

# Offshore Outsourcing - Negotiation and Contracts (Part 10)

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Outsourcing is a major organizational commitment. The Outsourcing Company should make a determination whether it wants a sole service provider or multiple service providers. There are advantages and disadvantages to both approaches. Certainly having two service providers is advantageous in that it keeps both the OSP's on their toes to deliver. There is a competitive play and both OSPs commit to the relationship as each vies for a larger share of the pie. However, from a Companies perspective that is two relationships that needs to be managed. Certainly there is a Management cost to having two relationships.

A contract is an important facet of the relationship; it defines the rules of the engagement. A meaningful relationship requires either party to be satisfied for a win-win relationship. Therefore in the contract there should be a win for both parties. Certainly, each party (and their respective lawyers) will work hard to dilute the liability. This can get bogged down if left to the lawyers. It is important that you design the deal and let the lawyers guide it. You understand the business far better than lawyers. However, your lawyers are more knowledgeable in how your needs have to be articulated. The Contract should define the rules of the engagement with the Statement of work appearing as an Addendum. That way the technical part can be separated from the legal part. The Statement of Work changes frequently; the contract need not be negotiated every time the work changes.

The legal contract captures the essence of your requirements. It contains definitions, engagement clauses. Developer's obligations, companies obligations, OSP warranties and indemnities, consideration and compensation (should refer back to an Appendix s this can change), proprietary rights and Confidentiality clauses, Term of contract and termination (Exit with or without cause and liabilities for early exit , ) Buy out clause, events on termination, COLA increases and general provisions.

There can be different types of pricing models:

- Fixed Cost, fixed time
- Time and Material
- Time and Material with limits- each project is quoted for on a Time and Material with an estimation of time. The OSP is allowed a certain over-run to the estimated amount unless requirements change. Once the limit is reached payments are capped (unless there is a compelling reason not to do so)
- Time and Material followed by fixed cost - If the requirements are not articulate or complete the first phase till requirements are frozen (or a prototyping done) is done in a Time and Material mode after that the rest of the work is done at a fixed cost
- Risk and Reward - The OSP charges you the work at cost (or sometimes below cost) and takes a percentage of profit from the sale of the work product

Companies often like to put penalty clauses in a contract. At times it is difficult to ascertain which side is responsible for non performance. A true partnership requires:

- Incentives and Rewards to be provisioned on goal attainment and exceeded expectations (should directly reach the staff - ensure that)
- Sanctions and penalties to be sparingly used. These should be used for repeated non performance or demonstrable service failures due to gross negligence
- Exit only in the event of gross breach, violation of IPR, dishonesty or gross incompetence.

Time and again we have heard stories from the trenches of Companies reaching a point of no return and ready to pull the plug. One Company was on the verge of making a similar decision with a leading CMM Level 5 certified OSP after 9 months of engagement. However, on closer scrutiny the Company realized that the projects chosen for outsourcing were not ideal, further the Company itself did not have the bandwidth to support such an Outsourcing. The Company redefined the projects to be outsourced and now enjoys a successful relationship with the OSP. In another instant every Manager at a Company revolted against the Outsourcing citing OSP incompetence. The Senior Management in the Company on the other hand was totally committed to the relationship. At a Company meeting a Management decision was communicated to operating Managers- their performance would be appraised on their ability to successfully manage the outsourcing effort. The result, Managers huddled together and came to an obvious conclusion - their processes were not setup to support Outsourcing. In the next few weeks processes were redesigned and the Outsourcing relationship has grown dramatically.

Before you pull the plug do a causal analysis - there is a likelihood that the Company contributes significantly to the failure of Outsourcing.