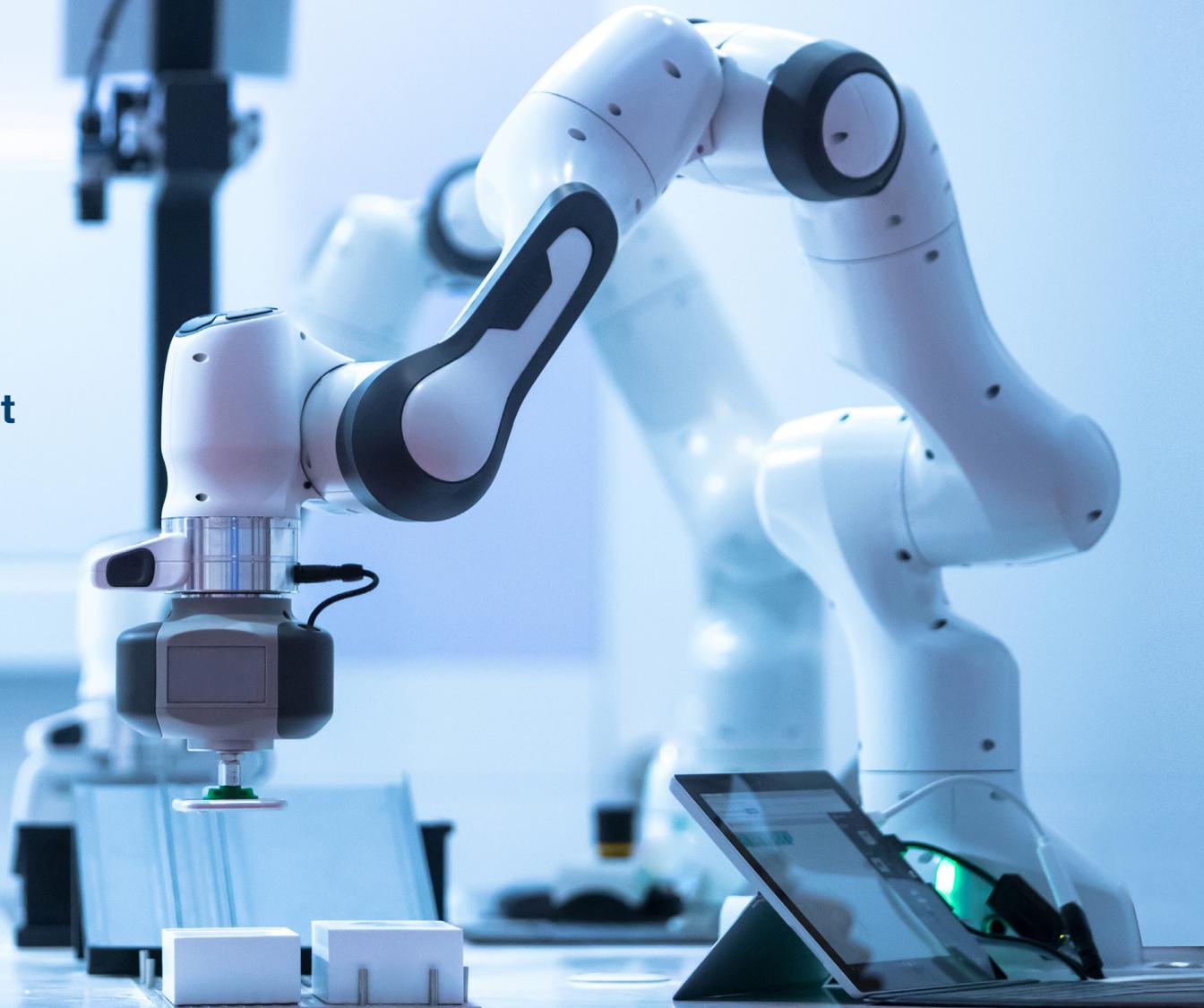


When Technology Meets Humanity

The Future of Contract Management



February 2021

A collaboration between:

Deloitte.

 **World Commerce
& Contracting**

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Data source



This report is based on a survey conducted by **World Commerce & Contracting**



Input came from more than **300 organizations**, and a mixture of individual interviews, executive roundtable discussion groups and an on-line survey



Research was undertaken by World Commerce & Contracting from **November 2020 to January 2021** and input gathered from a broad cross-industry sample



62% of respondents were from organizations with **annual revenue exceeding US\$5 billion**. Of these, 36% were executives and 34% were directors or managers



Input was nicely balanced between sales and purchasing: **buy-side 35%**, **sell-side 31%**; and a combined perspective of 34%



Respondents had a **broad geographic spread**: Europe 38%; North America 31%; Asia 13%; Australia and New Zealand 11%

Why you should read this report

This report provides compelling evidence that the pandemic is resulting in long-overdue reform of the contracting process and practices. You will discover the priorities and actions driving change at many of the world's leading corporations.

