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**Analyzing IT negotiations - can you deliver
Better projects by putting together better deals?**

Introduction and moderation:

Austin Park

VP/CTO

Paragon Development Systems

Keynote:

Erik Phelps

Partner

Michael Best & Friedrich LLP

This session sponsored by:





Analyzing IT Negotiations – Can You Deliver Better Projects By Putting Together Better Deals?

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Overview

- Quick Background:
(WARNING: I Ask You Questions)
- Data on Project “Challenges” & “Failures”
- Typical Technology Acquisition Process
- Negotiation Nightmares
- Some Modest Proposals to Make it Better
- Wrap-Up & Questions

Background: On Both Me & the Topic

- Former IT Professional – Now a “DangerNuff”
- Worked in a Law Firm & as In-House Lawyer
- Represent “Sellers” and “Buyers”
- Been involved in all aspects of the Technology Acquisition Process, even the Failures ...



My Questions for You

- Who enjoys the Process of Acquiring Technology?
- Who enjoys the Contracting Process?
- Do You Fight Over the Same Issues Every Time?
- Do Those Issues Really Matter?
- Do you Usually Feel like you got a “Good Deal”?
- Do Lawyers Help or Hurt the Process?



My Thesis

The Technology Acquisition Process is Flawed

AND WORSE YET

Those Flaws Can Lead to Bad Project Results
that Cost **Both** Technology Vendors &
Customers Time and Money.

Projects: Why They Fail



Negotiations: Why They are Painful

Sobering Statistics about IT Projects

- The Original Standish Report - 1994
 - Only 16% of Projects will be in on-time & on-budget (and those will have less than half originally planned functions)
 - More than 50% of projects are “Challenged” where “challenged” means: late, over budget or BOTH !
 - Average cost overrun was 189%, average time overrun was 164%
- Note: These numbers are disputed by many

MORE Sobering Statistics

- Robbins-Gioia (2001): Half viewed their ERP implementation as “unsuccessful”
- Meta Group: 50% of all IT projects deemed failures
- Tata: 43% of IT managers “expect” problems with IT projects
- KPMG: 75% exceeded time deadlines and more than 50% substantially exceeded budget
- HP (2007): In half the companies surveyed, 25% or more of their IT projects were delivered later than planned
- CA (2007): One in four projects costs 50% more than it was expected to cost

So, the Typical Project (if it isn't cancelled) – Will Be:



Over Budget
Late
With Fewer Features
Than Planned



Why do Projects Fail? It Depends Who You Ask ...

Customers Say ...

- Senior Execs Fail to lead
- Vendor Reps Over Promised
- Integrator Cost Out of Control
- Software too Buggy
- Integrator Doesn't Know Business
- Software Lacks Key Features
- Integrator Staff Lacks Skills
- Internal Staff Lacks Skills
- Rank and File User Resistance
- Integration with Other Apps Too Hard

Vendors Say ...

- Incomplete Requirements
- Lack of Visible Sponsorship
- Lack of Key User Involvement
- Lack of Project Management
- Unrealistic Expectations
- Lack of Management Support
- Changing Requirements

And Negotiating Deals Isn't all that Fun, Either ...

- They take too much time; project is late before it starts!
- Often unrealistic expectations on both sides with focus on issues not critical to project
- Same issues come up: “déjà vu all over again”
 - Warranties; limits on liability; disclaimers, remedies
 - Maintenance/Service level agreements
 - Development projects: Intellectual property ownership, acceptance criteria, Fixed Bid vs. T&M, scope and change management issues
- Can become acrimonious and adversarial, right in advance of a project that must be collaborative

Typical Technology Acquisition Process

- RFI, then IT/Business narrow selection group
- RFP
- Vendor comparison (may include demos, etc.)
- Vendor scoring and selection
- IT/Business-Vendor negotiations—pricing may go final
- **Involve Lawyer to Review Agreements**
- Process Screeches to Halt
- Much gnashing of teeth on both sides
- **Maybe** a deal gets finished
- Rarely is anyone particularly happy



By That Point ...

- Vendors Want ...
 - Close the Deal ... Quickly ... With Few Surprises
 - Obtain Pricing Target Already in Pipeline
 - Minimize overall legal exposure:
(warranties; limits on liability; disclaimers)

- Customers Want ...
 - Close a Deal so they Can Get to Work on Project
 - Stay Within Project Budget (i.e., Beat Vendor down on Price)
 - Minimize their overall legal and project exposure
 - Get it “through legal”

Too Late For a Lot of Things

- Any Structural Change (pilot, slower rollout, phases, etc.) creates problems for everyone even if it is the only way to mitigate risk
- Customer: You May Be Down to One Vendor and Be Starting All Over With Price Negotiations
- Vendor: You May Lose the Deal Altogether
- You are now “Pushing on a Balloon”

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Some modest proposals to
make it all work better





Buyer Recommendation: Revise Acquisition Process

- Standardize Technology Acquisition Process
- Standardize Documents (with some variations):
 - RFI & RFP
 - Professional Services Agreement
 - Maintenance Expectations
 - Service Level Expectations
 - Project Management Methodology
 - Development Standards
- Get management sign-off on general approach and risk tolerance in general approach

Revise Acquisition Process (continued)

- You MUST think about the deal you want on day one of the project – **consider attorney involvement here !**
- Distribute RFI / RFP with Major Project Requirements Already Captured
 - Pilots, any phased payment requirements; specific integrations, milestones, maintenance and SLA requirements, etc.
 - Include your form agreements for vendor review and comment
 - Require that all inbound proposals include all agreement terms and conditions
 - Explain that RFP response will be included in final agreement
 - But Always Allow Vendor Opportunity to Propose Things
- If Requirements Change, Go Back and Ask Again ...



Revise Acquisition Process (continued)

- Vendor comparison now includes agreement review and (potentially) exchange of redlined agreements with prospective vendor(s)
- Vendor Selection (may include demos, etc.)
- Agreement is mostly a formality at this point
- No teeth gnashing required

Why Shouldn't This Project Fail?

Customers Say ...

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- Vendor Reps Over Promised
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Recommendations for Sellers: Licensing Arrangements

- Pitch Down the Middle – Provide a Fair Form Contract that Addresses the Issues You Care About
- Focus on **Project** Risks, too, Because if the Project Fails, You **WILL** Get Blamed
- Don't Get Hung Up on Taking Reasonable Risks

Recommendations for Sellers: Development Deals

- Get Agreement on Project Ownership – Are you staff supplementation or do you own the project?
- Require Good Requirements, even if Time & Materials (remember, you **WILL** get blamed)
- Adhere to Change Order Processes
- Consider Fixed Bid and Hybrid Arrangements on the Right Projects

Conclusions

- You MUST be thinking about what kind of deal you need to from Day One—think of it as your first project milestone
- Use actual, contractual milestones to ensure project stays on track
- Don't sugarcoat things: honest communication and realistic expectations will benefit customers & vendors



Questions / Comments?

Erik Phelps, Esq.
Michael Best & Friedrich, LLP
ejphelps@michaelbest.com
608-283-2247