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Cooperation through clarity: designing simplified contracts

Robert Waller, Jenny Waller, Helena Haapio, Gary Crag and Sandi Morrisseau

This paper reports a case study of an innovative contract simplification project. The context is an energy industry facility to be built in northwestern British Columbia, Canada, where it is important to gain social license from Aboriginal communities by sharing employment opportunities. However, the complexity of contract documentation was seen as a barrier to local small contractors. This project transformed a complex document set by using principles of clear information design, both at the structural and detailed level. The principles used are explained in the form of a pattern library that lists potential solutions to common communication problems for contract documentation.

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Bringing clarity to contracts

In recent years there has been growing interest in applying the principles of clear information design to contract documents. This reflects a growing realisation that, in addition to accurately recording requirements and business terms, they also need to work as communication tools. Considered as communications, they are judged not only for their accuracy and legal soundness, but also by the degree to which they enable a good working relationship, cooperation and effective contract management.

As Tim Cummins (2016), CEO of the International Association for Contract & Commercial Management (IACCM), remarks:

> 'Contracts today are too complicated. The process through which they are created remains a mystery to many and the resulting content is often unintelligible. Yet effective communication lies at the heart of trading relationships and trading relationships are increasingly at the core of a technology-driven world, so we need practical instruments that gather and record commitments and obligations… In just a few years, we will look back and wonder why it took so long to make our contracts intelligible to the mass of people they affect. As contracts become more important, social and economic pressures are combining to force a rethink in how we design, structure, compile and disseminate our formal agreements.'

Roxenhall and Ghauri (2004) identified a number of purposes of contracts in business relationships, but found little relation in practice between the style of contract document and the type of relationship – for example, they expected to find (but did not) very clear, lucid contracts in cases where the relationship was a concrete, transactional one. This points to contract documentation as an immature area of practice, and to the need

to introduce more reliable, more professional approaches to document drafting and design.

Consumer contracts have to some degree led the way, which is unsurprising given that they have to address the whole population, with obviously different ability levels. Regulations such as the European Consumer Rights Directive[1] require the use of clear and comprehensible information for consumer contracts, and experimental studies have demonstrated that loan documents and credit card agreements can benefit from a new, more user-friendly approach (US Consumer Financial Protection Bureau CFPB, 2011; Siegel and Etzkorn, 2013). Further projects have aimed to simplify, for example, an online game's terms of service, a rail network's disclaimer, and a law firm's standard terms of engagement (Clarity2010 Blog, [no date]; UK Office of Fair Trading OFT, 2011). Several projects have looked into the simplification of online Terms & Conditions, end-user licenses, and privacy policies through the use of icons (for a summary, *see* Lannerö, 2013; for updates, *see* also CommonTerms, [no date]). For example, Creative Commons licenses use simple icons which can be clicked on to reveal a plain-language version of the license terms: the icons inform users about the possibilities and limitations of, for instance, sharing or remixing the licensed content (Creative Commons, [no date]).

Research and experiments in commercial contracting and public procurement show that the principles of clear communication design can be applied beyond consumer contracts (for commercial contracts, *see, e.g.*, Passera, 2015; Passera and Haapio, 2013; Haapio, 2013a and 2013b. For public procurement, *see* Passera et al., 2013). These studies, and the present one, result from collaborations between contract experts and designers.

Information designers are experts in clear communications, applying principles of clear writing and visual design to make information easy to understand and apply. These principles are underpinned by user-testing, research studies, theoretical models and the application of concepts from neighbouring disciplines such as cognitive psychology, applied linguistics, and vision research. Information designers typically work on functional and transactional documents such as forms, user guides, signs and interfaces, and their toolbox includes simplified language, typographic structuring, icons and diagrams.

In this paper we present a project to apply information design concepts to a set of complex contract documentation used by a global energy company, Nexen Energy ULC (Nexen), a wholly-owned subsidiary of CNOOC Limited, to enhance its engagement with small contractors from local and Aboriginal communities in northwestern British Columbia, Canada.

1 2011/83/EC, http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/index_en.htm

Introduction to the Nexen project

Because of the level of risk, the complexity of the work, and the scale of projects, contract documentation for the oil and gas industry inevitably appears complicated to a non-expert. In practice this is not necessarily a problem, because in professional settings individuals become skilled in navigating and interpreting information that might be quite challenging at first view.

However, complexity is starting to present itself as a problem as Nexen embarks on a new project in a new area, with new political and social pressures. Aurora LNG is a joint venture between Nexen Energy and INPEX Gas British Columbia Ltd. They are studying the design, construction and operation of a liquefied natural gas (LNG) facility and marine terminal on the coast of British Columbia. An important aspect of its success is obtaining social licence – the development of a trusted relationship with local and Aboriginal communities, who want to share benefits from employment and business opportunities. The Aurora LNG team seeks to accomplish this through collaboration and a commitment to developing strong, mutually respectful relationships. However, the complexity of the current contract documents is seen as a barrier by smaller companies from local and Aboriginal communities.

Social and cultural background

In Canada, Aboriginal Peoples are the First Nations, Métis and Inuit whose rights are recognized and affirmed in Canada's *Constitution Act* 1982. It would be too simplistic to group all Aboriginal communities together – there are significant differences between, for example, Treaty Indians who are from bands who signed one of eleven treaties between 1871 and 1922, and those who remain outside this process. Additionally, there are Métis communities with mixed First Nations and European ancestry. And there are the Inuit who are the Aboriginal people of the Arctic. Corporations need to be sensitive to these distinctions when managing community relations – for example, they cannot assume that simply employing an Aboriginal-owned contractor will be acceptable, if that contractor is from a community other than the one that controls the work site.

The Aurora project represents a change for Nexen from dealing largely with treaty communities in the oil sands area of northeastern Alberta, to 'non-treaty' communities in northwestern British Columbia (BC).

In the areas of BC where the Aurora project is being developed, the kinds of services Nexen, as operator of the Aurora LNG project, is seeking from local communities may include catering, land clearance, guiding services, platform construction for drilling equipment, guides and medics and marine and land studies. While it would be easy enough for individual project

managers to bring in established firms from outside, Nexen recognizes that it needs to work with local communities to build capacity, so they match the outside competition. Aboriginal people are interested in participating and working with industry to share in the benefits of resource development taking place on their traditional territories.

So the importance of earning social licence is critical. As one commentator puts it, 'Social licence can never be self-awarded, it requires that an activity enjoys sufficient trust and legitimacy, and has the consent of those affected.' (Morrison, 2014).

Capacity building will have to take a number of forms, which may include training and mentoring. It may also involve making allowances for any educational disadvantages suffered by remote communities, including Aboriginal communities. Dominique Collin, reporting on Aboriginal financial literacy, suggests that many small and medium-sized enterprises (SMEs) offering such services in Canada are likely to share the same kinds of challenges: 'Aboriginal individuals, entrepreneurs and communities have been affected by financial literacy challenges in many of the same ways that lower-income people and remote populations have' (Collin, 2011, page 3).