Introduction

2020 will go down in the history books for a myriad of reasons, among them, it was the year when incremental evolutionary change gave way to revolutionary transformation in contracting and contract lifecycle management.

As many transitioned to a virtual workplace and learned to use new, collaborative technology, weaknesses in contracting processes or content surfaced. Although organizations may have seen, talked about and even advocated for changes for some time, this was different. Suddenly, there were concrete needs for digitization, self-service, process rigor, intelligent data insights, and different sourcing models. Rather than shy away from these needs, companies began stepping up, and the pace of that change is accelerating. And as such – the idea for this report was born.

As you will read, the report has unearthed a number of interesting changes, not least that the previous promise of enabling technology is finally being realized. Companies are embracing en-masse the need to look at and understand how contracts are managed after signature,

with a true appreciation of the power of data. They're now thinking beyond the data found simply within the four-corners of the contract itself, to how this can be linked to enterprise data contained in financial, HR, procurement, and CRM systems.

Then meaningful, impactful business outcomes can be identified, and the walls between those who create the contracts and those who live with them start to crumble.

This report is not only a snapshot, but a turning point – a look ahead to what comes next and where newly enlightened companies should be focusing their contracting investment and resourcing energies.



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Key discoveries

1

It is in the **post-award phase** of contract management that value is won or lost – yet it is substantially less likely that organizations have a disciplined management structure overseeing this phase.

2

Almost two-thirds of procurement organizations are taking action to improve contracting, compared to half on the sell-side. New, **streamlined processes** are the leading priority, but these are frequently accompanied by potential changes to organizational models and structure.

3

Investment in contract and commercial management capability is on the increase – **automation and digitization** have become a priority for almost 7 out of 10.

4

For many, **implementing contract data standards** is a pre-requisite for sustained improvement.

5

The need for **speed, flexibility and consistency** is driving intense activity to create fall-backs, automated playbooks and more dynamic clause libraries – are the days of the template numbered?

6

Twice as many contract and commercial groups are seeing headcount increases as those facing decreases, especially in organizations where **resources are more integrated** and operating as shared service centers.

7

Only a third of survey participants are currently able to **measure and report a financial impact** related to their contract and commercial management investment.

Executive summary

Among the many impacts of the COVID-19 pandemic, organizations discovered the frailty of their contract management systems and processes.¹

As markets and supply chains were thrown into confusion, contracts proved difficult to find, hard to analyze and often provided little or no useful support in managing unfolding events. With customer and supplier data scattered across multiple applications, the absence of reliable contract lifecycle management systems exposed the fragmentation of critical business information. Commercial processes, especially those designed to ensure control and compliance, struggled to adapt and were in many cases by-passed.

Commercial teams – lawyers, contract managers, supply management – stepped into these gaps in organizational capability and helped overcome the fundamental weaknesses of systems and processes. Far from reducing their role, the pandemic has generated awareness of the critical importance of contract and commercial competence and the need for investment – better processes, better systems, better skills. 'Integrity' is not simply about compliance; it is also about adaptability and the management of change – a new blend between technology and humanity.

A new blend of **technology**
humanity

1. In a report issued in April 2020, more than 80% of those responding acknowledged an urgent need to improve contract and commercial processes, to update standards and to invest in new or upgraded systems. (*Managing Contracts Under COVID-19: What Have We Learnt?* World Commerce & Contracting research study of 507 organizations).

It's post-award that delivers value

Winning and awarding contracts is critical to the health of any business, so it is not surprising that the activities leading to contract award have tended to receive most investment and attention.

