

# Contracts and Agreements

Supplement to Managing Vendors Podcast Episode 9



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Los Angeles, August 2009

*This article gives an overview of working with contracts and agreements for engaging outsourced service providers. We mainly focus on the perspective of a Vendor Manager (or Delivery Manager) on the client side. That is, someone, who manages an external service provider and integration of their deliverables.*

*The theme of this article is that when agreements are created thoroughly and carefully, then the management of the outsourced project will be easier and be more likely to ensure the required deliverables and outcomes by the vendor. Treat this material as general background, that you need to use your own judgment in applying. Discuss it with experienced vendor managers in your company.*

*The title of Delivery Manager may suggest a different role from that of Vendor Manager. "Delivery Manager" places emphasis on ensuring deliverables and service levels, and integrating these into the work of the company. "Vendor Manager" places emphasis on working with the vendor and managing the relationship. For now, we will use the term Vendor Manager to cover both.*

## Using agreements

Contracts vary widely between companies, and with different types of work. It is wise to complete a contract with legal guidance, or at least an expert in contracts. In some cases, a starting point may be to use a standard company contract that has been developed with legal expertise. Even simple contracts require experience to create well. And large global agreements need deep experience and study to be expert in these contracts.

Contracts are a crucial element of working with external service providers. A good contract is a summary of the process of information gathering, communication, negotiations and agreements, definition of deliverables, work to be performed, timeframes, terms and conditions, obligations and rights of all parties.

A large project at company-level may be governed by an agreement or contract negotiated at high levels. The Vendor Manager is given a completed contract and agreement, and it becomes that person's job to ensure the work is done according to the agreement.

In other cases, for a departmental project, the Vendor Manager may be responsible for the full outsourcing lifecycle, by defining the work, selecting and engaging a provider, managing the delivery, and ensuring integration with company business.

Agreements are usually drawn up when engaging vendors under a contract, but may also be used at other times for reasons of confidentiality and security, or protection of intellectual property.

## Types of agreement

*Just a few of the typical Agreements which may accompany a contract:*

- Master agreement - covers the relationship and conditions
- Statement of Work (SOW) defines the entire project or program
- Services agreement - defines nature of services, scope of work
- Service Level Agreement (SLA) sets out metrics and standards
- Non-disclosure (NDA) - allows each party to share proprietary information
- Confidentiality - similar to an NDA, but more specific
- Sub-contractor & supply chain conditions
- Intellectual property and copyrights - these can become complex
- Trademarks or Servicemarks - what terms may be used and how
- Naming conventions - so correct terms are used when work is done
- Change Orders - formalize changed scope without new contract
- Exhibits, Attachments, Addenda

There can be Master Services Agreements, to which specific details of deliverables and pricing are added. Or the general terms and conditions can be an attachment to the overall contract.

Some companies require the same Master Services Agreement for all vendors who provide services, and simply add in the Statement of Work, or "SOW" as it is called, setting out the project specifics.

Conflicts can arise when things change, something goes wrong, or a party feels terms they agreed to have not been met. Then the contents of the contract come into sharp focus.

A well prepared agreement means less chance this will happen. A hastily prepared agreement may be a problem as a project unfolds.

Let's simplify. However a contract or agreement is structured, basically, there are five main elements. There are other models, but this gives the basic picture.

1. the work itself - deliverables, milestones, service levels, key performance indicators (what gets done)
2. payment - amounts, timing, conditions, and variables (how work is paid for)
3. roles, responsibilities, processes and procedures (how the project will run)
4. compliance and conditions - non-disclosure, intellectual property, termination, indemnity, liability (what has to happen or not happen in the course of the project)
5. processes for problem resolution and managing changes (what to do when problems or changes arise)

If there is effective communication, clear agreement and a common understanding of all factors, then much of the written contract is a formality. Those parts of the contract or agreement that define the work and processes are what should be used.

It is when something goes wrong, or a party feels that obligations have not been met that conflicts arise and other terms and conditions are brought out. The better the communication, the less likely this will happen.

