the purchase order prevail over any other documents.

Next, I outline price but I almost always follow up with terms of payment. In these days of "expensive money," vendors will want payment in full upon delivery of the product whether or not the product is installed or operational for months. I recently had a vendor request payment according to a "draw" schedule that appeared to be fair upon first reading, but when closely analyzed, it revealed that the entire payment would be made before the installation was to begin! I simply will not agree to those terms.

Generally, I feel that 20% of the price is a fair payment to be made upon delivery. I pay another 50% to 70% upon completion of installation, testing, debugging, receipt of all manuals and "as-built" drawings if appropriate, and training of our personnel in the operation of the system.

I will pay the final percentage of payment when final acceptance is made. That is, when we sign off completely that the project is complete and the system is working properly. It used to be that you could easily withhold 10% or more in a contract. I still try to withhold that much. Many vendors are resisting and settling for 5% to be withheld pending final acceptance of the product or service.

In the recent situation in which I was involved, the vendor wanted \$75,000 in full upon delivery of the major components of the product to the buyer. (The contract didn't define this term). The buyer wrote a good alternate contract authorizing payment of only 23% upon delivery of ALL materials. The system was delayed 16 weeks because of one \$250 component, thus the buyer had leverage in assuring that the job would get the careful attention of the vendor as soon as the part was available. You can imagine the delay in completing the system had the vendor taken this \$75,000 when the majority if the materials were delivered but not installable. The savings in interest alone in this one incident was enough to pay for the cost of preparing a good sound contract and purchase agreement.



It is necessary in any good contract to spell out what must be done in order for a vendor to claim payment. If you want an invoice, say so. Usually, there is more that you should ask for, as well.

I insist that the final invoice be marked "Final Invoice". I require in my contract a "Final Waiver of Lien." I require a copy of the limited warranty signed by company officials, and a notarized affidavit stating that all monetary obligations to suppliers of material, service, labor, and all obligations to sub-contractors have been fulfilled and discharged. I also require, as an attachment to the contract or agreement, that a "General Release" be signed releasing my firm of any responsibility for problems which may arise from the installation.

Another important part of my contract is a statement that the vendor agrees to complete the project and have the product operational by a given agreed upon date. Some buyers insist upon a penalty clause requiring that the vendor pay a monetary payment if the target date is not complete. The buyer should be prepared to pay the vendor a payment if the buyer in any way delays the installation of the product. This brings to mind another group of laws. The builder of the Great Pyramid, Cheops, had a law named for him by a modern day admirer. It says, "Nothing ever gets built on schedule or within a budget." Dilwether's Law also added light to this matter when he said, "When people have a job to do, particularly a vital but difficult one, they invariably put it off until the very last

minute, and some will put it off even longer." For this reason, I like to discuss deadline dates in my contracts.

If your organization or agency is tax exempt for any reason, this should be stated in the contract, as large ticket items involve large tax costs.

I often state in the agreement that the vendor is responsible for the safety and security for the product until the product is operational and not just upon delivery to our building. If insurance is necessary for a large purchase of materials or components, then this should be negotiated.

It is also necessary that the vendor and sub-contractors are aware of all conditions of the job site. Claims for additional compensation because of the vendor's failure to familiarize himself with the job site cannot be allowed.

My clients usually have a list of rules and regulations regarding access and parcel control for contractors. I routinely include this in all contracts and insist that all contractors abide by these rules.

Another practical and important provision of my contracts is that the unit prices provided in the contract or purchase agreement are to be used for all changes, additions, or deletions to this purchase during the period of time specified--usually for a year--and that all changes and additions will be made on a change order. In this way, a new contract does not have to be negotiated.



I specify that when final acceptance takes place, a specific release form must be signed, and I attach a copy of the form to the contract as an attachment. I specify when warranties are to begin and the service agreement, if any, is to be effective. Generally it is safe to have warranties begin 15 calendar days after final acceptance and not on the day of final hook-up. But spell this out in your contract, as experience tells me that many problems can be prevented. Even though a Hold Harmless Agreement is of questionable value, I insist upon one anyway and make it an attachment to my contracts.

In major projects, I require that the installation supervisor attend a weekly meeting with my staff and coordinate all matters and report on all progress. Some contractors fail to see the importance of such meetings when on-site work is being done such as the expansion of the electronic security system or installation of new systems such as CCTV's, etc. But having such accountability is essential to a smooth project.

Again I am reminded of "The Official Rules". Having an on-site meeting with the contractor--or the provider of a major service--on a regular basis, is important so that problems can be ironed out before they occur. Anyone who feels that problems will not occur just doesn't know "The Rules"! Chisolm established what I call the Chisolm Effect--Basic Laws of Frustration, Mishap, and Delay. And it is this effect that a regular meeting can overcome.

