
*Challenging Outsourcing's
Conventional
Contracting Practices - Opportunities
to Excel*

Ross Docksey – Partner: Sonnenschein Nath &
Rosenthal LLP
jdocksey@sonnenschein.com

Sonnenschein[®]
SONNENSCHN NATH & ROSENTHAL LLP

Conventional Thinking

- Has positive and negative elements
- “Conventional”
 - Growing out of custom or usage
 - Lacking spontaneity, originality, or individuality; formal
- Is not all good or all bad
- As in bridge, there is often more than one “convention”
- We can and should challenge conventional thinking, without falling into the “tyranny of the Or” (A or B, as opposed to A & B)

Observations About Outsourcing

- Competitive bidding has positive and negative elements.
- Use of outside advisors has positive and negative elements.
- Outsourcing customers and providers are not homogenous entities.
- It is difficult to forge true “collaboration” before a deal is signed; and not much easier afterwards.
- Question: Who defines the offering?
- Commoditization has positive and negative elements.

Examples of Areas In Which Conventions Exist

- Sales strategies
- RFP's
- Customer advisors
- Deal teams
- Negotiation process
- Contracts
- Senior-level dialogue
- “Vendor management”
- Governance
- Other

The Insidious Nature of Customer-Vendor Mindsets (CVM)

- Definition: 1. They're in it for themselves; 2. If I don't watch them like a hawk, they'll screw me; 3. They do not have my best interests at heart; 4. They must be managed; 5. Negotiate hard; 6. "C'mon -- they're... (vendors/customers/attorneys/paid by the hour, etc.)
- Each participant in the outsourcing value chain is entrenched in CVM.
- It is among the most dominant driver of transactions.
- Most either deny they have it, or believe it's a good thing.

The Difficulty of Establishing True Dialogue During the Engagement Process

- Where customers are “king/queen,” it is difficult and problematic for providers to raise issues questioning customers’ methodologies, thought processes, approaches, dictates -- forces most sellers into “to-get-along-go-along” strategies
- In other than a long-term-relationship or sole source context, it is difficult for customers to create a reliable context for open dialogue and creative solutioning with bidders
- These realities are not the “fault” of either side -- they flow naturally from the experience, knowledge, perspectives, and biases of both sides and the over-arching context of the competitive, adversarial process

Antidotes to CVM

- Orient more toward the design of a smart solution that creates joint and mutual advantage, than around adversarial processes and negotiation
- View outsourcing as a value chain of inter-dependent participants.
- Define and adhere to the right process objectives.
- Carefully select, organize and integrate the right high-trust people and teams to explore, design and implement the solution.
- Use “wide-band” individuals with strong technical and interpersonal skills and varied experience and perspectives.
- Be disciplined in framing and managing a constructive discussion.

Additional Discussion

- Are these deals inevitably cost-driven and adversarial?
- What are the prevalent methodologies and are they working?
- Procurement vs. outsourcing competencies
- What constrains more tightly-aligned relationships and structures?
- Dream team skill-sets and attitudes for innovative, successful structuring and execution