Interviews with contractors and procurement staff

Early in the project we conducted interviews over several days with a range of stakeholders:

- Representatives from 7 Aboriginal-owned contractors in the oil sands region of Northeastern Alberta
- 10 Nexen staff responsible for Aboriginal and community relations
- 3 members of Nexen's legal team
- 3 members of Nexen's procurement team.

The interviews followed a structure which was shared in advance:

- Your experience of what happens at the moment
- What needs to change
- What a simple and inclusive bidding/contracting process would look like
- What the documentation would look like
- What Nexen would gain from simpler, more inclusive contracting processes
- What might be lost
- Any barriers you can foresee.

Although the Aurora project is in BC, the Alberta-based contractors were able to give us good insight into their experiences of bidding for work from companies such as Nexen.

In all except one case where permission was refused, interviews were recorded and transcripts obtained for analysis. In the account that follows we identify the source of comments as contractors (C) and Nexen staff (N). The contractors were speaking generally, not specifically about Nexen's contracts (in fact, most of them were not currently working with Nexen).

Both groups agreed that the documentation was a problem:

> 'Doing the bids is an overwhelming task. We've been doing it for 10 years and we still have to read everything in case something's missing.' (C).

We identified several strategies for managing this complexity:

- Ignoring anything they cannot understand;
- Guessing at meaning based on a perception of what is likely to be normal practice;
- Paying for expensive expertise such as legal advice;
- Staying up late and working through it;
- Giving up and not bidding.

With the exception of retaining outside counsel (which adds cost), these strategies are worrying and indicate a potentially dysfunctional relationship between buyer and bidder. The bidder's attempt to bid for the right work, and comply with the terms of business is partly based on guesswork. And the buyer can only hope that the price has been based on a correct understanding of the scope, and that nothing will go wrong.

In practice, the success of any project will depend on human qualities of cooperation, mutual effort, communication and trust – which are actually qualities prioritised in Aboriginal culture.

Four challenges for better documentation

The interviews, together with our analysis of the documents and the bidding process, pointed to four distinct challenges for the project:

- The challenge of one-size-fits-all;
- The challenge of simplicity;
- The challenge of functionality;
- The challenge of relationship.

The challenge of one-size-fits-all

In most companies detailed attention is paid to the documentation for significant projects where the risks are high. Procurement staff are assisted by their legal departments to ensure that contract wording is watertight, and that key risks are covered. This can mean that not only are the general

terms and conditions written in a necessarily formal legal style, but so are other documents that define requirements and scope.

The same standards may then be applied to other projects which are smaller and less risky, and where suppliers are mostly SMEs. But there is an increasing recognition that this one-size-fits-all approach may not be appropriate in certain circumstances.

Recent research in both private and public procurement reveals that the issues raised in our interviews with Aboriginal companies are not unique to this community, but are typical of SMEs generally (Haapio, 2013a and 2013b; Patajoki, 2013). If the bidding process or documents seem too complicated or time consuming, the SMEs are unlikely to bid. Further, if the bidders do not understand the contracts they enter into, misunderstandings easily lead to a breakdown in relationships and poor or late delivery.

At Nexen, front line managers acknowledged the realities of working with First Nations contractors on small-scale, low risk projects.

> 'Often the risk profile and the consequence profile of that work is not that critical quite frankly. Primarily, I need to know that they are going to follow our safety rules, that their people are trained and are keeping their equipment in good repair and that their health insurance is up to snuff. But that is such early work, it's not that they are going to take down a multi-billion dollar facility because there's no facility there yet.' (N)

Instead, it is argued, the emphasis should be on the use of simpler contracts that better suit this audience, and that reflect the level of risk involved.

Nexen is not the first company to consider simplifying contractual documents. There are a number of precedents to act as a point of reference. For example, the in-house legal team at Scottish & Newcastle plc, the UK brewery, developed a new contract format they call Pathclearer. They found that in many cases, detailed contract terms were unnecessary because they are covered by general law, and that too much detail could actually be an obstacle to doing business (Colquhoun, 2007; Weatherley 2005. *See also* Siedel and Haapio, 2011: 119-121). They moved from conventional contracts – tens of pages and exhibits full of dense text – to a brief letter agreement that drastically reduced the length and complexity of the document set.

In another case, Agilent Technologies implemented a '50/50/500 Plan' for simpler contracts, with numerical goals: reduce the length of most common agreements by at least 50 percent; reduce negotiation cycle time by 50 percent; and provide more empowerment on contract terms for deals of $500,000 or less. One case was telling – a services division had consolidated six different exhibits describing six different services into one document. This seemed to be a simplification from their point of view, since they did not need to worry about which set of terms and conditions to use

when preparing quotes and processing customer orders. However, less complexity for Agilent meant more complexity for customers: rarely did a customer require more than one of the services described in the contract. So as part of their 50 percent simplification goal, Agilent broke the document apart and re-drafted it into six separate documents, none longer than three pages. The resulting experience was much less complex for the customer. (Barton, 2008)

Perhaps the best known and earliest simplified contract was the 1993 New Engineering Contract (NEC) (Barnes et al., 1986; Broome, 2012), described on the NEC website as

> '… a radical departure from existing building and engineering contracts, being written in **plain language** and designed to stimulate rather than frustrate **good management**.' (NEC, [no date], their emphasis)

It tackles the challenges posed by complex construction projects by prioritising clear and accessible content, recognising project roles, and focusing on management rather than rights and responsibilities. Its philosophy is to prioritise the positivity of co-operation over compliance enforced by threats.

> 'At the heart of the NEC is a new creed that Project Management techniques can be successfully written into a main contract to produce more co-operation, more efficiency and fewer disputes. There is also, of course, the implicit assumption that the terms of the contract can affect the way in which the contractor performs the work. **The boldness of the new approach cannot be overstated**.' (Uff, 1991, our emphasis).

Uff's last comment may be taken as a warning that implementing simplified contracts may not be straightforward. The new approach represents a paradigm shift – a fundamental change in the way we perceive contracts – and as such may be seen as an existential threat by practitioners of the traditional approach. McInnis (2001) analyses the debates that met the NEC in some detail – for example, between those who were concerned that new simpler wording would lose the certainty of precedent, and those who believed that greater certainty would in fact result from clarity of expression. These issues may partly explain why the NEC approach, although widely used in construction, has not spread far into other sectors.

The challenge of simplicity

Earlier we discussed the need to build capacity and capability amongst small business owners. This means, in effect, building what we might term 'contract literacy' – a familiarity with the processes and documentation used by large corporations. But general literacy may also be a problem.

