



MATERIALS MANAGEMENT NEWS

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Resist Electronic Records & E-Discovery

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Does your organization use electronic processes in managing supply chain business? Do you email contract documents, use email to communicate with management and technical folks, share electronic files with users, store electronic records, post information on the web, keep in touch via smart phones and texting, etc.? I know many supply chain organizations that depend a lot on electronic processes.

The good news is that the electronic files are much easier to search than the old paper files. The bad news is that the electronic files are subject to legal discovery proceedings. That is, **all the files**, in all locations have to be made available for a legal search.

What we don't know about the legal discovery process and issues associated with electronic records (generally referred to as e-discovery) is a liability and a risk. Supply chain managers should be taking the lead in educating themselves and their company on the issues and ways to mitigate the impact of e-discovery.

Here are a few facts and references that might get your attention:

- E-discovery software is a hot growth market for leading edge software suppliers, marketing to attorneys and auditing firms. Our electronic files are profitable targets for lawyers.
- In June 2013 Gartner distributed a Magic Quadrant report of e-discovery software in which they rated the top 25 firms. One of the software development leaders was reported to have increased its workforce from 20 in 2013 to over 500 people. Report ID G00252032. You can download a copy of the report by signing up through this web site (and I'm sure many others) www.zylab.com/.



- "...Gartner forecasts that revenue in the enterprise e-discovery software market will grow from \$1.7 billion in 2013 to \$2.9 billion in 2017... Double-digit revenue growth of approximately 15% is expected because of increasing volumes of litigation and regulatory investigation, and the ever-expanding amount of content and data that must be searched in support of these activities...."

- Federal officials arrested a former BP engineer on charges of obstruction of justice on Tuesday, in the first criminal charges filed in

connection with the 2010 Deepwater Horizon oil spill in the Gulf of Mexico. The engineer was charged with obstruction of justice for erasing hundreds of text messages sent to his supervisor during the event. [Just for erasing the messages on his own smartphone!]

www.huffingtonpost.com/2012/04/24/kurt-mix-bp-engineer-oil-spill_n_1449316.html

- Office of Federal Housing Enterprise Oversight (OFHEO) learned a \$6 Mil lesson in trying to respond to an electronic discovery order in a case where they were not even one of the litigants. That was just the estimated cost of searching and providing **all** the electronic records. Read the article by Monica McCarroll: www.williamsmullen.com/sites/default/files/wm-url-files/PLIT1001_McCarroll.pdf
- In this often cited [and now very old] case from 2005, Zubulake v. UBS Warburg http://en.wikipedia.org/wiki/Zubulake_v._UBS_Warburg the defendant **lost** primarily for failure adequately to preserve and provide electronic records.
- Imagine what it would be like if the next time you are in a dispute with a contrac-

tor, the lawyers show up with a discovery order for **all** electronic records. How would you comply? Could you prove the search located all relevant records, on all computers, network share drives, backup servers, email databases and cloud storage locations? Would your company personnel understand the meaning of the litigation hold order or would records get “accidentally” (or even criminally) erased? Think about the OFHEO case cited above - \$6 mil just to respond to the record request.

- Here is a link to a general overview presentation on e-discovery and the accompanying reference list with more links like the ones above:
 - ◆ www.mltweb.com/handouts/discovery.pdf
 - ◆ www.mltweb.com/handouts/references.pdf

If you don't recognize the terminology and issues mentioned in the references above, then it's time to get up to speed. Supply Chain managers don't need a legal degree to know the value

of understanding the basic tenets of the law.

Supply Chain Managers should also recognize that day-to-day processes are creating a huge electronic target. **What we don't know leaves our organization vulnerable.**

Related articles:

E-discovery review - October 2012
<http://www.mltweb.com/tools/articles/ediscovery2.htm>

"Y"zing up to Why

Terry R. Volpel, CPSM, C.P.M., SCMP, LSSBB

A few years ago, I was faced with a conundrum. As a Strategic Sourcing professional, I was getting some departmental resistance from certain departments who didn't want to use my services in facilitating RFX projects for indirect materials. The basic complaint was that it took too long and they didn't have the time to “waste on paperwork” that an RFX project would entail. Frankly, many just called their usual supplier and ordered what they needed without negotiating any kind of contract, or even price beyond a “discount.”

After about six months of being stonewalled, I finally got the opportunity to lead a project for a “spend” category. From the time I got the initial call until the RFP closed was some 65 days. The result was an annual saving on that “spend” item of some 25%. At the end of the project, my group Vice President called me in and tasked me with figuring out why it took so long and how to “fix the darn thing.” I was off and running on an adventure that took me down paths I had not anticipated.

