

Project Contracts

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Lecture 1



Lecture One

Section 1

Introduction to Project Contracts

*Some important
definitions*

*Concepts of
Contracts*

**Relationship between
Contract management
and procurement
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Section 2

*Roles and
responsibilities*

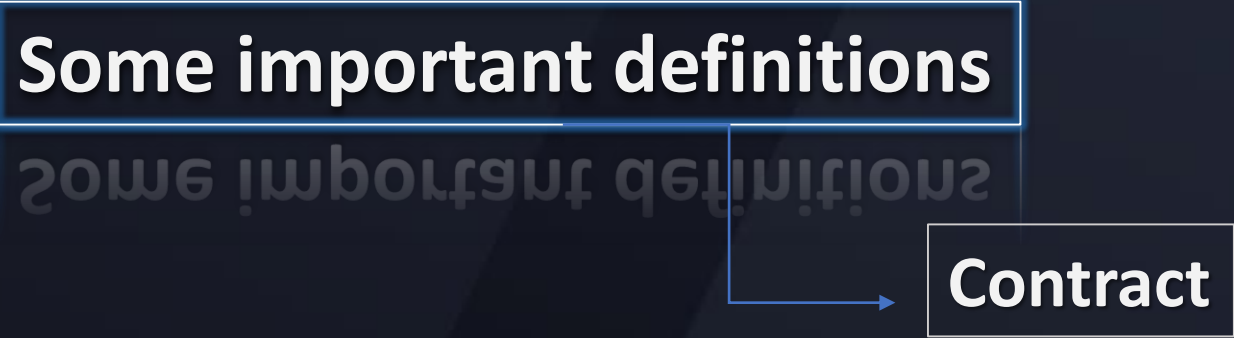
*Project
Procurement*

Lecture One

Introduction to Project Contracts

Introduction to Project Contracts

Some important definitions

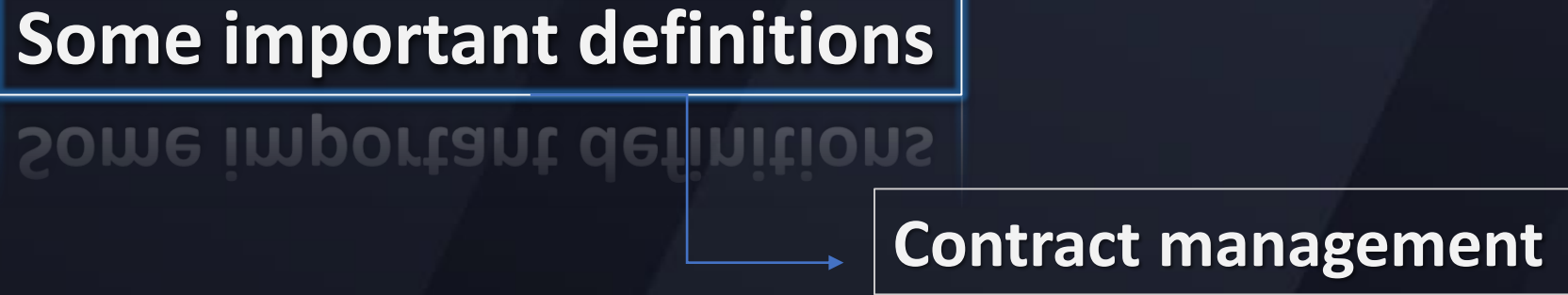


Contract

‘Contract’ as the term specifies is an agreement between two parties in general. In project management, it’s a formal agreement between a buyer and a seller (more often referred to as supplier). The agreement is made to procure goods and services required for the agreed project.

This document needs to be prepared by the Project Manager (or the contract project manager if assigned). It is in coordination with Procurement Manager during the project planning stage. It has to be documented as a Procurement Management plan, which is a part of the primary Project Management Plan.

