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## *Contract Management*

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Corporate legal departments often struggle to draft or review contracts for the purchase or sale of goods and services. These chronically understaffed departments tend to be the last to learn of such transactions and find themselves rushing to resolve legal issues or just to turn the document around. Even though the legal department is critical to these significant revenue- or expense-generating transactions, it is often poorly equipped to deal with them.

Corporations all too often think of the legal department as a peripheral operation, counting it as overhead when it comes to staffing and technology. By the same token, contract management is often hit-or-miss because the emphasis is on closing the deal quickly and moving onto the next one. Sales has paramount consideration and, as a result, the contracting process itself, with all its careful review and crafting of terms and conditions, doesn't always get the attention it deserves. The same can be said for contract maintenance and all of its compli-

ance functions. Proper contract management can, however, yield:

- 90 percent or more increase in compliance
- 75–90 percent decrease in erroneous payments (either to the corporation or its vendors)
- 50 percent faster contract negotiation
- 30 percent increase in renewal revenue
- 10–30 percent reduction in operating and processing costs (after initial, one-time costs for systems are factored in)

More to the point, contract management can result in savings of 10–25 basis points of revenue.

Hildebrandt recently undertook a Contract Processing Survey designed to benchmark how information technology (IT) product and service companies manage and operate their customer contracting processes. The survey was focused on five key areas: roles and responsibilities, processes, metrics, training, and technology.

The survey was sent to 29 national or global technology companies that sell both standard and sophisticated products or services, 16 of which completed and returned the surveys. An analysis of the survey results revealed three major themes:

**No company excelled in the contracting**

**process overall.**

Although several companies had adopted best practices in some of the survey areas, none appeared to be applying them in most of the areas. In fact, none of the respondents seemed to have a significant edge. The fact that the surveyed companies may be selling to as well as buying from one another may help explain the lag in best practices. There are no clear leaders to set an example.

**Customer contracting is still a manual, paper-based process; it is not as responsive or cost-effective as it could be.**

Unlike other business processes, customer contracting has not yet been effectively reengineered to cut costs, increase service levels and reduce cycle times. The use of paper for drafting, tracking, filing, retrieving and managing contract documents entails longer processing times and more effort than would be necessary if the contracting parties had direct access to the required information and documents over their corporate network and a shared network with their customers.

**Management of the contracting process is more art than science.**

Of the respondents, only five indicated that they measured the volume or turnaround

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time for their customer contract processing. None of the respondents used a document management system to provide version and access control. And only three had a computer-based matter or contract management system to either track contracts in progress or profile executed contracts. This seems to be closely related to the second theme. It would appear that many groups do not gather and report metrics because, without effective use of IT, it is simply too time-consuming and subject to error.

In summary, the survey results indicated that, aside from e-mail and networked word processing, most corporations are still processing and managing customer contracts with yesterday's technologies and organizational structures. Though these results are somewhat disheartening, they do indicate an opportunity for significant improvements in cycle time, service levels and costs in all areas of the company—not just the legal department. Those improvements will, however, require significant investments in reengineering the existing technologies, processes and organizations associated with contract processing. The end result, however, would be closer and more strategic ties with customers, as well as increased internal efficiencies

### **Getting the Job Done**

Following are what we consider best practices in contract management. These practices are presented in the order they should be established, as the ones listed earlier provide the fastest payoff and serve as a basis for later measures. Where it makes a difference, they deal with the revenue or sales and marketing side of contract management. Clearly, there is also the expense or procurement side of the process. Most of the principles apply equally to both sides of the corporate equation, but it's clearer to discuss them in specific terms

#### **1. Structuring Deals**

Customer contracting generally takes place on one of two levels: complex, custom contracts involving strategic issues or significant expense; or simple, standard contracts for commodity products and services.

Generally, the account executive first discusses the complex, custom deals with customer executives. If interest continues beyond this point, the appropriate business unit personnel (marketing, financial and technical specialists) are brought in to work with their customer's counterparts to further structure the deal in terms of technical details, deliverables, prices and timelines.

The legal and contract management group should be involved in these discussions as soon as practical to identify and resolve any potential issues or opportunities. For preferred customers, many corporations have developed a master agreement that covers non-deal-specific terms and conditions. In this event, a rider or supplement is subsequently prepared for individual transactions to address the unique aspects of that transaction.

#### **2. Negotiation Protocols and Procedures**

Establishing protocols and procedures at the outset of contract discussions sets expectations for both parties on manageable details and enables them to focus on the substantive elements of the deal as they work through the negotiation process. Resolving these protocols early in the process through a single meeting where each protocol is considered within the context of the offer is preferable to addressing and resolving each item on a piecemeal basis as it arises during the negotiation process. Specific discussion of these matters minimizes risk and eliminates the element of surprise. Following are the types of protocols and procedures that should be discussed at the outset of negotiations:

- Which party drafts the initial customer contract
- How changes are to be tracked and reflected in each draft
- How drafts are exchanged
- Time limits
- Periodic status calls
- Escalation processes

Once both parties agree to these protocols and procedures, it is best to confirm them in writing (e-mail or paper).

