



Performance Improvement Needs of Sourcing Personnel about Legal Issues

A Report to Global Manufacturing Corporation

1/20/2000

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Impetus for this Needs Analysis

In the last 12 months, Global Manufacturing Corporation has experienced several situations in the area of sourcing and procurement that pointed to possible insufficient knowledge and skill by the employees involved. For example:

- Suppliers' contracts are not understandable to Global Manufacturing Corporation buyers, so too many contracts are sent to the legal department for review.
- Global Manufacturing Corporation purchasing personnel leave out important elements in Global Manufacturing Corporation's contracts to suppliers.

Initial Meeting

A planning meeting was held in September at which eight areas of training need were identified:

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|-----------------------------|-------------------------------|
| ■ Negotiation | ■ Supplier Relationship Mgmt. |
| ■ Strategy Development | ■ Leadership |
| ■ Strategic Cost Management | ■ Project Management |
| ■ Ethics | ■ Legal Aspects of Sourcing |

Priorities were assigned and various participants agreed to oversee each topic. Needs analyses were then initiated into the highest priority topics.

Purpose of Needs Analysis

A performance improvement needs analysis is used at the beginning of a performance improvement project to determine:

- The work performance that is deficient.
- The benefit to Global Manufacturing Corporation for correcting this deficient work performance.
- The job titles and numbers of employees responsible for the deficient work performance.
- The causes of the deficient work performance.
- Solutions to the work performance deficiency.

Methods of Investigation

The following methods have been used to determine the nature of the need for performance improvement and its solution.

1. Interviews were held with the following Global Manufacturing Corporation personnel to determine the nature of the problem:
 - Evan Ruude (Director of Strategic Supply Management Programs, Subscriber Products, Communications Enterprise)
 - Carmen Santiago (Sourcing Director – America South)
 - Jim Dandy (VP & Dir –Supply Management)
 - Bill Pending (Manager – Strategic Sourcing Programs)
 - Gene Kelleye (Director – Corporate Computer Contracts)
 - Kevin Spaceman (Senior Vendor Manager)
 - Flipper Wilson (Senior Counsel – Telecom Group)
 - Larry Birdie (Director of Contracts)
 - Sam Hill (Sourcing Director – Europe)
 - Charley Horse (Regional Sourcing Manager – European Infrastructure).

Contacted, but as yet unable to be interviewed, are:

- Marilyn Monrovia (Director, Strategic Supply Management)
 - Jimmy Dorssie (Sourcing Director – Americas North)
 - Geoff Bridges (Director of Product Cost Strategy)
 - Clifford Owedettes (VP & Director of Legal Department).
2. Research was done at the web site of the National Association of Purchasing Management (NAPM) to determine recommended best practices.

Findings

Work Performance that is Deficient

- Global Manufacturing Corporation design engineers and supply engineers mistakenly involve Global Manufacturing Corporation in a binding contract when they deal with suppliers, usually over designs and prototypes.
- Global Manufacturing Corporation design engineers and supply engineers “hamstring” Global Manufacturing Corporation purchasing personnel when they agree, perhaps in concept, to supplier’s terms and conditions, usually over designs and prototypes.
- Global Manufacturing Corporation purchasing personnel mistakenly enter into binding contracts when they had intended to use a non-binding letter of intent or memorandum of understanding.
- Global Manufacturing Corporation purchasing personnel do not understand the legal jargon in the fine print of suppliers’ contracts and accept terms unfavorable to Global Manufacturing Corporation.