Like many advanced countries, Canada report major problems with literacy skills:

> 'The majority of jobs in Canada require at least IALS Level 3 literacy skill, yet 43% of all students leaving Canada's high schools still do so with Level 1 and 2 skills[1]. Some students obtain their grade 12 diploma but don't have the skills that the level of education implies.' (Harwood 2012, page i).

Around 15% do not complete high school – this rises to 34% in First Nations communities overall and 50% on reserve (George, 2008), which means that a considerable number of otherwise capable and intelligent people are hard to reach through complex documents.

These statistics help us to set a realistic readability[2] baseline for our target audience, to ensure that the level of difficulty of the text is audience-appropriate. For communicating with the general population, Microsoft guidelines recommend a Flesch Reading Ease score of between 60-70 (higher scores are easier) and a Flesch-Kincaid Grade Level of between 7-8. In the light of the statistics above, we would aim for the lower end of these recommendations. For example the Canadian Health and Wellness Centre (www.chla-absc.ca) recommends a Grade score of 6-8 for effective health materials.

In practice, readability scores should not be interpreted too rigidly – the formulae are not designed for use with highly structured text, and it is inevitable that for any specialist purpose, such as contracting and engineering, technical terms are bound to be present. But we can mitigate the risk that something might not be understood, by providing definitions and guidance notes for example.

The factors influencing readability are well researched and summarised in any number of plain English how-to guides (for example, Cutts, 2013). The central rules for simple language include short sentences, common words, personal pronouns ('you' and 'we') and active verbs.

> In the event of substandard performance, insubordination, illness, professional inadequacy, incompetence, misconduct, non-compliance with the Rules of Work or otherwise unacceptable conduct by any Personnel, as determined in the sole discretion of Owner, Owner may require the replacement of such Personnel by notice to Contractor and Contractor, at its sole cost, risk and expense, shall replace such Personnel as soon as possible.

Figure 1. A clause typical of many companies' general terms and conditions.

The clause quoted in Figure 1 has a readability level of Grade 12. The plain English rewrite in Figure 2 brings the action to the front, personalises the language, simplifies the list of transgressions and returns a readability score of Grade 3.7.

2 By "readability" we mean specifically the calculations carried out by Microsoft Word using the Flesch Reading Ease and Flesch-Kincaid grade level tests.

We can ask you to replace any of your people if, in our view, they:

- Are doing a poor job
- Misbehave
- Disobey the Rules of Work
- Become ill.

We will give you notice, and expect you to replace them as soon as possible, at your own expense and risk.

Figure 2. The clause from Figure 1 rewritten in plain English.

Whether or not it is legally watertight, the rewrite is more likely to be read, understood, communicated on within the contractor's team, and acted upon.

The challenge of functionality

Of course the documentation is not just there to be read in the sense of decoded. It has to be used effectively to guide those bidding for the work and eventually doing it. Contracts typically include information that might be considered work instructions – the scope and requirements documents are very obviously in this category, so are various sections of the general terms and conditions for many contracts. For example, they typically cover obligations to pack goods correctly, practices when working on site, reporting obligations, systems for inspecting and accepting work, and the information required on invoices. Managers need to be able to find and use this information, so what happens in practice is that it gets repeated in other documents, such as invoicing instructions that might accompany a purchase order. This can lead to version control problems when revisions are made. We should note that making sense of apparently discrepant information requires inference, one of the most complex of literacy challenges.

The ability to use documents effectively is known as 'document literacy' – a form of literacy that goes beyond reading the words to include strategic reading – searching documents for answers to questions, assembling information from different documents, and determining the relevance of information. Effective documents are structured around their users' strategic needs to access different information at different times for particular purposes. A good user manual, for example, includes numerous access devices such as contents lists, index, headings, icons, section tabs and alternative layouts to suit different content structures.

The challenge of relationship

The fourth challenge was the role the documentation plays in building good relationships with stakeholders.

Nexen actually has a reputation for excellent front-line relationships:

> 'Any contact I've had with anyone in Nexen has been really good. I think they have a good attitude.' (C)

> 'The Nexen culture is instinctively inclusive.' (C)

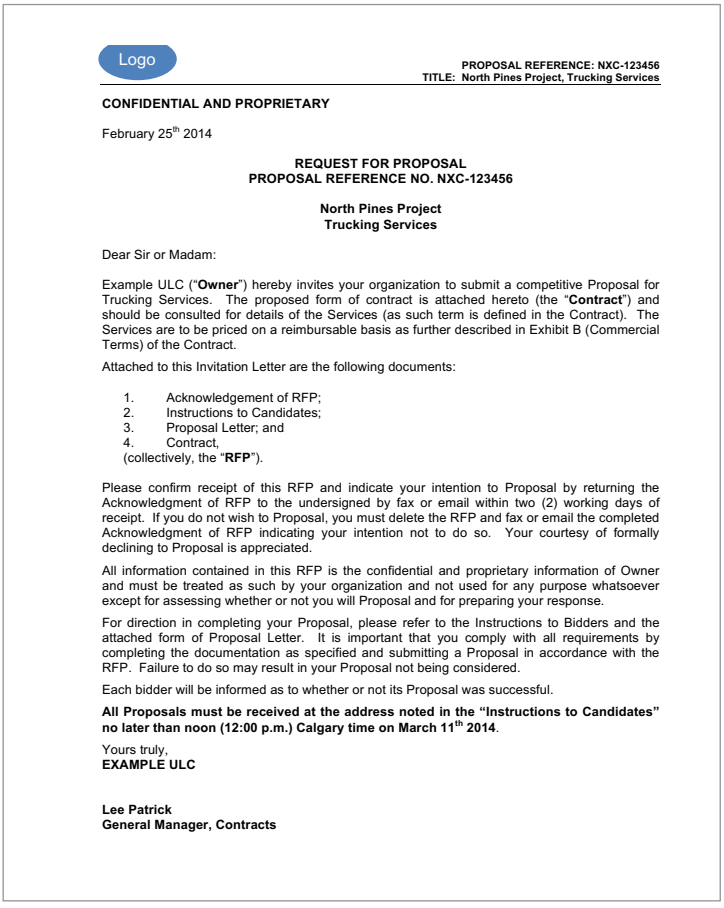
However, Nexen managers realised that this could be undermined by the formality of the documentation.

> 'The tone of our communications can be really formal…First Nations can be really sensitive to the tone. It's better face-to-face – the 'no emails between strangers' rule.' (N)

Relationship-building documentation would not only be more accessible in terms of its language and design but also more culturally aware, for example by replacing the directive nature of legal language with a more invitational tone acceptable to Aboriginal groups, and offers of personal contact by phone or meetings.

The first prototype

Early in the project we developed a prototype of one simple document to respond to these four challenges, to illustrate these learnings, and to get feedback from our interviewees within Nexen and among the contractors.