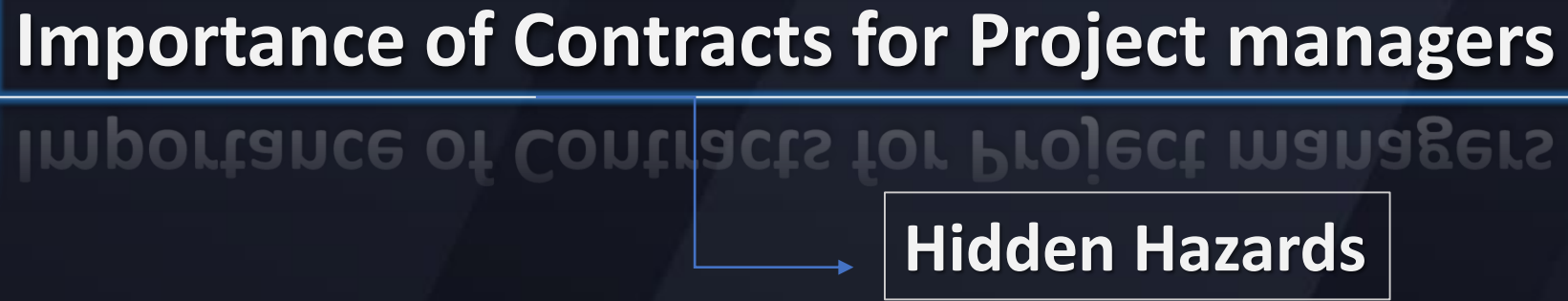
Some important definitions



Contract management

Contract Management, a part of the Project management, deals with the vendor/seller/supplier (as termed in the contract). It also manages the procurements according to the terms and conditions set in the 'Contract.' The terms and conditions are agreed mutually between the buyer and seller. Contract management is the art and science of managing a contractual agreement throughout the contracting process.

Importance of Contracts for Project managers



Hidden Hazards

Many contract drafting traps are invisible to non-lawyers. It takes much less skill to critique what is in an agreement than it does to identify and correct what is not – things like remedies for breach, rights of termination, intellectual property protections, or correct descriptions of what the other party is supposed to do. As a result, entrepreneurs and other business persons can overestimate their ability to competently negotiate commercial agreements without legal assistance. Sometimes this leads to painful surprises.

Importance of Contracts for Project managers

Enhancing Different Perspective

Most commercial agreements involve one party purchasing some type of good or service from another party, or a combination of goods and services. Thus, one party is often considered a “buyer,” “customer” or “client,” and the other a “seller,” “vendor,” “provider” or “supplier.” For simplicity, we’ll think in terms of buyers and sellers.

Many of the topics are discussed largely from the perspective of the buyer. One reason for this is brevity. There are several others though.

Importance of Contracts for Project managers

Enhancing Different Perspective

First, sellers often have standard contracts that they routinely present to buyers. In many cases, these standard contracts were drafted by the seller's lawyer months or years earlier and were loaded up with terms, both relevant and irrelevant, that favor the seller.

Consequently, it is often the buyer who is faced with reviewing a new and potentially confusing agreement.

Importance of Contracts for Project managers

Enhancing Different Perspective

Second, the buyer is often at an informational disadvantage. This is because sellers generally know more than their buyers about the goods or services being sold and about how to protect their interests in transactions involving those goods or services.

Third, sellers might be slightly more apt to breach their commitments than buyers, given the generally more significant performance challenges facing sellers – e.g., producing and transporting goods on time, developing software on time, competently providing specialized services, and so forth.

Importance of Contracts for Project managers

Enhancing Different Perspective

In most contract situations, therefore, it is the buyer who needs more coaching on how to protect his or her interests. That said, where relevant, issues of particular importance from the seller's perspective are also addressed – e.g., developing solid but workable template agreements, avoiding over-promising, and limiting downside risk through warranty and liability limitation clauses, among others.

Lecture One

Concepts of Contracts

concepts of contracts

Contracts as Private Law

Contracts create “private law” between two parties. Courts enforce valid contracts in order to provide predictability in private relationships and to facilitate commerce. Enforceability is a double-edged sword though, rarely distinguishing between good deals and bad.

Contract Formation

A contract is formed when there is “mutual assent” (also known as a "meeting of the minds") between two parties to enter into an agreement supported by “consideration” (money or something else given in exchange).

Mutual assent

Mutual assent means that two parties over the age of “majority” (18 years) and of sound mind have voluntarily agreed to enter into an agreement under which each will do or provide certain things. Where fraud or duress is used to convince a party (i.e., gunpoint) to enter into an agreement, the requirement of voluntary assent is absent and the contract can be voided.

Mutual assent

Interestingly, most contracts involving minors can be voided, but minors are generally not permitted to “disaffirm” contracts involving “necessities” like food, clothing and shelter. Mutual assent can also be undermined by mutual mistake about a material fact or assumption, as discussed below under Parol Evidence Rule.

Authority

Another concept falling under “assent” is “authority” – the question of whether the individual signing for a party is actually authorized to enter into it on behalf of that party. Or, alternatively, has the other party held that person out as having such authority?