- Global Manufacturing Corporation purchasing personnel accept the supplier's contract when they shouldn't. For example, such a contract was signed that included a clause that freed the supplier of a helicopter from all operating responsibility. Then, when a third-party operator was killed by the helicopter after himself not using the safety features, Global Manufacturing Corporation was sued.
- Global Manufacturing Corporation purchasing personnel do not understand and, therefore, do not handle routine suppliers' contracts but instead send them to legal departments for review. This results in large delays in procuring the materials, a work overload in the legal departments, and the supply chain getting ahead of the contracting efforts.
- Global Manufacturing Corporation purchasing personnel get involved in contracting through the "battle of forms" without understanding the pro's and con's of such action.
- Global Manufacturing Corporation purchasing personnel don't comply with the Global Manufacturing Corporation performance clauses of supply contracts; instead they "wiggle out" of the promises, often because of Global Manufacturing Corporation's superior position in the particular market. This results in the supplier being unable to recoup the ramp-up and raw materials investments, which reduces supplier trust and loyalty to Global Manufacturing Corporation for future contracts.
- Global Manufacturing Corporation purchasing personnel leave out important elements in Global Manufacturing Corporation's contracts to suppliers and as a result leave Global Manufacturing Corporation exposed or insufficiently covered.
- Global Manufacturing Corporation purchasing personnel use the wrong type of legal document for the stage of procurement they are in; e.g., contract, letter of agreement, and confidentiality agreement.
- Global Manufacturing Corporation purchasing personnel obtain the wrong reviews and the wrong signatures on procurement legal documents.
- Global Manufacturing Corporation purchasing personnel sign procurement-related legal documents when they should not.
- Global Manufacturing Corporation purchasing personnel don't allow suppliers to adjust their prices to follow increases in the price of raw materials; this sometimes causes the supplier's margin to be squeezed so much that the supplier must abandon the contract. These suppliers are reluctant to enter into supply contracts in the future – to Global Manufacturing Corporation's obvious detriment.
- Global Manufacturing Corporation purchasing personnel don't know how to handle cross-border purchases (those involving customs regulations and fees).

Benefits to Global Manufacturing Corporation for Correcting this Deficient Work Performance

- Increased ability to obtain necessary supplies.
- Increased willingness of suppliers to deal with Global Manufacturing Corporation.
- Increased supplier trust and loyalty.
- Reduced improprieties and appearances of impropriety.

Job Titles and Numbers of Employees Responsible for the Deficient Work Performance

<u>Job Titles</u>	<u>Number</u>
■ Engineers involved in sourcing and procurement (both sourcing and design)	10,000
■ Commodity managers	150
■ Purchase agents / buyers	600
■ Managers of all of the above	5,000

Causes of the Deficient Work Performance

At the present point in the investigation, the causes appear to be as follows.

Deficient Feedback/Reward/Consequences System

- One that encourages passing routine contracts to legal for review.
- One that encourages “wiggling out” of Global Manufacturing Corporation performance promises.
- One that encourages not allowing suppliers to adjust their prices to follow increases in the price of raw materials.

Lack of Time

- To thoroughly read and understand both the supplier’s contract provisions, usually located on the back of their Sales Agreement, and Global Manufacturing Corporation’s contract provisions, located in Global Manufacturing Corporation’s terms and conditions.

Lack of Knowledge

- Of what makes an agreement binding.
- Of the relative roles of engineering and purchasing, and the effect of engineers agreeing to things prior to the contracting phase of supply.
- Of terms and provision in routine supply contracts.
- Of the consequences of initiating the provision of supplies prior to contract acceptance.
- Of the use and consequences of contracting through the “battle of forms.”
- Of consequences of “wiggling out” of Global Manufacturing Corporation performance promises.
- Of important elements to include in Global Manufacturing Corporation’s contracts to suppliers.
- Of the appropriate legal document to use for the stage of procurement they are in; e.g., contract, letter of agreement, and confidentiality agreement.
- Of who should reviews and who should sign each procurement legal document.
- Of when to have the legal department review a supplier’ contract.
- Of consequences of allowing suppliers to adjust their prices to follow increases in the price of raw materials.
- Of consequences of lengthening the payment period.

Recommendations to Correct the Work Performance Deficiencies

Corporate Policies and Procedures

It is recommended that Global Manufacturing Corporation management:

- Develop a series of templates for the common forms and purposes of agreements used in the supply area: letter of agreement, memorandum of understanding, confidentiality agreement, and various purchasing situations.
- Develop an “expert system” which (1) enables a purchasing professional to select the business positions to include in an agreement, then (2) produce a standard agreement with the proper legal language to implement the business positions.
- Develop or clarify corporate policy regarding who should review and who is authorized to sign specific procurement legal documents such as letters of intent, memos of understanding, contracts, confidentiality agreements, etc.