Logo

PROPOSAL REFERENCE: NXC-123456
TITLE: North Pines Project, Trucking Services

CONFIDENTIAL AND PROPRIETARY

February 25th 2014

REQUEST FOR PROPOSAL
PROPOSAL REFERENCE NO. NXC-123456

North Pines Project
Trucking Services

Dear Sir or Madam:

Example ULC ("**Owner**") hereby invites your organization to submit a competitive Proposal for Trucking Services. The proposed form of contract is attached hereto (the "**Contract**") and should be consulted for details of the Services (as such term is defined in the Contract). The Services are to be priced on a reimbursable basis as further described in Exhibit B (Commercial Terms) of the Contract.

Attached to this Invitation Letter are the following documents:

1. Acknowledgement of RFP;
2. Instructions to Candidates;
3. Proposal Letter; and
4. Contract,

(collectively, the "**RFP**").

Please confirm receipt of this RFP and indicate your intention to Proposal by returning the Acknowledgment of RFP to the undersigned by fax or email within two (2) working days of receipt. If you do not wish to Proposal, you must delete the RFP and fax or email the completed Acknowledgment of RFP indicating your intention not to do so. Your courtesy of formally declining to Proposal is appreciated.

All information contained in this RFP is the confidential and proprietary information of Owner and must be treated as such by your organization and not used for any purpose whatsoever except for assessing whether or not you will Proposal and for preparing your response.

For direction in completing your Proposal, please refer to the Instructions to Bidders and the attached form of Proposal Letter. It is important that you comply with all requirements by completing the documentation as specified and submitting a Proposal in accordance with the RFP. Failure to do so may result in your Proposal not being considered.

Each bidder will be informed as to whether or not its Proposal was successful.

All Proposals must be received at the address noted in the "Instructions to Candidates" no later than noon (12:00 p.m.) Calgary time on March 11th 2014.

Yours truly,
EXAMPLE ULC

Lee Patrick
General Manager, Contracts

Figure 3. The RFP covering letter before our transformation.

The initial invitation

Figure 3 shows a Request for Proposal (RFP) covering letter. We chose this as an initial prototype since it sits outside the formal bidding document, has limited information to convey, and can be taken as the normative voice of the organization as it talks, sometimes for the first time, to potential suppliers. In other words, this letter should represent the organisation at its clearest.

It is immediately apparent from the words 'hereby' and 'hereto' in the first sentence that this letter is legally framed – it is written in the same style and tone as the terms and conditions, the core legal component of the contract. The content is dominated by procedural compliance, rather than the services being requested.

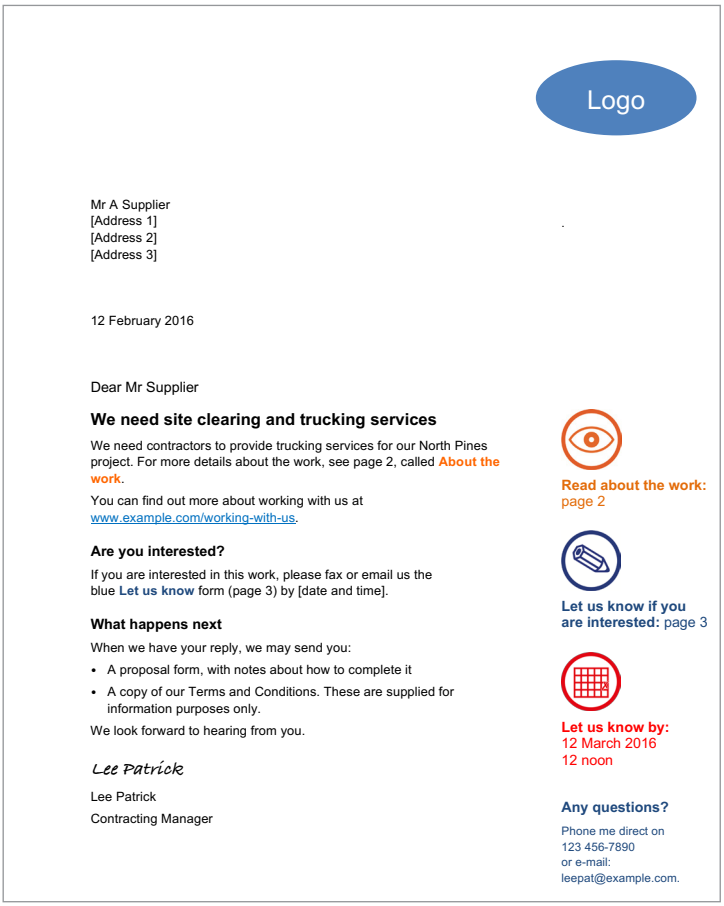


Figure 4. A draft of the new letter prototype, using a fictional project and location.

Figure 4 shows a draft transformed letter which addresses our four challenges:

The challenge of one-size-fits-all: we avoid formal language, which might be appropriate for larger organisations and projects, and instead focus on describing the job and bidding process in simple terms.

The challenge of simplicity: we use plain English throughout, in a conversational style.

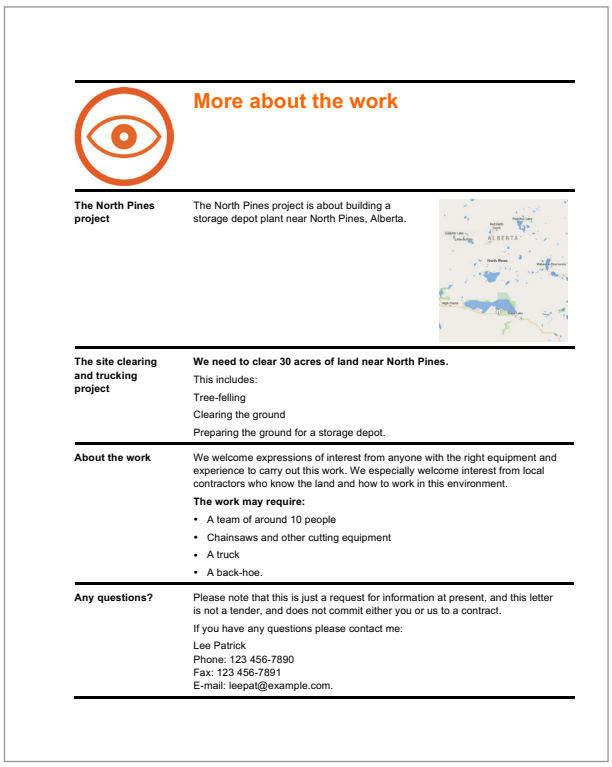
The challenge of functionality: information is chunked, with clear action oriented headings that make the structure clear. Coloured coded icons link to enclosures and spell out the process.

The challenge of relationship: the letter is now personalised, and includes an invitation to phone direct with queries. The implied power relationship is more balanced ('We need…', 'Are you interested?').