Authority

This should not be a concern where you are dealing directly with the president, chief financial officer, general counsel or sole proprietor of a company. But an unusually generous deal signed by a sales person or business development vice president, for example, might later be disputed as “unauthorized.”

Authority

For any contract involving substantial risks, commitments or monetary value, consider demanding proof of actual authority. In the case of corporations or partnerships, this may involve requiring the other side to produce board resolutions, partnership operating agreements, or delegations of authority outlining the signing authorities of persons in certain positions.

Consideration

Each party has to agree to do or give something of value in exchange for the performance of the other party. If one party is not obligated to do or give anything of value, or their performance is otherwise voluntary or “illusory,” there is no enforceable contract under law and either party may back out.

Consideration

Courts in most Countries will not set aside a contract unless the “inadequacy” of one party’s consideration “is so gross as to be conclusive evidence of fraud and as to shock the conscience of the court.” Cases where consideration is found to be wanting also usually involve other grounds for invalidation, such as fraud or duress.

Consideration

It should be obvious from the above that gifts without consideration from the other party cannot be enforced under contract law. Companies that fail to get proper intellectual property assignments at the time of hiring employees or contractors often stumble on this concept when they later try to get departed employees and independent contractors to sign intellectual property assignment forms without offering any consideration. Any such forms signed without some form of compensation are subject to being later disaffirmed by the former employee or contractor as unenforceable gifts.

Consideration

A document that would have had no price tag if signed at the beginning of an individual's employment can become much more costly when that employee knows that his or her signature is necessary to close a major financing or acquisition involving the former employer.

Offer and acceptance

Although there have been cases involving questions of whether “offer and acceptance” to enter into an agreement truly occurred, such problems are rare and can be easily avoided. Use caution in making a proposal that might be viewed by the other party as a firm offer to enter into a contract. If you propose a sufficiently detailed arrangement, even orally, in a manner that could be reasonably interpreted as an offer to contract, acceptance by the other party can result in a binding contract – or at least a dispute to that effect. To avoid such issues, lawyers often stamp draft agreements with “DRAFT PROPOSAL FOR DISCUSSION PURPOSES ONLY” or similar language.

Offer termination

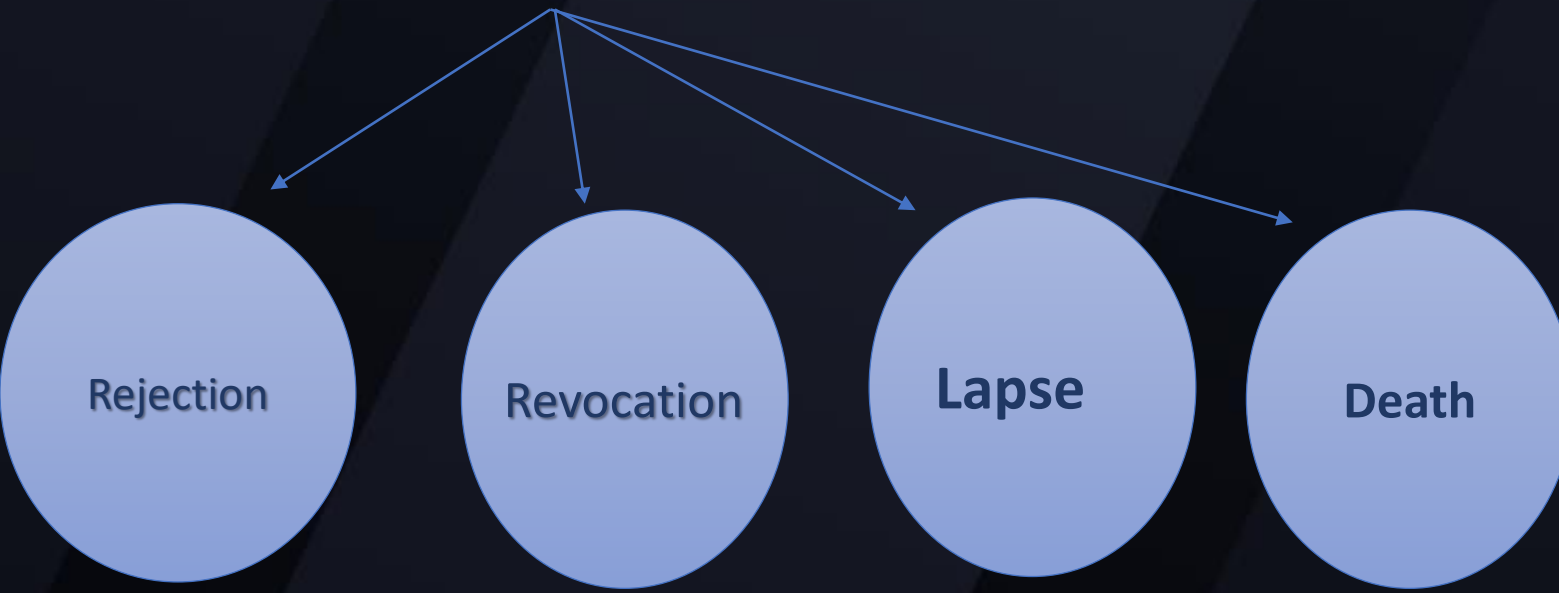
Contracts themselves can also be limited in their scope, so care needs to be taken when reviewing the terms and clauses within the document. Terms can either be expressed or implied. When things are implied, they are often invisible, such as 'don't break the law'. However, sometimes these implied terms can present problems down the line.