The balance is now changing. While the experiences of the pandemic are causing organizations to make improvements to their front-end capabilities, it is notable that post-award is receiving as much – and in some cases more – attention. The details of this are set out later in this report, but at a summary level:



It is certainly important to remember that the way contracts are developed and negotiated sets the framework for subsequent success. Indeed, a recent study highlighted that a majority of the 'friction points' in a contracting process occur in the pre-award phase – but it also pointed

out that the cost of contract management is overwhelmingly incurred post-award and this is also where the expected value is won or lost:

70% of friction points occur before contract signature, but 70% of time and cost occur during contract performance.²

Many of the operational costs associated with contract management are dispersed across the organization and may remain invisible. Examples of this are the resources responsible for:

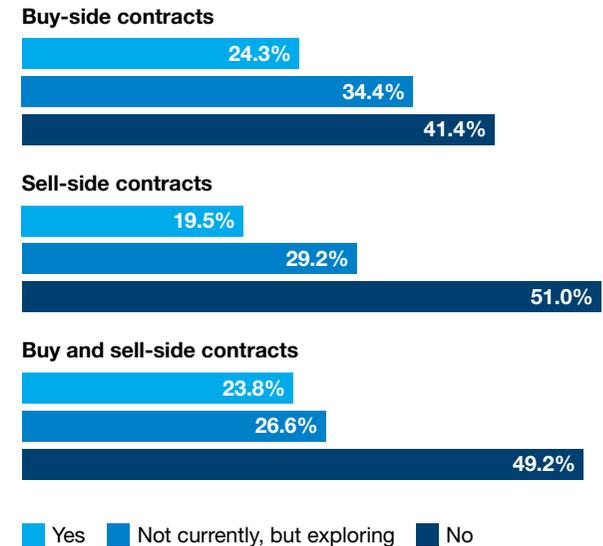
- interpreting and implementing the signed contract
- monitoring its performance
- evaluating changes or adjustments
- managing and reconciling invoices
- resolving shortfalls or disagreements
- conducting acceptance tests or delivery confirmation.

These tasks may be undertaken by a wide variety of individuals, with data captured (if at all) in disparate systems – Sales, Project Management, Procurement, Finance, to name a few.

When the pandemic hit, the demands on post-award contract management mushroomed. Customers and suppliers raced to understand the status of performance, to seek variations to terms, to identify rights and obligations and the implications of contract change and amendment. Those with experienced contract management resources and systems had a major advantage in anticipating and resolving issues and opportunities.

Many were not well placed. Less than 30% of organizations currently have centralized or center-led post-award contract management resources and, as the chart below indicates, only a little over 20% attempt to monitor or calculate the costs or overall benefits associated with contract management.³

Figure 1. Does your organization quantify the cost of the whole contract life cycle?



² *Better Contracts. Faster Contracts. Eliminating the Friction Points in Contracting.* World Commerce & Contracting research report, December 2020.

³ In environments where contracts are overwhelmingly short-term and transactional in nature (for example, retail or consumer goods), the cost of contract management as a proportion of overall operational costs is relatively low – estimates suggest in the region of 2-4% of average contract value. As the duration and complexity of contracts increases, these costs rapidly multiply, to a point where they may average 15% or more of operational cost.

A focus within procurement

As a generalization, it is often true that in certain industries the sell-side has had a stronger focus on commercial and contract management than the buy-side.

The latest data suggests that a growing number of organizations have woken up to the importance of upgrading this discipline for the management of their suppliers. Indeed, it has been an emerging trend for some time, but is being accelerated as a result of the experiences of the pandemic.

It is organizational change that offers especially interesting insights, with a strong trend towards increased consolidation and coordination of resources. For the buy-side, 93% of those making changes are shifting to a center-led or matrixed model for contract and commercial management. On the sell-side, this drops to 55% – but a higher proportion are already operating with a more consolidated approach.

Figure 2. Is your organization re-evaluating the way you are organized, or the headcount that is applied for some or all of the contract and commercial management activities?



Streamlining of processes is a priority, cited by 77% of those who are undertaking re-evaluation (with a slightly higher sell-side percentage than buy-side).

Automation, digitization – a new sense of urgency

Back in April 2020, the *Managing Contracts Under COVID-19*⁴ report indicated that the pace of contract management automation would accelerate.

This latest survey – and in particular the interviews and roundtable discussions – have confirmed this and that ‘digitization’ of the overall lifecycle is a growing priority. 68% cite medium-high urgency, with procurement groups placing a particularly strong emphasis on post-award improvement.

The shift to digitization, rather than simply ‘automation’, is important because it reflects an appreciation that a critical aspect of contract management is the need for consolidation of data and data flows. The pandemic revealed the challenges of rapidly accessing information, identifying risks and producing management reports.