Accompanying documents

The original letter is accompanied by substantial documentation, including a 44 page set of general terms and conditions. Our alternative starts with a simple three page document set: the covering letter (Figure 4), a one page summary of scope, and an expression of interest form (Figures 5 and 6). The result is less intimidating, and makes it more likely that small contractors in the new area of operation would respond. Obviously the general terms and conditions would eventually be supplied, but only after the bidder has expressed interest in the opportunity. This uses a principle known to information designers as progressive disclosure – the gradual revelation of complexity in steps, as the user demonstrates they are engaged with the topic.

The summary of scope includes a description of the overall context for the services that are sought, with a location map. There is also decision support, in the form of a simple description of the task, the people and equipment needed. The form makes it clear what action is needed and by what date, and removes the need to write a formal letter in response.



More about the work

The North Pines project

The North Pines project is about building a storage depot plant near North Pines, Alberta.

The site clearing and trucking project

We need to clear 30 acres of land near North Pines.

This includes:

Tree-felling

Clearing the ground

Preparing the ground for a storage depot.

About the work

We welcome expressions of interest from anyone with the right equipment and experience to carry out this work. We especially welcome interest from local contractors who know the land and how to work in this environment.

The work may require:

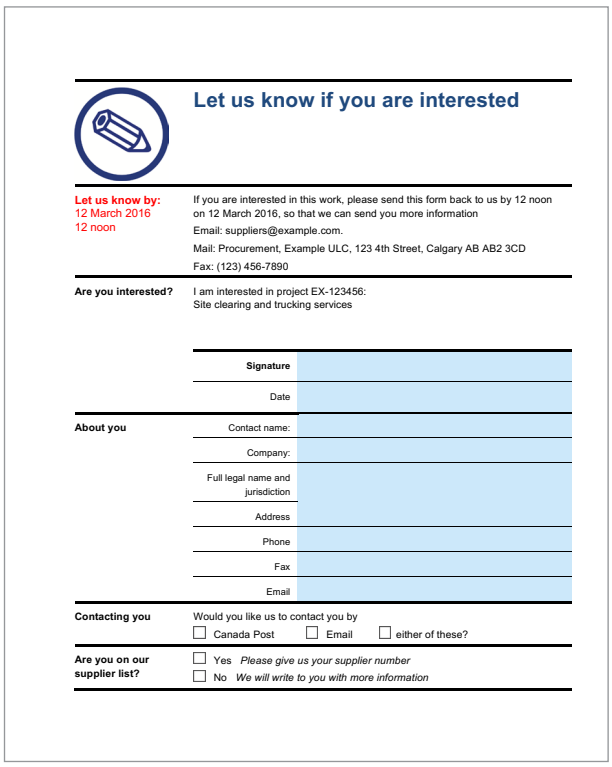
- A team of around 10 people
- Chainsaws and other cutting equipment
- A truck
- A back-hoe.

Any questions?

Please note that this is just a request for information at present, and this letter is not a tender, and does not commit either you or us to a contract.

If you have any questions please contact me:

Lee Patrick
Phone: 123 456-7890
Fax: 123 456-7891
E-mail: leepat@example.com.



Let us know if you are interested

Let us know by:
12 March 2016
12 noon

If you are interested in this work, please send this form back to us by 12 noon on 12 March 2016, so that we can send you more information

Email: suppliers@example.com.

Mail: Procurement, Example ULC, 123 4th Street, Calgary AB AB2 3CD

Fax: (123) 456-7890

Are you interested?

I am interested in project EX-123456:
Site clearing and trucking services

Signature	
Date	

About you

Contact name:	
Company:	
Full legal name and jurisdiction	
Address	
Phone	
Fax	
Email	

Contacting you

Would you like us to contact you by

☐ Canada Post ☐ Email ☐ either of these?

Are you on our supplier list?

☐ Yes *Please give us your supplier number*
☐ No *We will write to you with more information*

Figures 5 and 6. Pages 2 and 3 of the new letter prototype, using a fictional project and location.

Transforming the full Request for Proposals (RFP)

These prototypes were initially developed to demonstrate what an alternative approach might look like, before we moved on to consider how the full document set might be transformed.

The full document set for a typical contract comprised:

- RFP instructions;
- Signature document;
- Exhibit A – general terms and conditions;
- Exhibit B – commercial terms (such things as rates, prices, rules for invoicing), with various attachments;
- Exhibit C – scope (what is required and the manner of its delivery), with various attachments;
- Exhibit D – equipment (what is to be provided by Nexen, and what by the contractor).

The function of these documents is not entirely distinctive. Many issues are dealt with in both Exhibit A and one of the others (invoicing for example). This might work if B, C and D were plain language operational documents, governed by corresponding legal clauses in A (and that is one direction the redesigned contracts could take). But the default tone of voice is technical and legal throughout the whole document set, not just the general terms and conditions. This means that contract documents are hard to write, just

as they are hard to read. Assembled from component parts, the result may not cohere as well as it should, and rules of considerate writing get broken.

We have already mentioned the problem of divergent versions when information is repeated. Another common problem is what we might call false precision, where, for example firm quotations are required for services that 'shall consist of but not be limited to the following'. Or where, although the contract is on a call-off basis and may in theory not lead to any actual work at all, all equipment is apparently required to be on site for the commencement of the contract. The bidder 'knows' at a common sense level that this clause should not be taken literally, but they also need to know that other clauses cannot be so ignored – those about safety or insurance, for example.

A genre perspective

The term 'genre' refers to common document types for which we have names – words like 'magazine', 'novel' or 'catalogue' call to mind a particular combination of typical format, language style and appropriate reading strategy. Genres like these have evolved over many years, as producers of particular kinds of information seek to attract users (Waller 1991). For example, whereas a novel typically presents uninterrupted text intended for a long spell of comfortable reading, a catalogue prioritises quick search. So a good catalogue provides structural cues such as colour coded sections, or headings that can be easily spotted in a quick scan. A catalogue that fails to do this results in few sales.

Where documents seem not to work well, it is often because an imbalance in power relations has not encouraged document producers to take account of the needs of users in the same way. Traditional administrative forms, for example, are notoriously poor because users have little choice but to cope. They are, in effect, a poorly evolved genre, designed without a user in mind. The user is similarly absent from the traditional format of contracts and other documents with a legal status.

In the absence of training, or theoretical knowledge about document design, the genre perspective enables document producers to make use of their personal experience and cultural awareness. They can identify common document types which most closely match the needs of their own users, and use them as a starting point for their document transformation.

The example genres we listed at the start of this section are clearly inappropriate, because their content and anticipated user behaviour is very different from that of contracts. For example, a novel locks readers into an undifferentiated linear path, while a magazine is loosely structured for casual browsing. In contrast, users of contracts need a document that leads them systematically through essential content and that reliably leads

to correct action. It needs to be comprehensive, accessible and easy for document producers to maintain. The document genre which has best evolved to solve this set of problems is the user guide.