For example, contractors have a legal right to fix a defect within a 'reasonable time' before the client calls a third party. However, the 'reasonable time' is an undefined period, and will vary in different circumstances. It's the best for project managers is to minimize the use of implied terms.

Offer termination

An offer that is detailed and definite enough to result in a contract if accepted is sometimes called a “firm offer.” Once a firm offer has been made, it remains open until any of the following events:



Offer termination



Rejection

If an offeree rejects an offer, or makes a counteroffer altering important terms, the offer is no longer open.

Offer termination

Revocation

The offeror can revoke or retract an offer at any time before it is accepted, even if the offeror said or wrote that it would be open for a longer period. Sudden revocation of an outstanding offer may strike the offeree as unfair, but it is perfectly legal. Sitting on an offer carries risk of revocation without warning. Offerees can get around this concern by paying the offeror to keep the offer open. This is a separate contract itself, called an “option” – i.e., a contract allowing the offeree to make a decision about something later. Landlords, for example, are often willing to hold a space for a fee while a tenant takes an additional week or two to consider alternatives, giving the tenant and “option” on the space.

Offer termination



Lapse

Some offers lapse at a stated time, and all offers are subject to termination after a “reasonable time” depending on the circumstances.

Offer termination



Death

The death or insanity of the offeror will terminate an offer, as will the destruction of the subject matter of the offer.

Lecture One



Relationship between Contract management and procurement department

department
management and procurement
relationship between contract

Roles and responsibilities

Though many times the contracts are simple and straight, they are more complex. It happens to be in larger projects as many procurements and suppliers are involved.

No organization has all the skills required to do anything but the most simple of projects. Additional skills required for the completion of projects must be bought in from external sources. In this chapter, we consider the roles required throughout the project supply chain, and what contract types are available to provide the additional roles in different ways.

Roles and responsibilities

The Project Manager

Project Manager is the person who leads the team that is responsible for achieving the project objectives. The performing organization assigns a Project Manager.

Based on the authority level, the project manager performs numerous roles. Many organizations based on the project size and complexity, assign 'a contract project manager.' A contract project manager's role is significantly different from the Project Manager

Relationship between Contract management and procurement department

department

Roles and responsibilities

Contract manager

The Contract Project Manager (also referred to as Contract Manager) plays a very critical role for an organization. He/she manages contracts throughout the projects and their life cycle. On many occasions, they also play the role of a Liaoning person between the companies, employees, vendors, customers. He/she creates the contract's repository and is solely responsible for maintaining all the contractual records. The company uses these records for their projects, which finally become part of Record Management.

Roles and responsibilities

Contract manager

A Liaoning person and a contract facilitator.

Manage and close the contracts throughout the project duration.

Create a contract repository and update periodically.

Draft, develop, negotiate and execute the contract.

Create policies and procedures to the contract and ensure the effectiveness.



