

Successful BPO Contract Renegotiation The Importance of Trust and Flexibility



Anticipating change and the likely need for future renegotiation can enable the parties to plan for it, and that preparation can provide a more cooperative environment for making changes. Although business process outsourcing presents some specific issues -- such as the lack of common platforms and processes for benchmarking -- the basics remain the same from a legal standpoint. At the heart of a successful relationship is the initial agreement that considers as much of the future as possible.

"If you have a well-written agreement, the scope of services should be easy enough to change," said Ciecimirski. "If you've done it well, it has an enormous amount of flexibility in it. That's the key. Businesses just change a lot today. Technology changes. Therefore you need to have flexibility in the agreement to address these changes."

Defining Services Covered

The issue that arises in the purchase of additional services is when the customer and vendor disagree about the type of services included in the initial agreement. As an example, Ciecimirski cites what could happen in an agreement for outsourcing services.

"There's always a lot of scope hidden in there," he said. "It could be hidden because the work is being done or budgeted outside of the process area or because the employees weren't absolutely clear about what they were doing. So when that task comes up, the vendor says it's not their job, and the customer says it is. Then there's a disagreement about who should bear the cost."

Pricewaterhouse Coopers and some other service providers deal with that situation by building in what they call "a dead band," where a base line of services is identified and a small percentage of services above that point is provided within the original contract without incremental charges. The important thing for a customer to understand, according to Ciecimirski, is that the contracts should be written so that additional services can be added and the rates for adding those services should be understood.

But many companies do not have a good handle on their base line service levels. This can have an impact on the service providers' ability to anticipate the customer's needs, even with dedicated attempts at due diligence. That fuzziness over the standards can, in turn, create situations where service levels provided by the vendor don't meet the customer's expectations, setting the scene for renegotiation of that part of the contract. The potential for renegotiation of service levels again brings up the need for flexibility in the initial contract.

That fact is underscored by the frequency with which changes occur within the customer's operation, according to Ciecimirski. PricewaterhouseCoopers anticipates two levels of change, he said. The first level is non-dramatic change, where the customer is growing at a predictable 10-15 percent a year. The second level is dramatic change where there is an unpredictable divestiture or acquisition of a significant part of the customer's business.

"The metrics we put in place to determine the price of our services allow for that type of growth. That's one of the things you need to do," he said. "It also allows for some decrease, if there's a down turn in the economy or you spin off a small portion of your business. If there's not a dramatic change in the consumption of resources that the vendor's providing, then the agreement can deal with that. So there's no need to renegotiate in either one of those circumstances."

Both dramatic changes and long-term but non-dramatic changes can trigger renegotiations, but even those events can be limited with good preparation. "If you write the appropriate clauses in the agreement, your renegotiation shouldn't have to be a full-blown negotiation," said Ciecimirski.

In outsourcing relationships, he said customers should consider one other point: the importance of trust.

"You need to have trust in your relationship," he said. "It's sort of ironic for a lawyer to say that, but it's true. You need to have that, because it is almost impossible to write an agreement to cover every situation. So there's an

element of trust that says we're going to work together, and we're going to try to do the best for both of us." No one should be trying to win, according to Ciecimirski. "If somebody's trying to win," he said, "then the relationship is likely to fail."

Lessons from the Business Process Outsourcing Primer

- To minimize the level of renegotiation needed, write an initial contract that contemplates as much of the future as possible.
- Build flexibility into the original contract.
- Establish an atmosphere of trust with your vendor.
- Remember that renegotiation usually is focused only on services, service levels and pricing, rather than terms.

Publish Date: July 1998

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