Good user guides work because they are designed around the user's experience. When we buy a product or service, we need to know how to set it up, how to integrate it into our habitual routines, and how to fix something that has gone wrong. We rarely read a user guide straight through – instead we move in and out of the guide in response to tasks and events. So the best guides have clear systems of hierarchical headings, diagrams and icons, and layouts that allow readers to skim quickly in search of answers to questions.

Contracts as user guides

In our transformed contract documents, we took inspiration from the user guide genre. We searched for information in the contract documentation that is focused on practical actions, and extracted it to create three generic user guides:

Guide to Pricing: the content for this guide was derived mostly from Exhibit B (commercial terms). It explains what quoted costs should cover (for example, whether the hire of equipment includes the operator, fuel and maintenance), how to deal with change requests and similar issues. Potentially this guide could be developed in several versions to suit different audiences – for example, a technical version for more complex, sophisticated projects, and a simple, didactic version to help smaller businesses learn about pricing.

Guide to Project Management and Reporting: At various points in the document set, there are scattered references to reporting requirements. These include regular reports to be sent every month, and incident reports that need to be sent if there is an accident, spillage, labour dispute or similar event. This is largely a generic document, but it could be customised to include actual dates and reporting lines for the project in hand.

Guide to Invoicing: Nexen already had an excellent guide to suppliers called 'How to get paid'. We took the view that, since this should be completely consistent with the requirements separately specified in the contract, it should be merged into a single guide. This could then be referenced by the contract rather than repeated there.

Figures 7 – 9 illustrate our application of the user guide genre to the Guide to Invoicing.

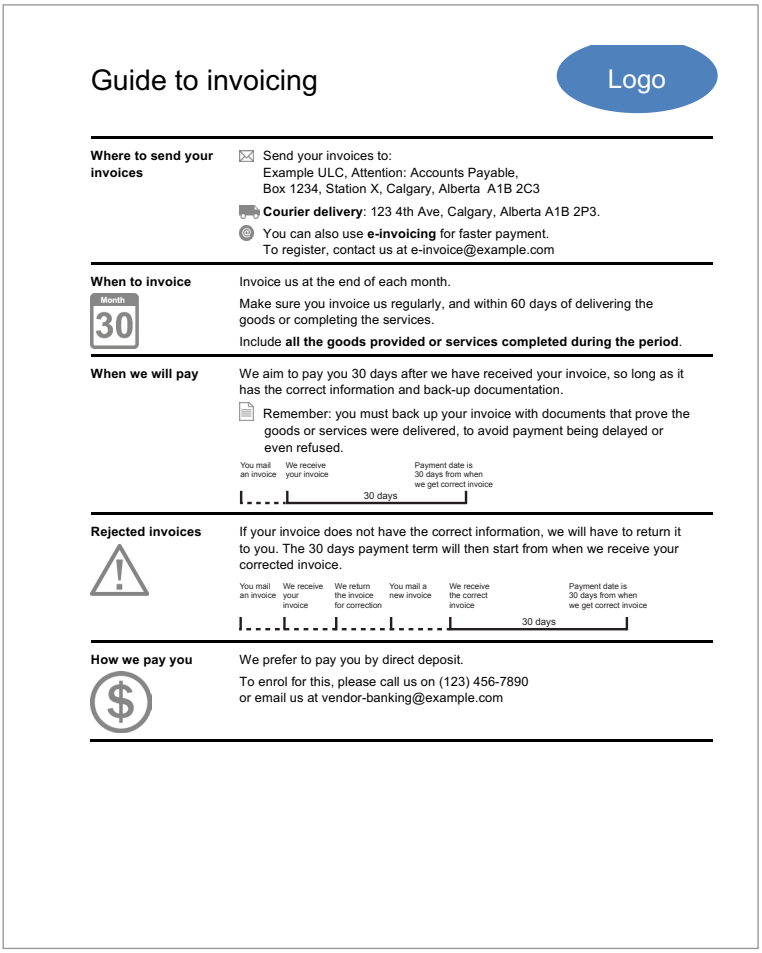


Figure 7. The draft of the guide to invoicing

Figure 7 shows the focus on action, and the use of graphic support through icons and visualisation (the timelines show the payment date, and the effect of a rejected invoice). It is designed to be clear to someone whose job is to create invoices – although this is a routine task, this person may be responsible for billing several clients, each with their own rules for correct invoicing.

To make the job even easier, an invoice template (Figure 8) is provided. Because it provides a place for all the correct information, using it helps the supplier to know they are compliant. And the required reference information is further defined in a separate illustration (Figure 9).

Figure 8. Rather than rely on a verbal description of a correct invoice, we include an example invoice that would be compliant if used or copied by the supplier.

Any problems?

Questions about invoice coding or to get your PO number: call the ExampleCo representative who requested the goods or service.

Changes to your Vendor Information: (such as your legal name, contact names, address, bank). Call Accounts Payable Customer Services on (123) 456-7890.

Past due invoices: Call Accounts Payable Customer Services on (123) 456-7890.

Invoice template

Below is an example invoice showing the information required for a correct invoice. See the notes that follow it.

Your invoice does not have to look exactly like this, but must contain the same information.

You can download a template from www.example.com/templates.

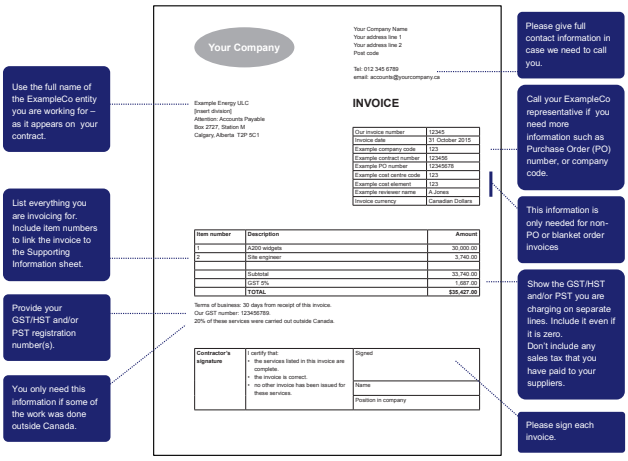
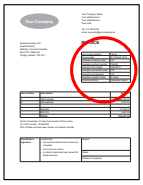


Figure 9. Reference information is explained in more detail using a checklist format to reinforce the fact that this is a firm requirement.

Reference information to put on your invoice



- ☑ Your company name and address.
- ☑ A clear heading saying 'INVOICE'.
- ☑ A unique invoice number that you have not used for any other invoices.
- ☑ Invoice date.
- ☑ The ExampleCo company code.
  You will find the company code on your Purchase Order.
- ☑ Your ExampleCo contract number, if you have one.
  [note here about where to find it].
- ☑ Your ExampleCo Purchase Order (PO) number and associated line item numbers.

  Only include one PO number per invoice.