Relationship between Contract management and procurement department

department

Roles and responsibilities

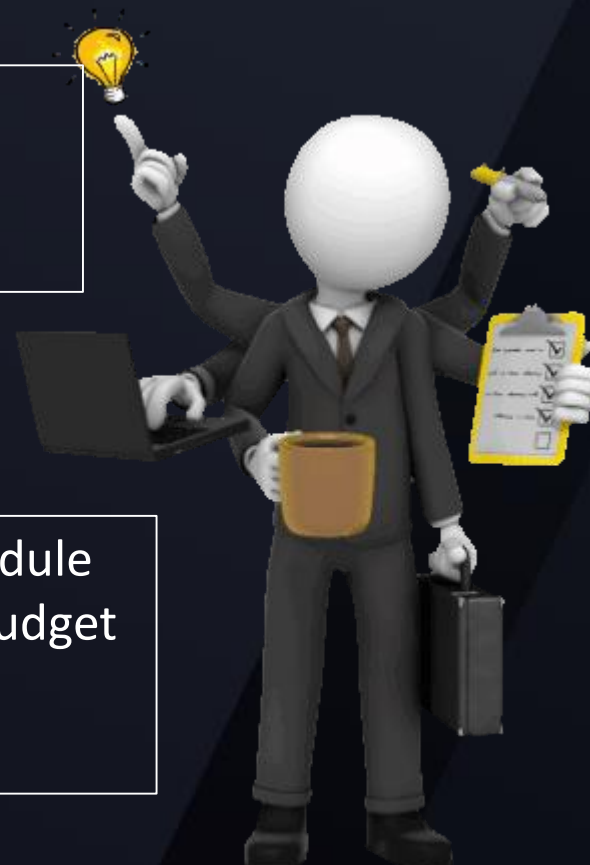
Relationship between Contract management and procurement department

department

Contract Administrator

The Contracts Administrator must ensure the following interface duties are carried out without fail.

With Document Control for submittals, transmittals and correspondences



With Project Control for Schedule Approval, Check Estimates, Budget trends and Forecasts

Roles and responsibilities

Contract Administrator

With Project Accounting for Invoices and Back charges.

With Construction for Daily Reports, Change Notices, Change Directive and Method statement submittals

With Environmental Safety and Health on Safety Program Submittals

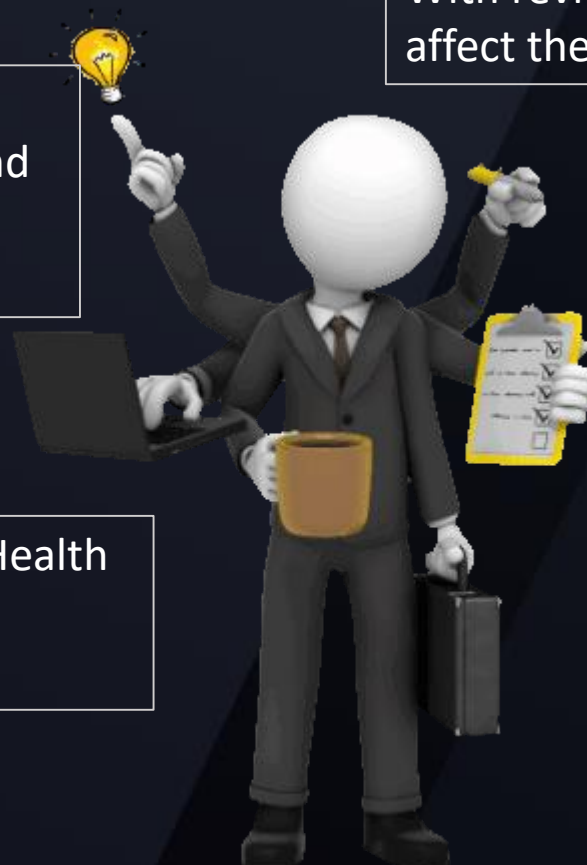
With Quality Assurance on Quality Plans and Audits.

With reviewing Contract issues that affect the Contract

Relationship between Contract management and procurement department

department

With Procurement for status of Owner or Contractor Furnished Materials and Equipment.



Project Procurement

Relationship between Contract management and procurement department

department

The contract is the mechanism by which:

The project organization is created;

Project managers are employed;

The commercial nature of the project process is defined.

Goods and services are procured;



Project Procurement

Contract management in procurement

Earlier, procurement wasn't seen as a separate function. It was considered a part of the role called purchasing where a company buys products/services from a supplier. However, companies have realized the significance of procurement in enhancing overall business performance and profitability. The procurement teams are supposed to build long-term relationships with the suppliers for mutually beneficial outcomes.

Relationship between Contract management and procurement department

department

Project Procurement

Contract management in procurement

Business relationships will be simpler and more transparent when all the transactions are supported by efficient contract management. The procurement team must have the right contract management strategy to attain the goals without any obstacles.

