

Contract creation and management legal risk



Running Header: Contract Creation and Management Legal Risk
Contract Creation and Management Legal Risk
Willie Beasley
University of Phoenix
Law/531
December 7, 2009
Contract Creation and Management Legal Risk
Memo To: Span System Project Management Team
From: Willie Beasley, PM
CC: Span Legal Team
Date: December 7, 2009
Re: Legal Risk associated with Citizen-Schwarz AG Project Team, As most of you are aware about eight months ago, Span Systems entered into a 6 billion dollar bilateral contract with Citizen Schwarz AG (C-S) to develop and implement their new banking software. (University of Phoenix, 2002) A bilateral contract is defined as one in which both parties promise to perform certain things (Jennings, 2006, p. XX). The basis of the contract is that Span Systems has promised to provide C-S with new banking software that meets their needs and expectations while meeting key deadlines. C-S has agreed to pay Span System for their services while at the same time providing timely feedback and representation to help Span Systems meet their deadlines. In the past few months, there have become some concerns regarding the continuation of the contract based upon performance and missed deadline issues. Because of these concerns, C-S has sent notice that they would like to escalate the contract and sever all business relationships including the pending order of C-S's e-CRM project. In any contract there is always the potential for disputes; however it is important for Span System to analyze the legal risk associated with the creation of this contract and how to manage that risk. The three major areas that Span needs to focus on are the following: ambiguity of the contract, timeliness and quality of deliverable items, and intellectual property rights. The contract between Span and C-S

was developed to try and protect the interest of both Span and C-S. Based upon this principle, the contract was created with a clause that stipulates that neither C-S or Span can end the contract if there is more than 50% of the project completed (University of Phoenix, 2002). The problem with this type of language is that it is not very clear what constitutes the 50% completion of the project.

Also, it is not clear who is the party that determines what is considered 50% complete. This type of language leaves not only C-S at risk but more importantly it leaves Span at risk of completing an extensive amount of work that will result in little to no payment for services rendered. It could be argued by C-S that 50% of the project has not been completed because Span has not delivered more than 50% of the deliverables. However, Span's argument is that the project has elapsed more than 50% of the time and according to the clause the contract is unavoidable. Whether each party is right is of no relevance at this time.

It is more important that, Span realizes the potential for litigation when a contract is ambiguous. Unnecessary litigation leads to accelerated cost which eats into the profits of Span Systems. It is the recommendation that in future contracts, Span clarify the clause to stipulate the exact method that would stipulate completion of key performance metrics. There have also been some complaints from C-S regarding the timeliness and quality of deliverables.

The major concern that C-S has is that Span Systems has fallen behind on the agreed upon deliverable dates and the quality of items that are delivered

are sub par. This has been the major reason that Leon Ther, negotiator at C-S, has called for the ??? the immediate transfer of all unfinished code and asserted the recession of the contract??? (University of Phoenix, 2002). From the perspective of Span, this is simply unacceptable because Span has invested time, energy, and financial resources to meet the deadline and needs of C-S. It can be argued that Span has done everything in their power to meet the deadline set forth in the project plan and that C-S??'s request to rescind the contract could be considered a breach of contract by C-S. Had Span clearly spelled out in the contract exactly how to handle a break down in project oversight as well as change request from the customer, C-S would not have a legal argument in regards to deliverable.

However, this language is missing in any of the contract clauses. C-S has gone through various project management changes which have impacted their ability to approve the necessary work in a timely manner. This caused Span to fall further behind in the deliverable forcing the delivery of sub standard coding in an effort to meet key deadline. There have also been numerous change requests that have fallen outside the scope of the project.

Had there been the appropriate language in the contract on how to handle change request, delays due to the customer, and what the impact would be to the project plan then the dispute could have been averted. Finally, there is some concern by Span due to the news that C-S maybe shopping around to other software developers to complete the software transition project.

There have also been rumors that C-S has already provided some of the code to an Indian software developer (University of Phoenix, 2002). This puts Span in an unfair position since the project is 80% complete at this point and C-S

has not been timely with their bills. This calls into the question of intellectual property and who actually owns the code at this point.

Although it is in the possession of C-S, Span should argue that because C-S is not current on their payments that they do not have the right to the code and can not benefit from allowing another software developer complete the project. In the future, Span should make sure that they include in their contract the stipulation that if the contract is rescinded and the customer is behind on their payments then all code reverts back to Span. This would alleviate a customer from benefiting for the work, resources, and resources that Span has invested in the project and protect Span's intellectual property rights.

Business to business contracts tend to try and anticipate the needs of both parties and make the contract as equitable as possible to all parties involved. However, there is no contract that can forecast every possible dispute that may occur through the life of a contract. It is imperative that all parties involved try to anticipate the most common disputes that could occur and include those provisions into their contracts to protect themselves.

References Jennings, M. M. (2006).

Business: Its legal, ethical, and global environment. (7th ed.). Mason, OH: Thomson. Retrieved December 7, 2009, from University of Phoenix, LAW531 " Business Law. University of Phoenix.

(2002). Legal environment of business: Contract Creation and Management [Computer Software]. Retrieved from University of Phoenix, Simulation, LAW531 - Business Law website.

<https://assignbuster.com/contract-creation-and-management-legal-risk/>