  If you have more than one PO, you need to send us a separate invoice for each one.
- ☐? For non-PO or blanket order invoices only:
  - ExampleCo cost centre code.
  - ExampleCo cost element.
  - ExampleCo invoice contact name.

  You will find this information on your Contract documentation, or call your ExampleCo Representative.
- ☑ Invoice currency.
  This must match the currency on your Purchase Order or Contract.

GST/HST or PST

If you are invoicing for expenses or subcontractors (whether at cost or with a mark-up), do not include GST paid by you to any suppliers or subcontractors.

If the services are GST or PST zero-rated or exempt, supply documentation to support this. Include GST and PST as zero dollars ($0) amounts on the invoice.

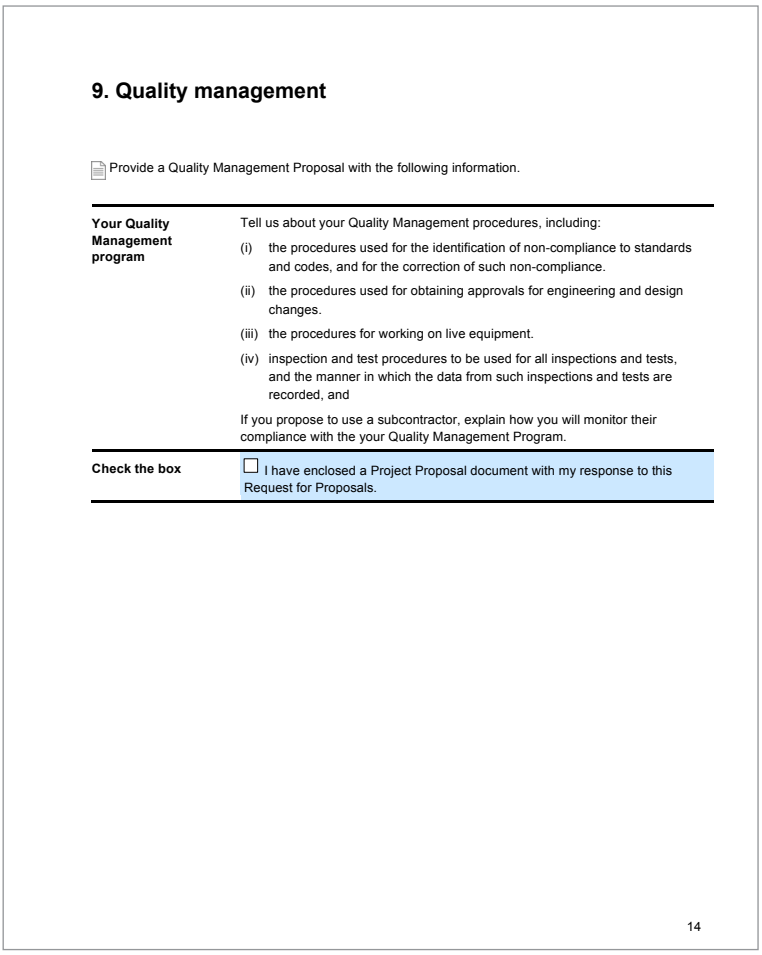
Note: Other than the GST/HST or PST which you are required to charge on the invoice, you or your subcontractors are solely responsible for paying any other taxes, duties and similar amounts assessed by government, and for all filing requirements.

If you are a non-resident of Canada for Canadian income tax purposes, you must identify in each province the amount payable for services rendered or performed in Canada, excluding related expenses.

Icons, check boxes and colour-coding

The RFP document is designed as a form to be returned with the proposal, ensuring bids are easily comparable, and reducing the burden on bidders to produce a perfectly formatted submission.

It asks bidders to submit various proposals and reports with their bid. To make it difficult to miss these actions, we include icons to cue a document requirement, and we provide check boxes for bidders to confirm they have taken the required action (Figure 10). A concern was raised that this might seem patronising, but our collective view is that this gives valuable reassurance to a new bidder that their bid is complete.



9. Quality management

Provide a Quality Management Proposal with the following information.

Your Quality Management program	Tell us about your Quality Management procedures, including: (i) the procedures used for the identification of non-compliance to standards and codes, and for the correction of such non-compliance. (ii) the procedures used for obtaining approvals for engineering and design changes. (iii) the procedures for working on live equipment. (iv) inspection and test procedures to be used for all inspections and tests, and the manner in which the data from such inspections and tests are recorded, and If you propose to use a subcontractor, explain how you will monitor their compliance with the your Quality Management Program.
Check the box	☐ I have enclosed a Project Proposal document with my response to this Request for Proposals.

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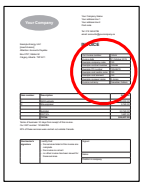
Figure 10. The RFP form includes icons to cue documents to attach, and checkboxes to confirm the action has been noticed and carried out.

We use light blue areas (or light grey if printed in monochrome) for places where a response is needed (Figure 11).

Reference information to put on your invoice



- ☑ Your company name and address.
- ☑ A clear heading saying 'INVOICE'.
- ☑ A unique invoice number that you have not used for any other invoices.
- ☑ Invoice date.
- ☑ The ExampleCo company code.
  You will find the company code on your Purchase Order.
- ☑ Your ExampleCo contract number, if you have one.
  [note here about where to find it].
- ☑ Your ExampleCo Purchase Order (PO) number and associated line item numbers.

  Only include one PO number per invoice.

  If you have more than one PO, you need to send us a separate invoice for each one.
- ☐? For non-PO or blanket order invoices only:
  - ExampleCo cost centre code.
  - ExampleCo cost element.
  - ExampleCo invoice contact name.

  You will find this information on your Contract documentation, or call your ExampleCo Representative.
- ☑ Invoice currency.
  This must match the currency on your Purchase Order or Contract.

GST/HST or PST

If you are invoicing for expenses or subcontractors (whether at cost or with a mark-up), do not include GST paid by you to any suppliers or subcontractors.

If the services are GST or PST zero-rated or exempt, supply documentation to support this. Include GST and PST as zero dollars ($0) amounts on the invoice.

Note: Other than the GST/HST or PST which you are required to charge on the invoice, you or your subcontractors are solely responsible for paying any other taxes, duties and similar amounts assessed by government, and for all filing requirements.

If you are a non-resident of Canada for Canadian income tax purposes, you must identify in each province the amount payable for services rendered or performed in Canada, excluding related expenses.

Figure 11. Coloured backgrounds are used to cue responses in the RFP form.

Communicating what we did: design patterns for clearer contracts

There are various possible ways to communicate information design techniques so others can use them.

Templates are one possibility, but assume a consistent context of use within the organisation they were designed for. Because they embody the organisation's particular practices and processes, someone adapting them for use elsewhere needs to discern the reasons behind the designs so that they retain or adapt only what is essential.