Relationship between Contract management and procurement department

department

Project Procurement

Relationship between Contract management and procurement department

department

Importance of contracts in procurement

Following are the main ways in which a flawless contract management strategy improves the procurement function:

Improves business
functioning

Efficient contract management will improve business functioning by identifying the needs, implementing the strategies to fulfill the requirements and analyzing if the objectives of the organizations are met.

Project Procurement

Relationship between Contract management and procurement department

department

Importance of contracts in procurement

Following are the main ways in which a flawless contract management strategy improves the procurement function:

Controls spending

Contracts provide better spend visibility and help organizations to monitor financial transactions. With this, organizations can also identify maverick spending and opportunities for cost savings in the future.

Project Procurement

Relationship between Contract management and procurement department

department

Importance of contracts in procurement

Following are the main ways in which a flawless contract management strategy improves the procurement function:

Helps in evaluating suppliers

The procurement team must constantly monitor the suppliers and their performance to evaluate the supplier risk. Contract management will help them to ensure if the suppliers are abiding by the criteria and build long-term relationships with them.

Project Procurement

Relationship between Contract management and procurement department

department

Importance of contracts in procurement

Following are the main ways in which a flawless contract management strategy improves the procurement function:

Ensures compliance

The organizations that have an efficient contract management strategy in place can mitigate risks to a great extent. When there are written rules and procedures, it will be easier to ensure compliance.

Project Procurement

Relationship between Contract management and procurement department

department

Importance of contracts in procurement

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The role of procurement Teams in Contract management

Procurement today is supposed to be a management function within an organization, directly supporting the strategic goals of the organization. However, this is yet to be achieved in most organizations. In most cases, contract management is left to the legal department team members. However, the team may not have all the required technical knowledge to carry out the work properly, especially when an organization runs a long and complex supply chain.

There may be hundreds of relationships and nuances they may not be aware of. Input from the procurement is therefore invaluable because of their frequent interactions with the service vendors and suppliers.

The role of procurement Teams in Contract management

Standardizing Contract Creation

The procurement team should be involved in coming up with a standard way to draw contracts with vendors and suppliers. Each organization should have terms, conditions, and technical language that are used in its contracts. Procurement team members should help the legal team in discussions about common terms and conditions in the industry. They can also give input on what the impact of setting certain conditions will be or how best to protect the interests of the company in contracts with suppliers.

The role of procurement Teams in Contract management

Setting Contract KPIs

Big organizations will have complex supply chains, sometimes spread across continents. The key performance indicators will differ depending on goods and services. The procurement team must therefore be involved in coming up with yardsticks to determine the best way to evaluate suppliers of each item or service.

The role of procurement Teams in Contract management

Setting Contract KPIs

Procurement team members interact with suppliers and they know their reliability. They can advise management on whether the terms inserted into a contract are realistic and how they will affect relationships with vendors. A company also needs to decide on how to go about collecting data to assess supplier performance. The data collection strategy should be affordable and easy to understand.

The role of procurement Teams in Contract management

Evaluating Supplier Performance

A procurement specialist would be best placed to determine whether suppliers are meeting their KPIs. A procurement expert can make a good judgment on whether the letter and spirit of the contract are being followed, in the context of the current operating environment. There are times when delays in delivery or other failures can be explained by inevitable occurrences. However, some scenarios may require a reevaluation of the relationship between an organization and a supplier.

The role of procurement Teams in Contract management

Evaluating Supplier Performance

The procurement team can make a detailed report to management on the cost of changing unreliable suppliers. In some cases, also, the procurement team might advise the company to revise its contract with a vendor as opposed to canceling it altogether. The management would then make the decision in the best interests of the company.

The role of procurement Teams in Contract management

Finding Saving Opportunities

The procurement team should be continually involved in evaluating supplier contracts to ensure they are aligned with the overall objectives of the company. They should be on the lookout for new opportunities to reduce costs. For instance, giving a vendor a longer contract might lead to a more favorable price per unit. Ordering larger quantities could also help minimize costs without necessarily leading to overstocking.

The role of procurement Teams in Contract management

Finding Saving Opportunities

Sometimes the company may be paying for items or services they no longer need. This happens a lot in big organizations. The procurement team should be involved in assessing the value of everything the organization is paying for. Should demand a particular product decrease, the team should be able to integrate such a trend into the overall procurement strategy.

thank
you!

The image features a dark blue background with diagonal stripes in a slightly lighter shade of blue. In the center, the words "thank you!" are written in a light blue, cursive, handwritten-style font. The text is flanked by orange dashed lines on both sides, with three lines on the left and three on the right, creating a sense of radiance or emphasis.