But a contract does not drive or guarantee performance. It sets the groundwork, and formalizes expectations, but the drivers of delivered performance are in the client-vendor relationship, and the management on both sides of the relationship.

## Creating the contract

What gets included in any signed agreement starts when a decision is made to outsource work, and gets rolled in when the Request for Proposal (RFP) is created. This is where the job and the work to be done is outlined, the capabilities to perform this are set out, and the standards required in delivery are first expressed to providers proposing on the work.

In the response to the RFP, the provider sets out their claims about their capabilities, prior experience and expertise, and makes commitments to delivery and price if they are chosen. It is important to remember that even at this stage, one of the vendors you are dealing with will become the one doing the work, even if the decision on which provider has not yet been made. So any dealings and communications at this stage are setting the tone for the eventual relationship.

When engaging a vendor, the term "transparency" is often used. This is how much the client and the vendor can see into each other's businesses. The more client and vendor know about the other's business model, culture, management, and operations, the better an agreement will be created for both parties.

For the client, this can be an opportunity to share a vision and possibilities beyond the immediate scope, and explore whether a vendor is equipped to expand or enrich the business in ways the client may not have thought of.

For the provider, it can be an opportunity to suggest and offer unique expertise, deep and proven processes that may not be feasible within the client organization or from other providers. This is especially so when a vendor is rebidding for renewal or re-engagement at the end of a contract period. So the response to the RFP by the vendor may influence the scope of work and what goes into the agreement.

Once a vendor is selected, they contract to perform the agreed work to a set standard for an agreed fee. The client agrees to pay the provider upon delivery or completion of milestones, or on a regular basis against an agreed set of service levels. Central to the management of a project or program is whether the contract delivery is measured by a results and outcomes, or activities and process.

The agreement defines terms and conditions under which both parties will operate in the relationship, how changes are handled, processes and procedures, reporting, problem resolution and escalation, handling disputes.

It is important to consider if a boilerplate contract or standard company agreement will allow the Vendor Manager to manage effectively and provide the framework to drive the specific performance and outcomes needed.

Does it form the basis for creating the required working relationship, or will it just keep costs and risks down and minimize exposure?

Whenever alternative or unique business models are used, such as partnering, global sourcing, and co-sourcing, or special arrangements for location of assets or facilities, then master agreements and special terms and conditions must be developed to cover the new operating relationship and contingencies.

Agreements worded with high penalties and one-sided benefits can set a negative tone with a vendor. And when the work of the vendor or consultant revolves around collaboration and trust, the client can lose more than they realize.

Even though the relationship has been built on personal contact, the agreement still makes a powerful statement.

However, the contract must also protect the company from exposure through factors beyond the department, and not simply rely on trust and good will. Working with Purchasing/ Procurement/Sourcing/Legal is key to protect the overall company interests.

### **Contracts and Negotiations Handled as a Central Function**

Larger outsourced contracts are often negotiated by a Sourcing or Legal Department, and sometimes by a special team, then passed to the group or person responsible for implementation and managing the project.

A Vendor Manager may be assigned a program or project, or take a new job managing a program or project that is already in place.

Since a contract must define the nature of the work to be delivered, and is the basis for ongoing management, the department or function that will manage the program should have major input and help shape the project-related aspects of contract, as well as any terms they may be called on to enforce.

A master agreement is typically an open agreement, used where the company requires an ongoing relationship with a vendor who is likely to work on more than one program over time, or for several departments at the same time. The agreement is broad, and sets out prevailing terms and conditions.

