CONTRACT MANAGEMENT FRAMEWORK

Contract Exit Strategies

Long term service contracts have the potential to create problems when the time comes to bring services back in house or move them to a more competitive supplier. Most buyers and suppliers do not want to consider the negative concept of exit when negotiating a contract so it gets left or given just cursory consideration.

Exiting from a strategic long term contract is not straight forward. 30 days' notice is just not long enough to organise a graceful exit. A good rule of thumb is a month for each year of the contracted relationship however six months to a year would not be unreasonable.

In an outsourcing partnership the incumbent supplier is there because they are expert in the provision of the services required. It is not in their interests to disclose the 'how' a service is undertaken, if anything the 'how' is a unique selling point and may be specific to the company engaged. The combination therefore of the long term relationship, the lack of provision in the contract and the nature of suppliers not to disclose more then they need to, means exit at best, is problematic. So, what can be done about this situation?

The contract has to be the starting point. If you are considering a new partnership then focus on securing the best and most advantageous provisions in the contract when negotiating the deal. If you are 'in-flight' and consider the exiting provisions to be weak then negotiate and agree a binding exit strategy, using change control, to improve the exit arrangements.

So what do good arrangements look like for exit and/or transition? An orderly exit demands legal weight therefore an exit schedule is appropriate setting out the precise expectations of each party.

Here are a number of pointers which will help you reduce cost and risk.

1. Set a time when both parties should get together and jointly develop an exit strategy. There is no point in doing this on Day 1 of a contract as there will be other pressing demands on both parties. Pick a time; say six months in, when the new service has stabilized. Specify the need to agree a strategy within one month and get both parties to commit to doing this.

2. Specify that the supplier must prepare a disengagement plan, in a specific time period, once notice has been given. It is well worth setting out what the plan might contain and at all times should be congruent with the buyers retendering or return to in house service plan at all times.

3. It is important to protect services during the uncertain times of transition. Ensure it is explicitly stated that service does not decay

because the staff have taken their' eye off the ball'; performance of all services must continue.

4. Where staff are in scope to transfer set out the information requirements relating to each member. Secure an early statement of staff working more than 40% of their time, or those materials to the services, giving all relevant details including costs, skill sets, role and secure their continuity of service from the moment notice of termination is served.

5. Secure an asset list of all property owned by the customer and operated by the supplier. Seek to secure an asset list of key assets owned by the supplier and used to operate the service, even, if they are shared with other parties. This is not to say the 'how'will be replicated post transition but indicates the scale and nature of any infrastructure in use.

6. Gather together all material subcontracts used in the service delivery. These may need to be novated to the new service provider. Check these contracts have clauses to permit novation and communicate with these suppliers so their service levels and relationships do not decay in any way.

7. Intellectual Property and Confidential Information is invariably critical to an outsourced service. Again ensure this the customer IPR and confidential information is identified and recorded. Over a long term relationship new IPR and confidential information may have been developed. Ensure the contract states all IPR belongs to the customer even where jointly developed and is deposited in a repository. Make sure all documents and digital material contains some form of copyright statement. It may be appropriate and necessary to license the outgoing supplier for jointly developed IPR. If the incumbent supplier has used its IPR make sure there is an option to procure a license for its use post exit.

8. Ensure the Exit schedule includes the requirement to co-operate with the re-procurement and transition process. It might be desirable to appoint a single point of contact for the whole process with mini-service levels to ensure cooperation with the buyer's project manager responsible for exit and/or transition.

9. Costs to support exit and/or transition can be neglected by both parties, beware however, if the contract remains silent additional charges will be made. Clearly some charges must be expected. Make sure your Exit Schedule bounds what is paid for and what is not. Asset and IPR registers are usually part of the on-going service so it should not be necessary to pay for the register twice so take care to ensure transition costs do not get out of control.

10. Ensure your incumbent will co-operate with the candidate and successful suppliers. Do this by agreeing a clause for co-operation and access for due diligence purposes. Suppliers generally do not like to open up their service to a competitor's inspection so ensure minimum levels of

access and co-operation are defined including a process for requesting access is detailed and agreed.
Transitioning an outsourced contract is never easy and does require careful planning. Early planning and securing commitments will reduce risk and cost and increase levels of co-operation so it is a good practice to anticipate exit right from the start.