Feedback/Reward/Consequences System

It is recommended that Global Manufacturing Corporation management:

- Modify the feedback/reward system to encourage the desired behaviors and discourage the undesired behaviors.

Work Standards and Management Expectations

It is recommended that Global Manufacturing Corporation management:

- Modify the work standards and management’s formal and informal expectations for work results to fit with Global Manufacturing Corporation’s long-range strategy for supplier relationships.

Training

It is recommended that, once the above are in place and communicated to the Global Manufacturing Corporation organizations involved in sourcing and procurement, that a training course in *Legal Issues in Sourcing* be developed. This course should expand upon the policies and practices and make them understandable and able to be implemented by the target population. Action on this course should proceed to the design and development.

Characteristics of Recommended Training

Content

The *Legal Issues in Sourcing* course should cover the following topics. Each topic is marked to indicate the audience: (E) = Engineering, (P) = Purchasing.

- Intellectual property basics (E)(P)
- Non-disclosure agreements (E)(P)
- Legal aspects of early supplier involvement (E)(P)
- Legal aspects of development agreements (E)(P)

- The relative roles of engineering and purchasing, and the effect of engineers agreeing to things prior to the contracting phase of supply (E)(P)
- Engineer's role in obtaining quotes (E)(P)
- Of the consequences of initiating the provision of supplies prior to contract acceptance (E)(P)
- Contracts versus other forms of agreement (E)(P)
- What makes an agreement binding (E)(P)
- How to keep out of legal difficulties (how not to say things you shouldn't) (E)(P)
- Who should review procurement legal documents such as letters of intent, memos of understanding, contracts, confidentiality agreements, etc. (E)(P)
 - When to handle these yourself.
 - When to involve the legal department.
- Who is authorized to sign procurement legal documents such as letters of intent, memos of understanding, contracts, confidentiality agreements, etc. (E)(P)
- Key contract provisions (P)
- Routine contract terminology and clauses (P)
- Uniform code of commerce (P)
- Of terms and provision in routine supply contracts (P)
- Delivery terms (P)
- Of the use and consequences of contracting through the "battle of forms" (P)
- When to use the supplier's contract and when to use Global Manufacturing Corporation's
- Of consequences of "wiggling out" of Global Manufacturing Corporation performance promises (P)
- Of important elements to include in Global Manufacturing Corporation's contracts to suppliers (P)
- Of the appropriate legal document to use for the stage of procurement they are in; e.g., contract, letter of agreement, and confidentiality agreement (P)
- EDI agreement (P)
- Service agreements (P)
- Customs compliance and export regulations (P).

Application to Different Target Audiences

All of this course is needed by purchasing professional, but only part is needed by engineers. The course should be designed so that engineers can take only the part that pertains to them; these parts are marked in the above content list with "(E)(P)".

Learning Strategy

This course should be mostly devoted to examples, consequences, and case studies. Presentation of policies, principles, facts, etc. should be kept to a minimum because the target population probably understands these things.

Length

This course should be about one day in length.

Delivery Methods

Initially, instructor-led training is recommended. This is because instructor-led training is the fastest, easiest, and cheapest to develop. In addition, it has several characteristics that are important to this training course:

- Asking questions of the instructor
- Sharing reactions to the content among the participants
- Sharing experiences among the participants.

Instructor-led training is practical only for the initial rollout of this training where there are enough people in various locations to fill a typical class. Subsequently, people to be trained will occur in one's and two's around the world as personnel are placed into the affected jobs. Clearly, the *Ethics in Sourcing* training is important enough that these new personnel should receive it soon after starting on the job. Therefore, it is recommended that the course be converted to a mediated delivery method after the initial rollout.

Final Recommendations

- Implement all the solutions described in *Recommendations to Correct the Work Performance Deficiencies*.
- Develop a training course entitled *Legal Issues in Sourcing* to be delivered by an instructor for the initial rollout of the training to all job incumbents.
- Convert this course to a self-paced learning format for future use by new hires.