As a Six Sigma Black Belt, I know the standard DMAIC (Define, Measure, Analyze, Improve, Control) method of looking at a problem. With my lean training, I was also cognizant of the 8 “wastes” or “Muda” that can contribute to inefficiency. So, where to start?



The “define” phase was the most difficult to determine because every time I defined what I thought an issue was, the answer was obvious for that issue. The issue had to be deeper than what I was seeing on the surface. So I did what a Six Sigma practitioner does in these cases. I sent out a survey asking for customer's (client's) perception. I then did the whole Pareto analysis to see if the same issues were reported by multiple departments. And there it was—cycle times were out of whack with customer ex-

pectations. Hooray!!

Of course I then remembered that the basic complaint the first go around was that the process took too long. After about a month into the analysis, I did confirm this to my satisfaction. Now, what to do?

Measuring is an interesting concept in Six Sigma with multiple steps determine what to measure, how to measure it, how to record it and so on. Do I use a Process Map to map the steps? Do I use a Value Stream Map to guide me? I soon discovered that the Process was set in stone, certain steps had to be followed or the Corporate Legal Department would not sign off on any contract. If they weren't on board, the chances of an officer actually signing a contract were, shall we say—none. This led me to a Value Stream Map and I quickly put one together that identified the activities, and linkages between them. Most of the steps required only a day or two to complete but there were significant gaps between certain steps that I started to address.

The first one was the gap be-

tween the day I got the first communication of the project and the day the package was ready to go out to suppliers as an RFX. Often this was 30-35 days from beginning to end and involved sometimes five or six rounds of emails, meetings, drafts and finally a finished document. I was determined that this could be cut in half at least.

The second area I concentrated on was the time the RFX was out getting bids. This was another month or more before we closed the project. Was this necessary? Was it normal?

The approach my advisors suggested was something called "The Five Whys." This is intended to get us past the symptomology of an issue to a root cause. Fixing symptoms is like putting a Band-Aid on a cut when the real issue is the bone sticking out. One starts with a perceived problem and asks "why"?

From that answer, they ask "why" again...

Then they ask why again...

Then they ask why again...

Then they ask why again...

In my case, the discussion went like this...

Why does it take 30-35 days to prepare an RFX document? (*Waiting for information from the department*)

- Why are we waiting so long? (*scheduling meetings, email responses, all take time*)
- Why do we rely on scheduling meetings and sending emails? (*Departments need to pull the information together and that takes time*)
- Why do they need to pull the information together now?

(*Because the information needs to be in the RFX*)

- Why can't they have the information ready at the start? (*No one asked them*)

So I jumped to the brilliant (I must admit) improvement step of designing a form with all the questions I needed answered to get the first draft done. The questionnaire was sent to each department who expressed interest in a Strategic Sourcing Project with a response time of one week requested. By the end of the second week, I had a draft ready and scheduled one meeting to finalize the criteria.

In the second area of concern (time the RFX was out getting bids), I went through the same series of five why statements. This led me to a root cause that every department head had their own idea of who should be invited and so they tailored the "open time" for these suppliers to get a proposal in for evaluation. There didn't seem any other reason for that and I began to suspect that I would have to put some guidelines around the open times if I was going to shorten the overall RFX cycle time.

I embarked on a benchmarking exercise with other industry sources including some outside agencies such as CAPS Research and Aberdeen. I also asked each supplier that had responded in the past six months (by survey) if they felt the open time was:

- Too short
- Too long
- Just right

In fact, most of the responses came back that the suppliers felt the RFX open time was too long and they could normally respond within a few days. Remember, these were indirect goods and services. From the responses I came up with a short set of guidelines.

If an RFX had less than 25 evaluation points (criteria), we opened the RFX for one week. If there were more than 25 criteria, the RFX was opened for three weeks unless specifically requested by the Department in question.

We put these two improvements in place and monitored the cycle times for about a year before doing the Six Sigma P test (for significance). The results were all that we could hope for. The average cycle time came down some 35% overall. The change was sustainable over time and the implementation only required a minimal tweaking of the initial form that had been sent to the departments. In the first year, no RFX was open for longer than seven weeks.

Department heads saw the improvements. Their staff saw faster results. My boss actually smiled (once). All was good and proper. "Y"zing up to u why" pointed me on the path through the symptoms that had plagued the RFX process and frustrated departments.

Next time you are faced with a symptom of an issue, ask yourself why. Once you run out of whys, you can be confident that you are looking at a root cause. Fix that, and take a bow in front of your peers.