



Stuart van Rij

Relationship enhancing contracts

GETTING THE RELATIONSHIP outcomes right in ICT service arrangements is critical. But how can the contract and negotiations advance these outcomes?

The pressures, gaming and arguments that often feature in finalising an ICT agreement can risk compromising a critical relationship from the get-go. If the relationship gets off on the wrong foot, it can threaten the long-term success of the engagement.

A white paper from Logica (in association with the London School of Economics), *The Power of Relationships*, confirms this concern (see www.logica.com/the+outsourcing+enterprise/400009149). Based on research into more than 1200 organisations, it found that, when it comes to outsourcing, relationship management can yield a 20 to 40 per cent difference on service, quality, cost and other performance indicators.

With such high stakes tied to the relationship, it's worth thinking about how to make the contract development and negotiation phase a relationship enhancing process.

The white paper recommends that management be proactive in sowing the seeds for a good relationship before the deal begins. So what can be done with the contract and negotiations?

Get the delivery folk on board

It's too easy for the commercial and legal people to draft and negotiate a deal, which is then "thrown over the wall" to the operational team. They subsequently struggle to implement a deal that doesn't

reflect how things need to work in practice. This will inevitably put strain on the relationship. So, it makes sense to get people that will actually deliver and receive the services involved in the contracting process. The white paper notes that an approach not involving the delivery managers in negotiations only stores up trouble for the future.

More often than not, it's also the delivery personnel (with the technical or operational know-

It makes sense to get people that will actually deliver and receive the services involved in the contracting process.

how) that can add a dose of "coalface" reality to help resolve contentious issues.

Make time for the softer aspects of the deal

While you can't effectively oblige the parties to have a good relationship under an agreement, you can set up regimes that benefit the relationship in the long-term. The white paper notes that "in outsourcing relationships, you mainly hit that at which you aim". It suggests that outsourcing customers target the relationship with "Relationship Values Charters", "Codes of Conduct" and the like, along with regular relationship health checks and balanced score cards that measure the broader dimensions of the engagement.

It's easy for some of these softer aspects of the deal to get squeezed out when the time pressure is on. However, if relationship management can make a 20 to 40 per cent difference to an outsourcing

engagement, perhaps more time needs to be invested in the design of the relationship and not just the purely legal and service related parts of the deal?

The contract process is the opportunity to set expectations as to what matters to both parties. Ambiguity, loopholes and things left unsaid can be the rocks that tear holes in the hull of the relationship. While the white paper rightly observes that the contract is a "necessary but

insufficient governance tool for outsourcing", it concludes that poorly constructed contracts can seriously damage the health of an outsourcing relationship.

Poorly constructed contracts are often a function of not getting the right commercial, delivery and legal people involved, failing to spend time aligning the documentation with the business case and then trying to prepare the terms and schedules at the 11th hour.

In an effort to reduce ambiguity and enhance focus, there is a growing trend of including "objective" sections in ICT outsourcing and service contracts spelling out the key business drivers of the engagement. These sections can be helpful in providing focus to the contract development process and during negotiations. Importantly, they can be used to flush out any incorrectly held expectations as to what the deal is all about.

While the objective sections

don't necessarily need to be binding, (as they may capture outcomes the supplier just can't deliver by themselves), they can be used as a tool to assist in interpreting ambiguities encountered down the track.

Don't try and get too good a deal

Often the customer has the upper hand in the contract and negotiation process and can push the supplier hard in terms of the pricing, timetable and services. However, it is possible to get too good a deal. As covered in a previous column, "Beware the winners curse" (see *CIO* December 2006), a deal that excessively favours the customer can backfire in the long-term if the supplier's not making any money. A supplier that's hurting can make the customer feel it too by cutting corners and focusing on the letter of the contract and not its spirit. With care, the contract and negotiations can help capture the benefits that a good relationship brings to an ICT services arrangement. ■

Stuart van Rij is a senior associate at Wigley & Company, a law firm specialising in ICT. He can be reached at (04) 499 1842 or stuart.vanrij@wigleylaw.com

If there is a question you would like Stuart to answer in relation to IT issues, please forward it to divina@cio.co.nz