Chisolm said:

1. If anything can go wrong--it will.
2. If anything just can't go wrong--it will anyway.
3. When things are going well, something will go wrong.
4. When things appear to be getting better, you have overlooked something.
5. If you explain something so clearly that nobody can misunderstand--somebody will.

Do your self a favor and specify that the project boss for the vendor or supplier will meet with you regularly through the life of the contract to help prevent Chisolm from being too correct!

I find it is advantageous to hold weekly meetings even if both parties have nothing to report. You would be surprised how many important problems arise and are resolved at meeting that would otherwise have been cancelled if both parties were given the option to do so.

In system installations, I provide blueprints and require that the vendor provide complete and detailed "as-built" drawings from those blueprints. I specify in the contract what I want on the blueprints and I will not sign for final acceptance until all "as-builts" are received. If you want the blueprints to be delivered in the form of reproducible vellums or sepias, ask for them or you will get blue line prints. If you require mylars, say so. Above all, anytime you require submittals of drawings, require that they be "clean



and clear, easily readable" or you will get prints that are overexposed and reproduce poorly.

When tools and building materials are involved, I require that the contract spell out what tools and equipment, fork lifts, high lifters, etc., we are to provide and which are the responsibility of the installer. This may become important if a penalty is called for due to failure to complete installation in a specified period of time.

Since training is an important part of our security program, I insist that a maximum number of employees receive competent factory authorized training on new complicated systems or equipment, and that key people understand the terms of all services we buy. In most cases, I require in the contract that the factory authorized trainer train me first and if the program is acceptable, I turn him loose on my staff. If not, I assist him on preparing what I deem to be an acceptable program. Too often in the past, vendors have handed me an oversimplified manual and considered that to be my training in the operation of a highly complex system such as a million dollar computer-based security, fire and access control unit.

I specify the number of operator and instructional manuals that I expect to receive and I also require that for any major system or electronic product, a service manual be provided. Often resistance is given by vendors in this regard, but if you persist, you will usually win out.

In computer or processor systems or equipment, I require whatever programming assistance I feel will be necessary and make this part of the contract. If there is proprietary software for the system, I require that I be given a back-up copy and that manuals and codes pertaining to the software that will enable a qualified programmer to keep my system running if the vendor goes broke is provided to me or is placed in an escrow facility.

Often a service or maintenance agreement is part of the purchase package . This, too, usually leaves something to be desired and should be re-written if it is not initially in your best interest. It is often amusing to verbally negotiate a service agreement. You will note that typically the agreement calls for "annual servicing" of the product but does not spell out what "annual servicing" is. The vendor will give you a detailed verbal description of his service but will balk at permitting you to put that description into the contract. I insist that the scope of service be detailed. Remember Graditor's Law of Service Contracts--"If it can break, it will. But only after the warranty expires!"

Another area of concern, particularly in the area of service contracts for security equipment is the response time on normal business days, on holidays, and after hours. We often cannot afford to have our equipment "down" for long periods of time. But you must specify how quickly you expect service to be accomplished or



at least begun. Again it is amusing to hear the vendor tell you that he responds within the hour, but when you ask for this in writing, he begins to turn pale.

It is important in service contracts to specify the cost of service included in the contract. It is also important to specify what service is NOT included. I have not had more trouble with any other provision of service contracts in the past than I have with this particular area. It takes time, it take patience, and it takes perseverance, but you must spell out as much as you can in your service contract in regard to response time, extra service costs not covered in the contract, and specifically WHAT service is included and what is not included.

One Security Director in a downtown financial institution in New York had problems with his service agreement on a piece of equipment. We discussed his problem and I asked him what his contract said. He pulled out the vendor's contract. He never made any changes nor did he ask any questions about its provisions. He told me that he felt that there was a credibility gap. I tell you that Clapton, author of Clapton's Law, was never so correct as he was when he said that, "For every credibility gap there is a gullibility fill".

My advice to you is to "Put it in writing!"

Another provision I routinely change in all contracts with vendors is the section generally referred to as "Controlling Law". This section states that all questions regarding the validity

of the contract shall be decided by the Laws of the State of (and then it lists the state of the home office of the vendor). Now, I don't do business with a vendor who does not have least an office in my area. Nearly every vendor tries to impress me with his "national" status. Why should I sue him for breach of contract all the way across the country in his home state if he has an office here in mine! I insist upon changing this to read that venue shall be in my state. Usually, if presented properly, the company is too embarrassed to not comply with this request.

