

Judging from my 25 years of experience as an outsourcing practitioner, I believe there is widespread consensus among suppliers and customers that, promptly upon their execution, outsourcing contracts should be locked away in a file cabinet never to be looked at again until it is time for them to be renewed (or litigated). Or, alternatively, be used as expensive door stops. This despite the many person-months of effort and hundreds of thousands or, in some cases, millions of dollars spent to structure, draft and negotiate them.

Why is this? Why do outsourcing customers repeatedly invest so much time, effort and money to create and negotiate detailed outsourcing contracts if they expect them to play such a small a role in the ongoing management and administration of their relationship with their outsourcing supplier? Is it somehow immoral or unfair to expect the parties to follow the roadmap they so painstakingly create during the process of negotiating the outsourcing contract, or to expect the suppliers to actually deliver on the numerous commitments they typically make in an outsourcing contract? Perhaps the better question is whether it is just too much of a bother for the company's supplier management organization to read, understand and attempt to follow the typical outsourcing contract. Could the root of the problem be that outsourcing contracts are customarily structured and written in such a way that it is nigh on impossible for mere mortals to use them as effective tools for managing and administering an outsourcing relationship? If so, that is a powerful indictment on the last 25 years of the outsourcing industry.

Structured and written properly, an outsourcing contract is the best (if not the only) formal statement of the type of relationship the customer expects to have with its outsourcing supplier, the expectations and objectives for that relationship, and the rules of the road that both parties have agreed to live by. If the outsourcing contract is discarded as an ongoing relationship management tool, the customer and its supplier are left to muddle through - typically doing things the way the supplier has always done them with little regard to what was specifically discussed and agreed during the weeks and months of discussions and negotiations preceding the contract's execution. This problem is exacerbated if, as is all too often the case, the business deal makers and lawyers who engaged in the discussions leading up to the contract's execution disappear from the scene soon after the contract is executed, replaced by fresh troops who know little about the content of those discussions or the resulting contract and, as a result, would be hard pressed to follow the contract even if they were inclined to do so (which they generally aren't).

If the customer has not insisted that its supplier perform in accordance with the contract, the customer will be hard-pressed to complain when the benefits it expected to receive under the contract do not materialize. Often, the same people who ascribe to the view that it is not necessary to follow the contract very closely when things seem to be going well are the first ones to ask the lawyers to demand strict adherence to the contract when things go off the rail. The problem is, if both parties have been acting in a manner inconsistent with the contract for an extended period of time, it can be difficult, or even impossible, for one party to suddenly begin insisting that the other party adhere to the contract. All too often, the contract didn't contemplate the state of affairs the parties find themselves in at that juncture and, as a result, it doesn't provide a clear solution or risk allocation for the problem (and may not even provide a specific process or mechanism for developing a solution or risk allocation).

There are many components of an outsourcing contract that are not intended to be used to manage and administer the outsourcing relationship in normal circumstances and which, accordingly, do not need to be committed to memory or even consulted regularly - e.g., most of the contract's general terms and conditions. On the other hand, much of the content of an outsourcing contract's schedules and service order documents are developed specifically to serve as an implementation roadmap and to establish operating principles and rules for the relationship. It would behoove the personnel who are assigned by the customer and the supplier to manage and administer the relationship to acquaint themselves with the whole of the outsourcing contract and become an "expert" in those parts of the contract that are designed to govern and regulate the relationship and manage the scope, performance and billing aspects of the deal. If the parties make reasonable efforts to conduct themselves as contemplated by the contract, they will be much better positioned to avail themselves of the rights and remedies afforded to them in the contract when things don't work out as planned.

As a best practice, we advise clients to hold a joint contract training session with both supplier and client relationship leaders present so everyone understands how the contract works and how it should be used to manage the relationship. We also typically prepare a contract summary document to be used as an orientation document for new client or supplier staff assigned.

An annual review and refresh of the training is an excellent way to keep the two teams on the same page or to surface latent issues that are going to become problems in the future.

This isn't to say that an outsourcing contract provides the answer for every question that will arise during the course of the relationship - it doesn't. It does, however, provide operating frameworks for the most important aspects of the outsourcing relationship - which the parties ignore at their peril.