*Normally, a contract for outsourced work defines (at a minimum):*

- Full business names and addresses of all parties
- The nature of the work
- Description of deliverables and milestones with time lines and dates
- Fees, basis of payment and payment schedule
- Relationship between parties
- Conditions and processes for termination by either party, and transitioning to other vendors
- Well-defined exit strategy, including business continuation and transition clauses
- Liability, indemnity and insurance
- Confidentiality requirements and non-disclosure
- Intellectual property and ownership of work product
- Conflict of interest (such as doing business with a competitor)
- Consultant employees, subcontractors and agents
- Caveats and other special requirements
- Assumptions on which deliverables, service levels and other terms of agreement were based
- Projections and adjustment clauses for international factors such as exchange rates
- Disaster contingencies
- Escalation procedures

In some cases with large projects extending over a long term, for each separate phase of a program, a separate and specific agreement may be drawn up relating to the deliverables for that phase or program. This agreement must include specific milestones or service levels not included in the Master Agreement.

It is critical to review the agreement and identify elements key to being effective as a Vendor Manager.

### **Service Level Agreements**

A Service Level Agreement (SLA) is a contract that defines ongoing deliverables in a contract, such things as the level of technical support, or business standards, that a vendor is required to meet in the delivery.

The agreement typically spells out measures for performance, consequences for failing to meet these, and incentives for exceeding standards.

The SLA provides a framework by which a vendor agrees to deliver a continuing service against specific metrics and criteria, which are quantifiable or measurable in ways that have been carefully defined, and are termed benchmarks.

Subjective criteria may also be included (e.g., "courteous at all times with fewer than .5% of complaints", "create a level of confidence with the customer").

The more that the meaning of such terms can be agreed upon and how they will be measured, either as behaviors or by results of, say, customer surveys, the stronger and more valuable will be the agreement. A very useful qualifier is "as evidenced by..."

Problem resolution for users, as a deliverable or service level, needs to include clear problem definitions. An example from a technology help desk environment is shown below:

*Level 1 problem - unit can operate without problem fix; needs fix by end of day*

*Level 2 problem - urgent, unit cannot operate until problem is fixed*

This is such a crucial area in managing an ongoing outsourced program, that it is an entire area of study and learning by itself. Many programs and projects have come unstuck because of service levels not being addressed thoroughly in the original agreement.

Well defined and documented service levels can help both client and vendor manage a project through changes and times of potential conflict.

For new Vendor Managers, or for projects that are new in nature, expert guidance is needed in the early stages of creating an agreements, and carefully defining and documenting service levels and metrics.

## **Intellectual Property**

Intellectual property (IP) is an area of much focus, particularly in information technology and software industries.

It is any intangible asset that consists of human knowledge and ideas and creations, and it must be managed and protected like any other asset.

The basis is very simple - Who thought of it? Who owns it? Who can use it and how? Who gets paid when it is sold or used?

But in practice, it is a complex subject with gray areas. In various countries, Intellectual Property can be defined in different ways.

The US has a particular and unique definition, that may not apply or be enforceable outside the US. Conversely, other countries, such as Russia, may define Intellectual Property in ways that the US has to adhere to.

Agreements made between companies and vendors in the US are open to interpretation by broader laws applying to such property, including copyrights and intellectual property.

There are cases where intellectual property is owned by the contractor or outsourced provider, not the client. The US concept of "work for hire" is not universal and, for example, does not apply in Russia, or even the UK. IP rights may be "assigned" to the client versus giving an exclusive license.

However this must be included in negotiation, and handled by experts in international intellectual property rights law.

As a rule of thumb, material developed specifically and exclusively for a company by a vendor is the property of the engaging company. Typically, these are "work for hire" projects where the vendor is engaged specifically to develop a product, service or other deliverable.

Even in the US, products adapted from vendor proprietary materials may be subject to limitations where the engaging company contracts a vendor to customize such materials.

Examples where copyright is vested with the engaging company include advertising copy (TV and photographic works may be exceptions), training materials, instruction manuals and product sheets.

The four main ways that proprietary methodologies and processes are included are:

1. Vendor brings to the project
2. Vendor gets paid to create
3. Client allows vendor to use
4. Vendor and or client is given license to use

Exceptions may be where providers use their own templates or design methodologies. Complexities can occur when a vendor uses a proprietary process to create the work for hire and this process is embedded in the work.

