Building
Tomorrow's Enterprise

View Point

Are you meeting your Contract Obligations?

Robert Henry

Abstract

Today companies find themselves under pressure to grow revenue and profitability in the face of intense competition and demanding customers. In this environment it is critical that suppliers meet their customer commitments on time and every time.

Commitments are usually formalized in a contract between the buyer and seller. Depending on the nature of the product or service it can take weeks or even months to complete the contract negotiation. It is not unusual that once the contract is executed that it is placed to the side as the operations teams move forward with implementation. A proper hand-off of the customer commitments is not made between the negotiators and implementers.

The absence of a strong mechanism to document, track and report commitments place the project at a high risk of not being delivered on time. This could lead to contract non-compliance and result in termination, penalties, disputes and even blacklisting from future bids.

Infosys has designed a comprehensive solution to address this challenge. Our solution combines the use of technology, process, and organizational design to ensure that commitments are monitored and made visible at the executive level of the organization.

Are you meeting your contract obligations

What is the core element of a business relationship between a buyer and a seller? Most will agree that it is the commitments that are made with respect to price, delivery, performance, quality, and regulatory compliance.

In today's highly competitive market a key characteristic of successful companies is satisfying and delighting customers. Delivering on commitments is integral to customer satisfaction. Meanwhile, the consequences of poor performance can result in lost revenue, lower profitability, penalties, disputes, and damage to the brand and the customer relationship.

Based on personal experience and industry information, companies on average meet 60% of their contractual obligations. This is a disturbing statistic for both the buyer and seller.

As a result, company executives are devoting more of their time assessing how well their organization is performing. The challenge is to monitor performance levels so that proactive steps can be taken to deliver on one's commitments.

This paper examines how commitments can be managed to assure customer satisfaction.

Is the implementation team aware of the contractual commitments?

In most cases, a contract is entered into by a buyer and seller to formalize a business transaction. Contracts generally consist of both legal (examples include limitation of liability, IP, indemnification) and business terms. For major projects, it is not unusual for the contracting cycle to take weeks or even months. Often times the focus is on negotiating the legal terms to the detriment of clearly and concisely documenting the business terms, including commitments and deliverables.

It is also not unusual for the individuals negotiating contracts to lack a clear understanding of the entire scope of the transaction, and for the functional teams which are responsible for delivery to be uninvolved in the negotiation.

Unfortunately, following execution of the contract it is often put aside, leaving the implementation team with no documentation of what has been committed to the customer while failing to treat the contract as a living document requiring changes in the future. As such, the contractual commitments are not properly handed-off from the negotiators to the implementers.

Who is responsible for assuring delivery to the customer?

The answer to this question varies from company to company. It ranges from a lead organization such as program management, which coordinates the deliverables from units across the company, to individual units which work independently with minimal coordination from a group such as the account sales teams. Of course, there are variances to both of these examples.

Another issue is who, if anyone tracks the status of projects to assess the risk exposure at the corporate level? Is there a central group overseeing the status of the projects?

While central coordination at both the project and corporate level is a more effective way of managing a project to a successful conclusion, there are two key elements that must be present--process and technology. A major project may have over 100 obligations of various types, importance, owners, due dates, frequencies, and dependencies. A process and technology platform must be in place to manage, document and track a project of this size. A process clarifies who is responsible for the obligation, when it is due, and what tasks are required for completion. A tool documents, tracks, and reports on the project's status.

What is the solution...giving management better visibility?

Process, organizational structure, and technology are required to proceed from a reactive mode to proactive risk management. They provide management with visibility to issues requiring corrective action.

More specifically, a framework is required consisting of the following:

- A centralized compliance office, tasked by executive management, to work with the project team to put the compliance tracking process in place, assign owners, track progress, and report on the status. This is typically a small group working in cooperation with the individual project teams. This group updates and consolidates the status of each project and periodically submits management reports highlighting the projects which are at risk.
- Project teams to implement the standard process for managing obligations with assistance from the compliance office:
    - Legal review of the contracts to identify and assess the contract risks. A summary (abstract) is prepared documenting the obligations as follows:
        - Clear description of the obligation as understood by the customer
        - Due date (one time or on-going)
        - Type of obligation (technology, regulatory, financial)
        - Importance
        - Customer dependency
        - Legal view on managing certain risks

- Designate an overall owner from the project team who will be responsible for working with the project team to implement the process.
- Assign project team members who are responsible for completion of each obligation, including breaking down the deliverable into required tasks with due dates.
- Submit regular updates to the compliance office clearly identifying the status of each obligation and, for those at risk, providing a mitigation plan.
- A technology platform which may be either an end-to-end contract management system (contract workflow, repository, and obligation tracking) or a discrete contract repository and obligation tracking tool. The tool should be capable of supporting both buy and sell side contracts and project management.

  Each aspect of managing a contract obligation must be supported:

  - Document
  - Assign
  - Track
  - Report

This solution can be implemented in phases depending upon the needs of the business. For example, the first phase may start with assigning a compliance representative and project owners to a few key projects. This can serve as a pilot phase to validate the model and to adapt the potential full scale implementation to the organization's structure and culture. The number of projects (preferably new projects) could be increased and the technology platform implemented in phase two. Our experience indicates that these two phases can be implemented within a six month period.

What are the benefits of implementing a proactive approach like this?

To reiterate, you will be judged based on your ability to deliver the value that was committed to in your contract. To do so, risks must be visible so that they can be managed and mitigated.

Other key benefits that can be derived include:

- Increased revenue and market share from repeat business and a positive brand image.
- Improved profitability through the avoidance of penalties, disputes, and litigation.

From my past experience as the head of a contract management team, the following are two examples of the costs of failing to meet contractual commitments:

- As part of a $500M/5 year project, a $30M settlement was paid by the supplier for not delivering product features that were part of a technology roadmap attached to the contract.
- A $150M services contract was delayed by a year resulting in a time consuming dispute.

Summary

Companies make a large investment to win business and negotiate contract terms. It is our experience that management must focus more of their time and resources on satisfying customers by delivering on their promises. Companies performing at a higher level will be rewarded by their customers with more business and higher profits.

This paper proposes a solution consisting of

1. Forming a central compliance group
2. Implementing a process for documenting, tracking, and reporting obligation status
3. Selecting a technology platform to support the people and process

Infosys has found that each client organization is different. Infosys is available to conduct an assessment of your current process, identify gaps, and recommend an implementation plan. We can also provide, as a service, the process and organization blueprint, the technology platform, and the implementation service.

About the Author

Robert Henry, is currently a Practice Engagement Manager with Infosys where he is responsible for their Legal Process Outsourcing offering in North America. Prior to joining Infosys, Bob was the Vice President, Contract Management with two large telecom companies. Earlier in his career he served as a Vice President, Sales and Marketing in venture backed technology start-ups. As a practitioner, he has an in depth experience in the contract and legal services space.

Infosys® | Building Tomorrow's Enterprise

For more information, contact askus@infosys.com

About Infosys

Many of the world's most successful organizations rely on Infosys to deliver measurable business value. Infosys provides business consulting, technology, engineering and outsourcing services to help clients in over 30 countries build tomorrow's enterprise.

For more information about Infosys (NASDAQ:INFY), visit www.infosys.com.