#### **3. Requesting and Negotiating Simple or Standard Contracts**

Simple or standard contracts are designed

to streamline and simplify the contracting process for both the customer and the company. The requestor can be either the customer or the business unit personnel. Account executives should only be advised on submissions of these simple or standard agreements.

Ideally, the contract group will have a Web site that provides the requestor with direct access to an "intelligent" electronic contract request form or contract template that would present constant information and prompt the user for the variable information to complete this form. These forms and templates will have hyperlinks adjacent to their variables that will provide the user with access to more detailed instructions, warnings or examples.

Once completed, the form would provide the user with a transaction ID (a reference number) and notify the appropriate person (via e-mail) to receive and process that request. The fulfillment of the electronic contract request form would be monitored for timeliness by workflow software. If the request is not fulfilled within a set number of days, the workflow software will follow programmed instructions and either route the form to another party for preparation or send an e-mail alert to management.

Requests for these simple, standard contracts should be sent to a responsible contract group member (a contract manager or analyst—titles may vary) who is familiar with the variable contract terms and the contract processing technologies. The standard document should be quickly and efficiently assembled by merging the stored variables (gathered from the contract request form) with the standard document template (text).

The responsible contract group member generally coordinates negotiations between the contracting parties (the customer and internal contacts). This interaction is generally well structured with simple, easy-to-follow guidelines for negotiating terms and conditions with the customer and instructions for contacting in-house counsel or the relevant business unit on questions that fall outside those guidelines.

#### **4. Drafting and Negotiating Custom Contracts**

Custom contracts generally involve technically or structurally complex terms and conditions or scope of work. They generally have significant value to the customer and the company.

The person requesting a custom contract is generally someone who is in a position to commit resources to the development of a contract, and who has a relationship with the customer executive authorized to ultimately approve the contract. This would either be an account executive or an executive in the business unit.

The requesting party completes an “intelligent” contract request form that is automatically routed to the appropriate drafting party. As with simple, standard contracts, these forms and templates will have hyperlinks adjacent to their variables that will provide the user with access to more detailed instructions, warnings or examples.

The electronic contract form requesting the drafting would be routed to each party via e-mail and monitored for timeliness by the workflow software. If the e-form is not completed and advanced to the next party within a set number of days, the workflow software will follow its instructions either to route the form to another party or to issue an e-mail alert to management.

Generally, a responsible contract group member orchestrates the contract drafting and negotiation process. This individual sets up a task list with assignments and a corresponding timeline to meet internal and customer expectations.

The statement of work is generally drafted by the business unit responsible for the products or services being contracted. The contract group manager will ask in-house counsel to draft the contract’s terms and conditions and review the overall structure and content of the contract.

The contract group manager, either directly or indirectly, structures or directs contract negotiations with the customer. Generally, these negotiations involve not only negotiating with the customer, but also with the in-house counsel and with the internal business units providing the products or services.

These negotiations should be conducted

with groupware—software that “memorializes” the flow of the negotiations (the logic of decisions) and enables the parties (internal or external) to go back and understand why certain positions were taken at certain points in time.

Quality control should be undertaken for all drafts going out to the customer. This process is simplified by using the document management system that provides version control on documents and document comparison (redlining) software which provides flexible formatting and processing of the comparison process with minimal effort. Quality control is generally a two-step process overseen by the contract group manager. The first step involves a check of the document’s structure, format and spelling by the contract group manager. The second step involves a substantive review of changes to the terms and conditions or statement of work by the contract group manager and the parties responsible for the drafted or changed items.

### **5. Storing and Indexing Contracts**

Companies can use the features and functions of their matter management system as a centralized contract management system. The system is maintained by either a central or distributed contract-processing group (the same group responsible for generating and tracking the contract from request to execution).

For contract management, the matter management system would have two major components: a contract profile database that would be populated with the variable data used to assemble the variable terms and conditions and statement of work of the contract, and a scanned image of the executed agreement that would show the original signatures and any initialed marginalia.

The contract management aspects of the system should be integrated so that users can retrieve and display an image of the contract itself from the screen that is displaying that contract’s profile. The scanned image should also be accessible by searching on one or more of the contract variables such as product name, customer name, expiration date, effective date, etc.

This system should also be browser-based with the appropriate access controls to enable access by all authorized internal clients and outside counsel.