Careful negotiation and decisions around trust are needed, and unambiguous definitions of "acceptable use" set out clearly in agreements.

If a client wants to license the use of materials that have been previously developed and copyrighted by the vendor as proprietary, this needs to be clearly spelled out in the contract. In this instance, the vendor may grant the client a "perpetual unlimited, worldwide license to copy and distribute freely or sell the end product of the work for hire."

When agreements are drawn up, ownership of materials and content must be clearly spelled out. This may be done in a section within a contract, or a separate Intellectual Property agreement may be completed.

## **Insurance**

Insurances can include indemnity, insolvency, damages, and failure. It is part of the process to check if the insurance requirement built into the agreement is in line with the overall value of the contract, the capacity of the provider to take care of such insurance, and appropriate for the potential for damage.

If the client uses a boilerplate or standard insurance requirement, regardless of the size and value of the contract, is it onerous on the vendor where the contract has a small price tag? Is the insurance overly stringent for projects with little possibility for harm or losses? Conversely does it give it the vendor too much latitude and let them off the hook?

Coverage can range from simple 3rd Party liability, to strictly enforced Errors and Omissions. The level of insurance a vendor is expected to carry should be commensurate with their potential for impact.

For example, if an advertising firm is developing a campaign, and the final sign-off (especially around making claims about product efficacy) is by the client, the ad firm should not be required to carry the same insurance as an IT applications development vendor, whose final product will be the operational engine for the entire logistics of a shipping company.

## **Global or cross-cultural agreements**

Agreements between businesses in different countries and business cultures need to be drawn up and reviewed by experts in both environments.

And it is not just wording of a cross-national contract that needs to be understood, it is how the agreement will be interpreted in the different business cultures, and processes for enforcing, renegotiating, terminating and changing that must be factored in.

And there may need to be a provision in the contract for offshore arbitration, to ensure neutrality and allow for the laws of both countries to be taken into consideration. A client based in the US may be subject to audits and subpoenas, that encompass the work done by providers in other countries. Offshore work is not immune to these.

Each country is subject to its own governmental regulations. These may be stringent, or at odds with the US business model. In some cases, a US outsourcing client may apply for special injunctive relief from local laws and requirements, simply to be able to do business with another country and enable companies there to take on outsourcing projects in a way that is viable for both parties.

In some countries (such as India and Brazil), government regulations may specify business standards that need to be in SLAs. This does not always create the optimum outcome, such as specified response time and duration for a customer call. Clients may want to balance speed of response to quality of advice delivered.

Different countries may provide tax incentives, not just for the client company abroad, but for the local service providers. It is important to understand these to enable the provider to take advantage of the incentives, and also to allow for these to be factored into the negotiations.

Client contract requirements, that are easy to comply with in the US, may be burdensome for a provider in another country, and cause overall delivery to suffer. Clients should go through terms and conditions, and what is expected. It may require working with the provider and their legal counsel, to waive an incidental requirement by the client, not critical to the project quality, to allow better overall delivery.

This is why it is important that a contract or agreement be reviewed by someone in each country, from that business culture, who understands the meaning and importance of how an agreement is worded.

It also needs to be reviewed by a subject matter professional or Vendor Manager, not just contracts experts, to ensure the wording of deliverables will enable the day-to-day work to be managed, adapted, and result in the business outcomes required.

Countries' exchange rates and economic conditions can vary during the life of a contract. This must be factored into a global agreement. Changes in credit ratings for offshore provider companies can affect the level of risk within a contract, and this in turn can affect the pricing.

On top of all this, there are cultural variations in how contracts are treated once in place. In some parts of the world, such as some Middle Eastern countries, a written contract is only the beginning of negotiations between parties.

The US sees a contract as final and binding. Some Japanese businesses (particularly in companies with deep traditions) see spoken agreements, or unspoken understanding, as more binding than a written contract.

## Change orders

During the course of most projects, there will be changes in work required, or the context in which the the work is done.

These can derive from client business models, acquisitions, new markets, changes in priorities or operations, economic conditions, or ongoing experience with the project itself.