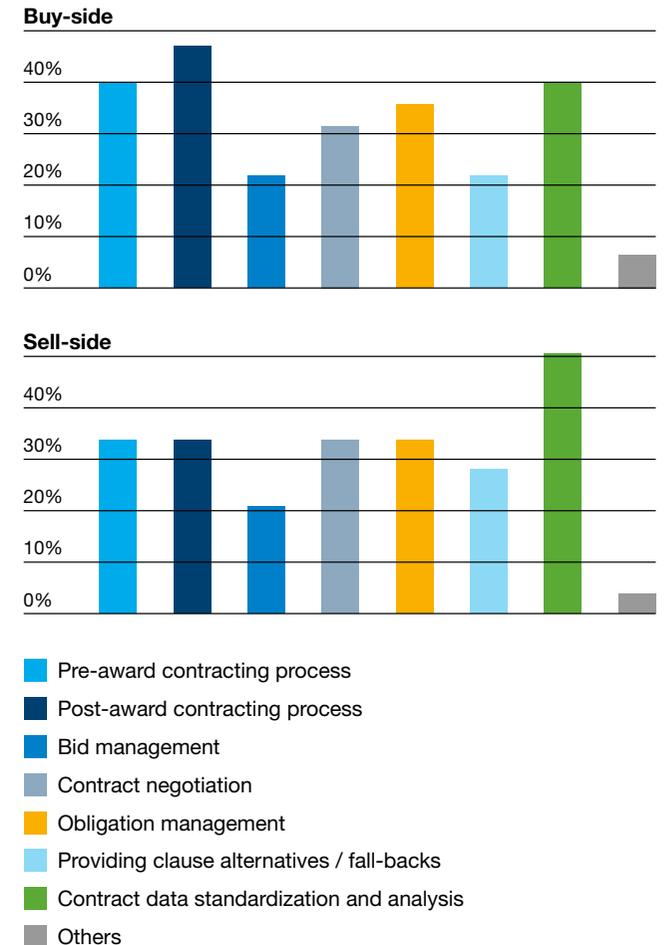
During one interview, the head of digitization at a global engineering company observed:

“We must stop thinking about contract management and think about contract data management”.

The research reveals an appreciation that successful adoption of technology depends on a series of coordinated actions, which include better definition of an integrated process, simplification and standardization of contracts and increased clarity over organizational roles and responsibilities. With that clarity comes increased appreciation of the ‘human intelligence’ factor in the overall contracting lifecycle – the importance of judgment, challenge, empathy. Far from technology replacing people, it is creating more fulfilling roles that are increasingly measured on delivering tangible business value.

68%
say that increasing digitization of the contract management lifecycle is a medium-high priority.

Figure 3. Priority areas for automation and digitization to drive improvement in the contracting process



⁴ *Managing Contracts Under COVID-19: What Have We Learnt?* World Commerce & Contracting research study of 507 organizations.

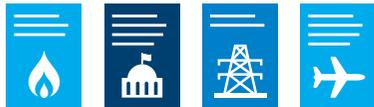
We need standards

Contract management software first came to market 25 years ago, and some analysts have over-estimated the extent and speed of adoption.

In some industries, such as those in consumer goods, contracts are relatively standardized and automation was achieved quite rapidly. For industries where agreements are subject to greater levels of negotiation, technology struggled to deliver value. The absence of consistent taxonomy and the inconsistencies of contract structure were factors that contributed to low levels of adoption and use.



Consumer goods contracts are relatively standardized and automation was achieved quite rapidly.



In industries with contracts subject to more negotiation, technology struggled to deliver value.

In the words of one executive from the Oil and Gas industry:

“We invested in a contract management system and mandated loading of all contracts. That instruction worked well and we have a comprehensive contract repository. When COVID struck, we knew we needed to gather data fast, especially around some of the critical categories. But when we started to search, we found that contracts had been loaded in a random fashion – for example, our biggest category was Aircraft Services – simply because it was first on the list. And trying to look at specific clauses, such as payment terms, was similarly frustrated by the fact that the clause had been given different names – there simply was no discipline”.

Much of this inconsistency is avoidable and 65% of the improvement initiatives are tackling the issue, bringing discipline to the way that contracts are coded and metadata is extracted and entered into systems.

The demise of templates

With a push for standards, it may seem counter-intuitive to suggest that contract templates are under threat.

