



CASE STUDY

CONTRACT SIMPLIFICATION FOR THE AURORA LIQUEFIED NATURAL GAS PROJECT

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INTRODUCTION

Contracts And Communication

It is common to view contracts as legal instruments to prevent risks and impose penalties. Lawyers meticulously draft contracts to capture any anticipated breach. They aim to create an airbag for a dispute and to secure a position for a trial.

But are these meticulously drafted contracts good? Very often, they are not.

Is a dispute or a trial the right kind of result that one should focus on when creating a contract? No. Cooperation and an added value are the results of a contract.

Essentially, contracts are a form of communication. Contracts are an exchange of requests, promises and guarantees between the parties. The same applies to the procurement process.

In the business world, communication needs to be fast, clear, and up to the point. Contracts are the guides to direct the parties' behaviour in a mutual process of value creation. Risk management and punitive functions are secondary to contracts' essential role.

What can we say about modern contracts, when viewed through the lens of communication theory? Too often, they are incomprehensible. They do not serve their primary function well.

Lengthy legalese contracts and cumbersome procurement processes incur expenses and imply risks that contracts are supposed to prevent. Hard to understand and comply with, contractual provisions are misapprehended or ignored. Sometimes, individuals and entities even opt not to participate in otherwise profitable ventures due to the complexity of their contractual frameworks.

These considerations were in focus of the contract managers for the Aurora Liquefied Natural Gas (**LNG**) project in British Columbia.

Aurora LNG Project And Social License

The Aurora LNG project was a plan for the construction of a LNG facility and a marine terminal near Prince Rupert, British Columbia. The developer was a Calgary-based oil and gas company Nexen Energy ULC (Nexen), now CNOOC Petroleum North America ULC.

Construction affected the traditional territories of several First Nations. So, the project entailed inevitable environmental and quality-of-life concerns for these peoples. Nexen sought a social license, or approval from Indigenous communities, to go on with the project.

In return for their assent on the project, the legitimate claim of Indigenous peoples was to create employment opportunities for local businesses. Hiring local contractors to perform works and provide services for the project was an obvious solution.

Small and medium-sized Indigenously owned enterprises (**SME**), expectedly, did not have the resources to process hundreds of pages of contractual documentation. They were reluctant to make bids because of the complexity of procurement processes.



Proactive Law And Contract Design

In response to these challenges, the Aurora LNG project embraced proactive law and contract design as innovative solutions. Proactive law emphasizes collaborative approaches and foresight to achieve favorable outcomes, shifting focus from reaction to anticipation. Contract design, a manifestation of proactive law, prioritizes user-centricity to enhance contract clarity and accessibility.

Two prominent evangelists of these innovative approaches were commissioned for the Aurora LNG project. They were Helena Haapio, a legal scholar and contract strategist from Finland, and Robert Waller, an information designer and simplification consultant from the UK.

The task for the design team was not just to improve, but to rethink Nexen's templates for procurement documents. The ultimate goal was productive cooperation with Indigenous businesses in the Aurora LNG project.

Avoiding Misconceptions Of Design And Simplification

Contrary to common misconceptions, contract design is not about the enhancement of the visual appearance of the contract. It encompasses human-oriented, creative methods to identify and address underlying issues. Its primary focus lies in enhancing the content and comprehensibility of contracts, thereby improving the overall user experience.

Simplification is also often misapprehended as making long documents shorter. If possible – yes, but not necessarily. Oftentimes, re-design documents increase their volume because it makes it easier to understand them. In other words, simplification aims at quality, not quantity of information.

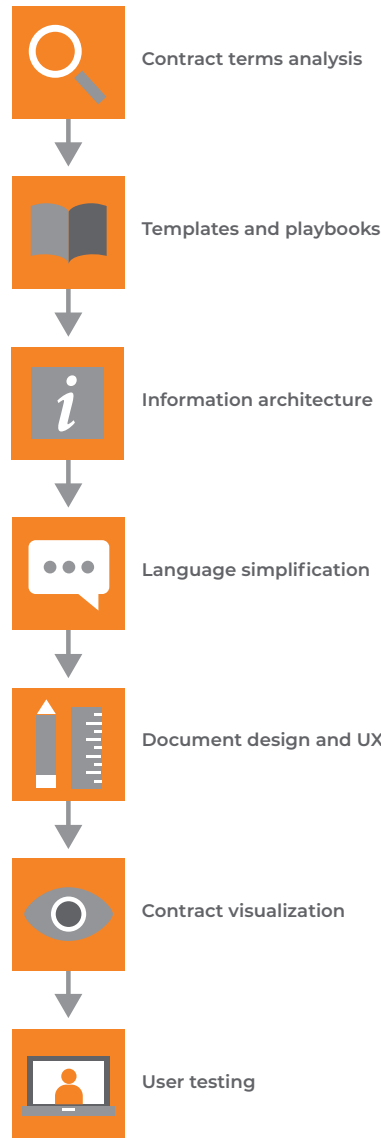


Figure 1. *The process of contract design*
 Source reference: <https://www.worldcc.com/Research/Contract-Design-Simplification>

METHODOLOGY

Discovery Phase

The project followed the logical progression of a service design approach, see figure 1. The first step was in-depth user research. Understanding the pivotal roles of both contracting parties, the design team conducted comprehensive investigations into:

- ▶ Nexen’s existing contract templates and procurement process.
- ▶ Indigenous ethnography related to participation in non-Indigenous commercial activities.