In some cases, the original agreement has adequate built-in wording to deal with minor changes in scope or delivery standards.

When there is a significant change, reduction in work, additional requirements, new markets, or when the changed work is well outside the original scope, then a change order need to be created. These may simply be an addendum to the original agreement, or the original agreement may need to be renegotiated.

The same criteria for effective initial agreements apply to change orders, and the new overall work definition, terms and conditions, should be reviewed, not just the part added. If the body of change orders gets large, it makes sense to revise the overall agreement, or at least the scope of work.

## Vendor Manager

For professionals first taking on outsourced projects, managing providers will be very different from managing employees or internal projects. We address this career shift in podcast episodes, other articles, and on our workshops.

Where the initial sourcing and selection is handled centrally, or by a specialized sourcing function, those negotiating with the provider and framing the agreement should work closely with the Vendor Manager.

Once an agreement is signed and the vendor begins work, a Vendor Manager will be managing the ongoing relationship, delivery by the vendor, and ensuring integration with the recipients of the service and other stakeholders.

Specifically, the Vendor Manager role will typically include:

- managing by milestones, standards or benchmarks, deliverables, service levels
- interpreting the emerging requirements as the project moves forward and evolves
- ensuring payment against milestones, service levels, or metrics in the agreement
- handling change as an adaptation to changing market or economic conditions
- negotiating and renegotiating terms
- handling terminations, as well as transfers and handoffs to other vendors

The Vendor Manager needs to know and be clear on what the contract means and why certain elements and terms are included, the significance of the elements, and how much scope there is for renegotiating or adapting to meet the project and vendor.

To this end, Sourcing or Purchasing needs to work closely with Vendor Managers who will be ultimately have to manage not only the vendors, but also (indirectly) the other vendors who make up the supply chain as a total delivery mechanism.

The negotiators and sourcing team should provide a full briefing when new projects are assigned to Vendor Managers.

If there is a supply chain, a Vendor Manager must know how this is connected, which vendors are part of it, what expectations have been set, what risks and contingencies are.

A Vendor Manager who did not negotiate the contract and draw up the agreement, needs to know the following as a minimum:

- types of agreement and their implications
- the form and style they can take
- specifics roles and responsibilities of different parties in the process
- how the company creates agreements
- how the vendor approaches contracts and agreements
- overall philosophy of Legal and Purchasing
- how disputes and enforcements are handled, especially for global agreements
- how and why terminations and transfers are typically done

A Vendor Manager taking over a project that is already operating needs to quickly learn the history of the project to understand context of the agreement and what interpretation, practices and assumptions have evolved.

## Getting up to speed on agreements

For any Vendor Manager, whether creating a contract from scratch, being assigned a new project that has been already negotiated, or taking over a project already up and running, there are aspects of the project and agreement that need to be clear. It is critical to review the agreement and identify elements that are key to being effective as a Vendor Manager. Using the list below as a guide, focus on the following:

1. Generic clauses: always included, but don't tell how to manage
2. What is standard or boilerplate wording, and what is specific to the particular project
3. Definitions: useful to understand at the start
4. Assumptions/exceptions: critical to know, these often are raised in disputes
5. Roles of parties: central element – who does what?
6. Where do responsibilities lie, and what are the limits of authority?
7. Milestones: do they clearly set out what reaching a milestone looks like?
8. Service levels: how clearly set out; how measured, by whom and frequency?
9. Are there periodic reviews set out, or triggered by events or thresholds?
10. Problem solving processes: what steps to follow when issues arise?
11. Escalation process: what happens when problems are not resolved?
12. Payment schedule and criteria: how is payment linked to delivery?
13. Quality standards and measurement: how clearly are these set out?
14. Open-ended areas: what is left ambiguous; what is discretionary?
15. Is there a process spelled out for handling disputes?
16. Training and procedures: who develops and who pays for it?
17. Definition of vendor team: key individuals, competencies, roles, or just heads?
18. Inclusions and exclusions: what is paid for and what is extra?
19. Risk areas and vendor pressure points: where is envelope pushed?
20. What has been included about terminating a vendor or a contract?