Earlier we introduced the concept of genre – and the user guide genre was an important inspiration. But this is not a robust enough concept for general use. There are many poor user guides, and some genres include features that are vestiges of historical technologies, with no real function today (for example, the half-title and title pages of a typical book). And some useful techniques might come a mix of different genres or they might be an original creation.

Instead, we prefer to use design patterns to describe useful techniques in terms of the functional problem they aim to solve.

Originating in architecture (Alexander et al., 1977), design patterns have become widely used in software engineering and interface design (Tidwell, 1999), and in more recent times, among some information designers (Waller, Delin and Thomas, 2012; Farkas et al., 2011). Haapio and Hagan (2016) have proposed a pattern library for contract design, and Gerding (2013) proposed a design pattern approach to contract content. Creating design patterns is a naming exercise – identifying a useful, repeatable solution to a common problem, then giving it a name and a description so it can join a designer's repertoire of potential solutions to similar problems.

Table 1, at the end of this document, lists the main design patterns we have used in the transformed Nexen documents. We present them here as a way to summarise our learning from this case study, and to list techniques that might be applied to other contract documentation with similar user needs.

They are defined at a high level – we do not, for example, reiterate the rules of plain English, or legible typography.

Conclusion

This case study has described an innovative approach to contract simplification in response to the needs of some members of a particular audience, Aboriginal small businesses in BC, Canada. Similar needs will be felt wherever contracting parties come from different cultural and professional backgrounds. And, as the creators of the New Engineering Contract showed, simplified contracts also address a need felt in any industry where the users of contractual documents include not only procurement and sales professionals but also the managers and workers on the job.

Contract simplification and visualization is sometimes discussed in the abstract, with few examples and practical cases to illustrate what is actually being discussed and proposed. The innovative document designs published here, together with the design patterns that explain them, are intended to move the debate forward and lead to further, more detailed research on the topic.

This is by no means the first instance of contract simplification, but rather it continues a growing trend towards greater clarity as a priority. The project used a multi-disciplinary approach that combined the best professional practices of specialists in procurement, legal drafting, project management, community relations, and information design. Importantly, it also consulted users, to give them a voice in the creation of the new document set.

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Table 1. Some design patterns for contract design

Pattern name	Challenge	Typical solution	Typical issues	Example from this project
PATTERNS THAT SUPPORT STRATEGIC READING				
Skimmable headings	People need to skim read to get a sense of what the content covers, and to find answers to questions.	Prominent headings that they can move quickly between.	There need to be frequent headings for this to work – several to a page, and perhaps even one per paragraph.	Figure 5: All the Guides have headings in the left-hand column.
Section start pages	The start of each document sections needs to be easily found. They also need have internal unity, so they can be copied and distributed.	Start each section on a new page, with a prominent heading. Do not worry about 'wasting' space at the end of the previous page.	Section start pages can have a special layout, perhaps including notes or a contact name for help.	Figure 9: most of the transformed documents use a new page for each section start. Simple documents are not necessarily shorter.
Alert icons	Contracts are quite long and calls to action (eg, reporting requirements) can be missed on a quick read.	Wherever there is an important action, include an icon. It can be used to draw attention on a first read, or as a search target on a later review.	It can sometimes be tempting to pepper a text with icons, so be consistent and reserve them for important events that form project management stages.	Figure 11: we use a document icon to represent a required information to be attached. It helps bidders check they have submitted everything needed.
Colour coding	1 It can be hard to navigate a long or unfamiliar document. 2 Users may need to quickly identify a page or section that is referred to elsewhere.	1 Colour coding provides an ambient cue that you are still in the same section – a colour change is a quick alert that you have moved on. 2 Colour provides a good search target, similar to icons.	You can't rely on colour alone to signal a difference, because the document may be copied in black and white. So use it along with another cue such as heading or icon. Around 8% of males have some degree of red-green colour blindness.	Figures 4–6 use coloured icons to link enclosures to the covering letter.
PATTERNS THAT SUPPORT EXPLANATION				
Timeline	It is difficult to use words alone for explanations that involve sequences of events perhaps with dependencies or alternative routes. Sometimes it is unclear whether two time periods overlap or are sequential.	Use a timeline diagram showing key events in sequence, with number of days/months/years/.	A time line can be elaborated with branches for alternative decisions or loops for re-worked stages.	Figure 7: the Guide to Invoicing uses timelines to contrast a normal payment process with a rejected invoice.
Exemplars	It may be difficult to reliably describe a requirement or rule which is not commonplace or intuitive.	Provide an example or demonstration.	Examples can be taken too literally by readers. Provide commentary stressing what is essential to follow, and what is just illustrative.	Figure 8 shows one of the exemplar invoices we illustrate to show what information to include.

Pattern name	Challenge	Typical solution	Typical issues	Example from this project
Layered explanations	There may be two audiences for the same content, or part of the content cannot be changed.	Use parallel columns to juxtapose commentary or plain English text alongside the core content.	You may need to make it clear that only one version has legal status.	For reasons of space we have not illustrated this, but we developed experimental formats with layered explanations.
Hints	Although an instruction might seem clear, in practice users make errors.	Provide hints that help users. For example, when asking for a password, websites might hint 'this is in the email we sent you'.	This an important relationship-building idea that gives your document a helpful and cooperative tone.	Figure 9 offers a hint about where to find the PO number.
PATTERNS THAT SUPPORT AN EFFECTIVE USER RESPONSE				
Checklist	Users want to comply with your process but need to check they have covered everything.	Provide a checklist they can use before sending in their bid, invoice or other submission.		Figure 9 includes a checklist to help contractors submit acceptable invoices.
Highlighted response space	Users want to comply with your process but need to check they have filled in correct information in a form.	Highlight the places where they need to respond, using colour, bold boxes or icons.	It can be difficult to assess how much space is needed, so users need permission to go beyond the allocated spaces is they need to (eg, in margins or on extra paper).	Figure 11 from an RFP highlights response areas in colour (or grey if printed out in mono).
Distributed declaration	Users sometimes sign forms at the end, implying they have read everything, but they haven't.	Distribute separate declarations with checkboxes or signatures, indicating they have considered individual requirements.	This may only be needed if the separate requirements are critical or if experience shows they have not been understood.	Figure 10 shows a section-level declaration.
PATTERNS THAT SUPPORT READER ENGAGEMENT				
Topic icons	Long documents can be off-putting and not invite a careful read	Provide graphics that break up the text, and highlight particular topics.	Use this technique sparingly, with meaningful graphics. Otherwise it can look trivial or over simple.	Figure 7 uses icons to draw attention to deadlines, payment and a warning about correct invoicing. It makes the page look and act like a user guide.
Background information	Users may not know why you are asking for information, or may want to do wider research about the project.	Provide contextual information about your operation, in the same way as you might if met face to face.	This is an important part of relationship building and puts the bidder or supplier more fully in the picture as a participant in your project.	Figure 5 gives general background about the project, and a map.