### **6. Document Exchange and Comparison**

Submission of requests is done by accessing either an online, electronic contract request form or a document assembly template. Either of these two vehicles should prompt for contract variables, validate against a database of prior contracts and store those variables in a contract management database.

A member of the contract management group should be able to use a document assembly program to merge those stored variables into a boilerplate document template (standard or custom) and produce a final document in the company’s word processing program. This word processing program should be able to output the file in a portable document format such as Adobe Acrobat’s PDF.

Both the word processing document and the portable document are then stored and indexed in a document management system by the contract management group. The storing of the completed contract, in turn, triggers the workflow software to generate an e-mail notice (with a hyperlink to the document) to parties in the contracting process stating that the document is ready for review. The document management system provides these parties with version control, access control and powerful full-text and fielded search and retrieval facilities for these documents.

Contract processing parties outside the legal department or contract management group can click on the document hyperlink in their e-mail system to review and annotate the contract in the portable document format. The document management system then stores the reviewed document as a new version. Once the document is back in the document management system, an e-mail notice is generated to notify the contract manager or in-house counsel that it has been reviewed.

The contract management group can review the annotations in the stored document and make the appropriate revisions. If the

annotations require a change to the stored variables in the database, then those changes are made to the database via the electronic form, and the document is reassembled and stored as another new version of the original document.

If the changes are to boilerplate text, then the document in the word processing format is retrieved from the document management system, the changes are applied, and the document is stored as a new version of the original document.

Changes from version to version can be tracked and illustrated in a variety of formats using commercial document comparison software (also known as redlining software). These redlined versions can be saved as new versions of the document as well.

### **7. Escalation Procedures**

Escalation guidelines (how issues are routed up the management ladder) are defined for particular terms and conditions and for statements of work related to particular products or services. These guidelines will be available in an online document management system with full-text search capabilities.

Workflow software provides an electronic escalation request form that will route an escalated issue to the proper authority and monitor the review and approval process so that the issue is resolved promptly. This software will provide management with metrics for measuring the number and duration of escalation issues.

### **Support Structures**

To make these practices work, legal departments need to be able to track what is happening. They also need the human and technological resources to support the practices. Here are what we regard as the basics:

#### **Metrics**

Legal departments and contract management groups should collect and report chargeback statistics (time records and actual expenses), but not necessarily debit the requesting departments with those charges. Minimally, chargeback statistics should be

collected and reported so that management understands the cost basis for its contract processing operation and can make the appropriate business decisions regarding its budget, efficiency and service levels.

Workflow, document assembly, matter management and document management systems can be designed to measure volumes and turnaround times with minimal effort and a good deal of value. These statistics can help the legal and contract groups to monitor trends and focus resources on preventing potential problems or realizing potential opportunities to save costs or time.

These types of metrics should be unique to the company's business goals, objectives and strategies. The Balanced Scorecard philosophy is a good example of metrics that focus on and reinforce a particular company's strategic initiatives.

Metrics are less meaningful for complex and custom contract processing. However, they can be helpful, from a customer service level and from a future forecasting perspective, to measure variances (both over and under) between requested and actual turnaround times.

#### **Training**

All individuals involved in the contract process (internal and external to the legal department) should have regular, ongoing training in those areas related to their areas of responsibility.

The training organization (internal or external) is invariably determined by the scale, frequency and specific expertise of the training course and content. The training materials should, whenever possible, be tailored to fit the specific business unit (product or service) or positioned to make the effort more interesting and relevant to the trainee.

#### **Technology**

The contract group hosts an intranet or extranet home page to enable authorized participants in the contracting process (internal and external) to use their browsers to

access information from core systems:

- Online, "intelligent" contract request forms and contract templates
- Profile information on executed contracts including, key dates, signatory parties, and other terms and conditions
- Scanned image of executed agreements
- Print image of contracts-in-process
- Profile information on contracts-in-process:

Assigned contract group rep, business unit project manager and lawyer

Status of the contract-in-process

Contract terms and conditions

The contract management group uses the following core systems to produce, process, manage and store contracts:

1. Workflow software to shepherd the contract process from initial request through escalation and negotiation. This software uses electronic forms integrated with e-mail (for routing) and the case and matter management system (for storing contract variables).

2. Document production software including document assembly, word processing, portable document processing, OCR scanning, image scanning, and document comparison.

3. Document exchange software including network faxing and encrypted e-mail.

4. Groupware to provide facilities threaded discussions with hyperlinks to relevant documents, calendars, tasks and e-mail.

5. Case and matter (contract) management system to track the key data attributes of executed contracts and contracts-in-progress. This system will store the variables collected by the workflow or document assembly software.

6. Document management system to provide version and access controls of executed contracts and contracts-in-progress (as well as to facilitate their retrieval through profile and full-text searches).

7. Records management system to track the location of physical files.