## Impact of mindsets on agreements

The success of an outsourcing relationship can be affected by how those managing the vendor see the agreement. Here are three mindsets guaranteed to create problems somewhere along the line.

1. Agreements are a procedural "necessary evil" to be gotten out of the way, so work can start.
2. If it is in the agreement, then it will naturally get done as required.
3. Change orders result from a badly done agreement.

In the table below, we expand these three most common problem mindsets, show what can happen as a result, and suggest a more effective way to see the agreement.

Dysfunctional Mindset	Consequences/risks	Effective Mindset
1. Agreements are a procedural "necessary evil" to be gotten out of the way, so work can start. Once they are done they are tossed in a drawer and forgotten until something goes wrong.	The project and metrics can drift from what was agreed and signed. All seems fine until problems arise, and one or the other party brings out the agreement and litigation follows.	Treat agreements as foundation for the work, and put care into defining terms, milestones and metrics that are meaningful and accurate for project. If things change, create change orders.
2. If it is in the agreement, then it will naturally get done as required. No management needed. The incentives and penalties will ensure the vendor stays on track.	When vendors work to avoid penalties or get bonuses, they do not give their best, they are less adaptive, and results are only as good as the boundaries are set in the contract.	Use the terms of the agreement, and the included metrics, as a reference point for keeping the project on track. Allow the vendor to have a longer term stake in the overall success.
3. Change orders result from a badly done agreement. They are needed because whoever struck the agreement failed to plan properly and did not foresee what was needed.	Sticking to the agreement, no matter what, reduces adaptation to changing needs and situation. Or, new work is done but gets out of alignment with written agreement, and conflicts arise.	Treat change orders as a natural part of evolving projects. Give the same care as the original agreement. But check if they do stem from problems or shortfalls in original agreement.

## Reality check - a few questions

1. Who drafts contracts or agreements - Legal, Finance, Purchasing, Sourcing, or the department engaging the provider? What are the priorities of the drafters of the agreement? What is their focus, and what are they tasked to do?
2. If the master agreement drafted as one size fits all, it is important to review it carefully against the work to be done, and the suitability for the specific vendor. Does its stringency and breadth, detail and conditions, match the project and the vendor? Can it be changed, and does the vendor know that?
3. If it appears very onerous, what message does it send to the vendor about doing business with you? Will it trigger a matching response (such as loading the pricing or tightly bounding deliverables) because you seem so difficult to deal with? Is the agreement drawn up to the extreme degree of specificity, or is it to the spirit of the law?
4. Is there a supply chain? Special care and diligence may be required if the primary provider is engaging or acquiring another vendor as part of how the contract is fulfilled, or who may be used as a resource.  
  
Special considerations here include conflict of interest, intellectual property, and nondisclosure.
5. Does the contract make provision or allow for changes in scope, scale, deliverables, timeline, inflation, and changes in the cost basis? Is it written in such a way as to avoid onerous renegotiation when change occurs?
6. Does it spell out how change will be renegotiated or built in to the agreement, and what the processes are for this? What if the work increases or decreases? How is termination covered, and is there a process spelled out for both parties to handle this.?
7. Is there a balance between penalties and bonuses? Penalties are tied to specified operational performance, such as system downtime or processing turnaround. Bonuses can be tied to positive outcomes such as additional cost savings and customer satisfaction.  
  
Penalties alone create a punitive relationship driven by metrics and the letter of the agreement. Bonuses alone can allow errors and shortcuts. Too much reliance on penalties and bonuses may not deliver the desired results or allow added value.

8. Does the agreement serve both parties - ensure best work, best value, best relationship, ease of managing, adaptability, safety and protection, and a sound legal foundation in case of litigation?
9. Have all assumptions been included? This needs to be thought through, discussed and clarified.