Another concern is the limitation of liability clause by vendors. I, as a consultant, routinely use a limitation of liability clause in my contracts with clients. I wouldn't work without one. After all, if you really want me to protect your Rembrandt, I will lock it away in a vault and never let it see the light of day. You want it hanging on the walls, you say? Well, then, don't expect me to be responsible for it. And don't expect your alarm contractor to be responsible for your assets either. Buy insurance or provide optimum security. But some vendor contracts go far beyond what is reasonable. One major access control system contractor actually has a clause in their contract that says that they are not even responsible for gross negligence on their part, breach of contract, or any problems caused by their sub-contractors whom they were hired to oversee and supervise. Don't accept it. They have nothing to sell you that you need so badly that justifies that contract wording.



As a former member of the criminal justice system, I have faith in our courts to sort out the facts and come to a fair decision in any litigation between me and a vendor who fails to meet the requirements of his contract. But I also know--as a former member of the criminal justice system--that few of the "Official Rules" are more valid than that uttered by one John Alley. Alley said that, "Justice always prevails--seven times out of ten." I'm not going to press my luck by making the odds any worse.

And a final area of concern for any contract involves who may instruct the vendor during the term of the contract, or during installation of the system, and how contact with that person is to be made. Spell this out in the agreement, and include full formal addresses where notifications and cancellations are to be sent. This is a critical aspect of a service contract or a contract for guard or manpower services.

I'd also like to offer you some advice on dealing with a security consultant. First, know your needs. Don't put a consultant to work without direction. Don't pay for advice you can get for free. Ask questions of your colleagues and get your answers to the easy questions. Make the consultant work on the tough problems.

Know the qualifications of your consultant. Regardless of what you have always been told, no consultant is an expert in more than 2 or 3 basic areas of security. Don't hire a counter-

intelligence specialist to do a survey of your museum. One counter-intelligence specialist stated in an interview that he is qualified to do museum surveys because "the thought process is the same" for museum surveys and for military intelligence. Well why then am I not competent to catch spies?

Check references and develop other reference. If you want a proposal in advance, ask for it. In fact, make the consultant tell you in advance what he will give you and how much it will cost. Use a detailed request for proposal so all consultants are agreeing to the same things. That's tough. But get a "not to exceed" figure for the cost.

If you want a report, require in advance that you will get one and specify its detail and scope. It is sometimes important to limit a consultant's scope.

Require that the consultant not retain unnecessary confidential information about your business unless it is safeguarded while in his custody.

Know your consultant's price in advance--by day and hour as well for the entire project. Have him keep a log of time spent on the project and have him outline expenses. Expenses, by the way, should be limited. First class airfare, hotel cost limits, etc. may be appropriate.

Set a schedule. Make the consultant meet the schedule, but be reasonable or you will get a rushed job. Know what other projects he is working on and how they affect you and your



project. Is he on a retainer for you? Is he on a retainer for somebody else? Who gets priority service?

Be aware of the additional work your consultant wants to do. More than one consultant will charge you \$7,000 for a 7 page report telling you that you have a problem. You know that, of course. For \$7,000 more, he'll tell you how to solve the problem. Know what you are in for.

These are just some of the considerations you may wish to make in preparing a contract or hiring a consultant. Don't be afraid to consult your attorney. No one expects you to be a contract attorney. The important thing to know is that you do not have to accept the contract that the vendor supplies. You are free to negotiate the best possible contract for your company or institution's interests.

Another thing you should remember is that vendors and suppliers of services to the security industry are generally honest. When something goes wrong, it is often beyond the vendor's control. But things do go wrong and a contract is needed. Vendors and suppliers of service generally intend to give you what you want. When things go wrong, they usually correct things promptly and capably. There is no need to pursue a contract in an adversarial manner. But good business requires that you do have a contract. You, as a security administrator, are responsible for providing your employer with the best possible protection when you make any purchase.

Kafka's Law provides advice regarding the need for a contract. When you have a contract, you have the law on your side. Without one, you might as well be up against the world. Kafka said, "In any fight between you and the world, bet on the world!" Remember that when something goes wrong, your boss will come to you and ask what are you going to do about it. You just can't avoid getting involved in the problem. Ledge's law is subtitled, "Why you can't run when there is trouble in the office." It says, "No matter where you stand, no matter how far and how fast you flee, when it hits the fan, as much as possible will be propelled in your direction and almost none will be returned to the source". In a world where the light at the end of a tunnel is almost always the headlights of an on-coming train, you can't afford to be without a sound contract.