The research included desk studies and structured interviews with Nexen’s staff and Indigenous contractors.

The research made it clear what challenges and expectations parties have about the procurement process. Important cultural issues that need to be addressed in the design process were articulated. For example, the imperative or patronizing tone in existing templates did not fit the Indigenous understanding of respectfulness.

Additionally, customer journey mapping unveiled the disjointed nature of communications within the procurement process.

The result of the discovery phase was an understanding of what prevents effective SME participation in procurement. The particular challenges that should be reflected in the new documents were agility, simplicity and functionality.

Define Phase

Building upon insights from the discovery phase, the project team applied their expertise in proactive law and contract design, see figure 2. Central to this stage were three key concepts:

Genre

Novel, romantic letter, regulations – encompasses rules and stylistic features that are easily recognized by readers and facilitate strategic, targeted reading. For example, you skim a tabloid and focus on an alert announcement. Unlike that, traditional legalese contract documents have no particular genre: no skimmable headings, no layout to direct the reader’s attention, the “wall of text” very often hides the true meaning of the words.

To set the groundwork for re-designing procurement documents, the team identified the user guide as the most suitable genre. A user guide provides a clear step-by-step solution to the problem – exactly what a bidder needs when preparing a tender offer. User guides are organized through a clear system of skimmable headings. The visual aids like diagrams, exemplars and icons, as well as layouts allow readers to quickly find answers to their questions.

Layered Contracts

Layering information enriched this general perspective with concrete tools to ensure that the main message of the document may be grasped quickly and that there is an explanation for a more detailed reading.

Design patterns

These are tools to typify challenges and correlate them with repeatable solutions. This is an agile alternative to templates with their “one-size-fits-all” principle, which is often not the case with business contracts. For the current project, a vast array of patterns was used, ranging from stylistic enhancements like checkboxes and color coding to substantive features such as providing concise background information on the Aurora LNG project.




	 Action Layer	 Explanation Layer	 Reference Layer
<i>What is it for?</i>	For skim reading	For understanding	For research, when dealing with a problem, or asking a question
<i>What is in it?</i>	At-a-glance information requiring little effort Headings for navigation Urgent warnings	Engaging explanations integrated with marketing messages and the application process	A reference guide
<i>Example techniques</i>	Headings Icons Alerts	Clear text written from the user’s perspective Frequently Asked Questions Decision support flowcharts or apps Infographics, videos, comic strips, etc	Clear access structure Legible type Headings
<i>Knowledge base</i>	User-centred design, behaviour change, literacy, wayfinding	Instructional design, journalism, graphic design	Technical communication, reference book design.

Figure 2. *The layers of a contract*
Source reference: <https://www.e-elgar.com/shop/usd/research-handbook-on-contract-design-9781839102271.html>

Develop Phase

Armed with the understanding of the problems and solutions, the design team was ready to develop a prototype.

Opting for a streamlined 1-page document, they focused on deconstructing dense text, implementing skimmable headings, and adhering to principles of plain language to enhance readability.

They opted a streamlined 1-page 'Request for Proposal' document as a prototype.

The first thing that contract design usually does is deconstruction of a "wall of text". Designers chunked the information and supplemented it with skimmable headings. They eliminated redundancy and rewrote the text under the principles of plain language. This increased readability metrics dramatically.

Visual tools such as icons and color coding were strategically placed to improve document functionality, while clean formatting and ample white space optimized user experience.

To address the cultural issues that were discovered during the ethnographical research, designers implemented personal elements like personal pronouns, and an invitation to connect over the phone or in a meeting.

Test

The prototype was discussed with the stakeholders and received positive reviews.

Subsequently, other procurement documents were redesigned in the user guide genre, incorporating selected design patterns to streamline processes and enhance clarity, such as:

- ▶ checkboxes where a critical action is required like attachment of documents to a proposal;
- ▶ timelines to explain key processes such as invoicing and payment;
- ▶ exemplars such as an example invoice with explaining comments, etc.





CONCLUSION

The Aurora LNG project was terminated before there was an opportunity to carry on procurement with the use of new documents.

However, findings from that project were included in a contract design pattern library (maintained by the World Commerce & Contracting Association) and used in other projects.

Since 2020, the Government of Canada has been making efforts to simplify contracts and make procurement less burdensome for suppliers. It also aspires to increase the share of Indigenous procurement by 5% in the next years.

Despite the project's untimely conclusion, its impact transcends the confines of a singular endeavor, shaping future initiatives and contributing to the ongoing evolution of contract design and procurement practices.

ACKNOWLEDGEMENTS

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