

## **IT PROCUREMENT CASE STUDY:**

### **AVOIDING UNFAIR CONTRACT DEMANDS FOLLOWING THE MERGER OF TWO COMPANIES**

#### **SUMMARY**

##### **Do**

- Identify the threat of stiffing and start planning early defensive measures.
- Bring together legal, commercial and IT disciplines and assign specific roles and responsibilities.
- Recognise that software suppliers have to earn their living based upon the licensing revenue, and additional scope costs money.
- Anticipate and be prepared to go to court

##### **Don't**

- Pay unless added value arises.

#### **ORGANISATION**

- IT department evolved from mainframe environment into multiplatform, networked services both for in-house activity and external business partnerships.
- IT procurement predominantly undertaken from within the IT department, with roles distributed across the management team, coordinated by a contracts manager.
- Legal advice frequently is sought, normally at early stages. Authority to do business follows process that brings in layers of management, according to the cost of the contract.

#### **DRIVERS & OBJECTIVES**

- Specific requirement was to avoid suppliers' unfair contract demands arising solely from the merger, a widespread practice in such circumstances.
- Merger with another global insurer brought the need to combine and reshape the businesses and IT services in the UK. Through an interim period and on to a consolidation period, systems were selectively dropped, as staff numbers lowered.
- Objective was to be using fewer licensed products and hence reduce the costs.

#### **CHALLENGES AND ISSUES**

- Too many software suppliers simply expect more money from a merger, and have been through such situations before - senior sales staff immediately "lead the way", while the customer is both shell-shocked and inexperienced.
- In a merger, the customer's detailed knowledge of every contract is not readily to hand. Any one person will have experience of only his part of the list.
- Relationships between staff from either side of the merger boundary have to be established in order to exchange information at the same level.
- Very weak customer position, very strong supplier position.

#### **APPROACH TAKEN**

- Contracts management team formed, with legal, commercial and IT depts.

- Representation from all merged parties. Specialist legal support retained, to advise on the peculiarities that the merger would introduce. Various strategies were considered, leading to the conclusion that the customer must regain and retain the initiative.
- Information gathering and consolidation to conclude what named individual would "own" each supplier, and so act on behalf of the merged company.
- Suppliers were categorised, to determine the style of formal contact to be made.
- Each supplier was sent a series of letters, according to their category, leading to addendums that were drafted and offered as the basis for negotiations.
- Every communication was vetted by a legal representative.

#### **WHAT HAPPENED**

- The underlying judgements leading to the categorisations turned out to be largely valid.
- A vast majority of suppliers recognised the mutual business benefits of moving smoothly forward.
- Only a few suppliers took a negotiating position which was at some distance from the customer's.
- Under the guise of charging the customer for the new needs arising from the merger, the supplier attempted to recover foregone fees for minor deviations in the past.
- By persistently declining to pay for anything that did not provide added value, to the point of being prepared to suffer legal action, the revised terms and the costs were gradually shaped to reflect the change in scope that the merger had brought about.
- Suppliers have revenue models to consider and some additional commitments were given where the customer was confident of resultant value, to enable those revised revenues to be used to offset reductions elsewhere.

#### **RESULTS AND BENEFITS**

- Educating a wide set of people about software licences.
- It is reasonable to create complex terms and conditions to meet the changing requirements of the stages of the merger. These also provide the necessary flexibility that normal business activities require.
- A small set of suppliers acted strongly in their dealings with the company, causing it to defend its position.
- The resultant contracts were acceptable to both parties and avoided enormous unjustified payments of several million pounds.