One of the reasons things come back to bite the client or the vendor is assumptions that have not been spelled out. For future ease of reference it is good to list all assumptions in one place, or list them under the specific areas they refer to.

## Problems and changes

One of the key reasons for going back to fix (remediate) contracts is that they were not drawn up with the necessary expertise or diligence, and those implementing them did not have the experience or skillset.

One of the key elements of an agreement, either included or attached, are the metrics.

These can be strategic (such as enhancements to a customer service approach, or overall integration of a company-wide business IT application) or tactical (such as linked statistics of response times and callback rates, or lines of code).

During the life of the contract, a large number of change orders can mean several things. The client business grew unexpectedly, went through hard times, acquired another large business or was bought out, or made a shift in its business model or operations.

It may indicate that the provider bid was not accurate, either because it was inadequately scoped by the client, and was not set out a clearly and completely in the RFP.

It may have been poorly bid by the vendor, or there was excessive client pressure for a low price resulting in an unsustainable delivery model for the project.

But if everything else is business as usual, then lots of change orders may be a symptom of an agreement that was done improperly, inadequately or expediently, that is now coming back to bite both client and provider.

Whatever the reason, treat an emerging pattern of change orders as an orange light.

## Terminating a vendor

Many things can create a need to terminate a contract or a vendor. It could range from a project being canceled, buyouts, business drying up, change of business models or vendor expertise, or simply poor vendor performance. There may be a closeout involved, or handoff to another vendor.

A contract may have a provision for termination without cause. The vendor usually must be given written notice (the period may depend on type of program and resources/commitments involved). In any case this must also spell out the responsibilities and obligations on both sides for completions, payment, non-compete and non-disclosure.

While what is set out in the contract for termination and payment drives the client's obligation to pay the vendor for work done, or at least a process for determining client payment, there will be cases where this may not be interpreted fairly, or to the satisfaction of one of the parties.

In this situation, a broader legal concept of "Quantum Meruit" applies. This literally means "what he deserves", and courts may draw on this for a determination.

To an extent, this means when a vendor has carried out work on a reasonable expectation of the contract continuing, or has made investments based on the agreement, then they have done so in good faith. This becomes a factor in final determinations of payments.

## Renegotiating an agreement for renewal

With changes in business or the economy, and where the nature, scope or magnitude of the work changes, then companies may need to transition to a different vendor. This may be a client decision or a vendor decision.

A vendor may find that the work has shifted in nature, and has moved outside their area of specialization. Whatever the reason, there needs to be a process specified for how transitions will occur for different situations.

In some cases, if a project has run well, and there is a good relationship, the contract with an existing provider may simply be renewed.

Even so, things change over time, there is good business sense in revisiting the terms, and both parties being open to renegotiating a better agreement that is acceptable to each. There is value in this for continuity and momentum, as well as the tangible value of knowledge and feedback loops set up.

But keeping the same provider does not mean that the agreement cannot be reopened for negotiation, assumptions questioned, priorities reviewed, metrics and standards reexamined, and price structures analyzed.

This can be done against a backdrop of business as usual if the end of contract is anticipated and negotiation started early, especially where the business or economic conditions have changed since the contract was drawn up and agreement first signed.

Don't just go back to the table to drive the price down. If there are new financial constraints with an economic downturn, make this a strategic goal or operational constraint, not a bargaining chip for cheaper pricing.

And, for example, in difficult and uncertain economic times, reducing areas of risk to the vendor, extending the contract term, or shortening payment terms may be valuable incentives for the vendor to reduce pricing.

Start planning these renegotiations and renewal by fully reviewing the project performance and operation against the current contract. Look at what worked and what did not work. Analyze why in both instances, not just what caused problems, but also why something was successful.

Even if you are opening the contract to bidding by other providers, some more strategic existing providers may see it as an opportunity to showcase their expanded or deeper capabilities they have gained with your business as a result of working with your company to date, which they see from this experience will be beneficial to you as a client.

## Conclusion

This has been an overview to contracts and agreements, as a dynamic and vital part of managing an outsourced project.

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