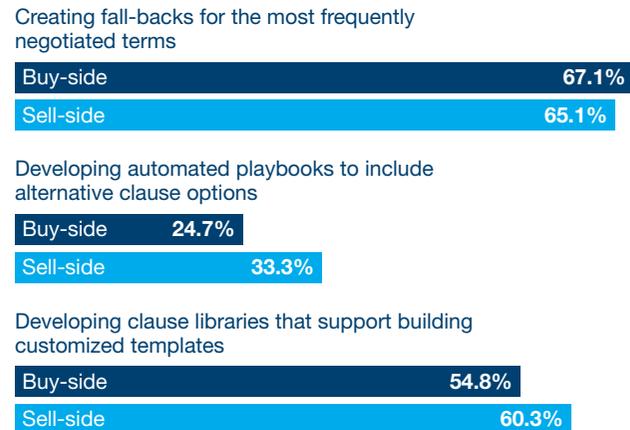
Templates were seen as the answer to complexity, introducing control, preventing deviations, speeding transactions. In many respects, they have been successful – but at the expense of flexibility, change and value.

Templates tend to be rigid. In a field such as contracting, they are often designed to cover a wide variety of transactions, resulting in terms that may be redundant. With fast-changing markets, they also tend to become outdated and require a dynamic feedback and update system. They frustrate negotiation – in a survey conducted at the end of 2019, 56% of contract negotiators complain that much of their time is spent in ‘non-negotiation’, battling over compliance with the template.⁵

New technologies – in particular artificial intelligence and machine learning – enable a fresh approach. Standards remain, but now within tools and systems that support fall-backs, automated playbooks and dynamic clause libraries.

As the chart below shows, a high proportion of those undertaking process reevaluation have set objectives that will reduce or eliminate the use of today’s templates. In the first instance, many will use these tools within the commercial and contract management teams, to speed contract production and negotiation while maintaining consistency and control. Over time, this should enable increased levels of ‘self-service’ within the business, or even directly by the customer or supplier.⁶

Figure 4. New technologies enabling fresh approaches



⁵ How tech has disrupted negotiation, and what to do about it', World Commerce & Contracting report, March 2020.

⁶ This concept of remote, automated negotiation is well-established in many e-commerce sites, in the form of 'term optioneering'. Now, examples are emerging in the business-to-business sector, for example where suppliers can choose from a menu of term alternatives which may in turn impact the bid scoring process.

The impact on headcount

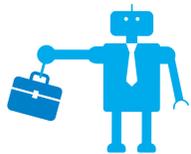
“Will machines take my job?” This is an inevitable question and it applies to commercial staff, whether they are in Legal, Procurement or Contract Management.

In all likelihood the future is one of human capital and technology working side by side. This means that most jobs will be different, but does not point to any decline in overall job numbers.

In those organizations where there is a traditional buy-side / sell-side split of resources, the proportion experiencing headcount increases (just over 26%) is almost mirrored by those facing decreases (just under 25%). In organizations where buy-side and sell-side resources are integrated (often within a shared service center), the picture is quite different. 45% of these teams are experiencing increased headcount versus just 8% reporting a reduction. So the message seems to be clear: **expand role and it leads to greater value.**

Along with that message is the realization that a different skill set is needed. In the words of one General Counsel, who leads an integrated commercial team:

“I need people with the curiosity to understand how markets and the business work; the courage to speak up and challenge; the collaborative skills to engage with others and solve problems”.



Q: Will machines take my job?

A: No, but they are likely to change it



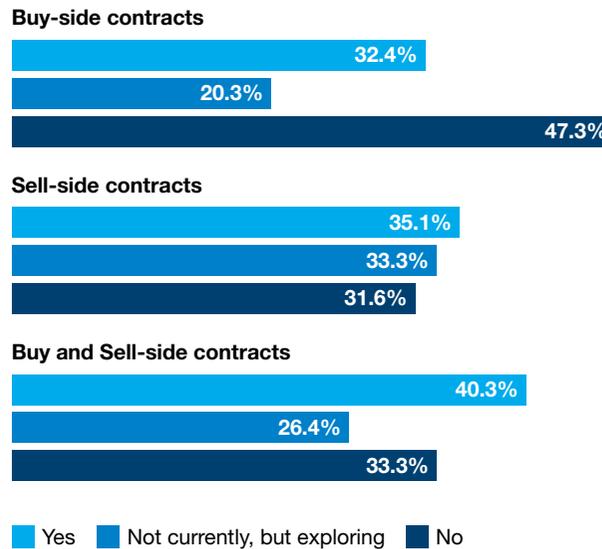
What is the value?

It is the issue of value that remains a problem for many. Lacking systems, with fragmented data, how exactly can those performing commercial and contract management roles demonstrate their contribution?

Measures such as negotiated savings are largely discredited; risk avoidance is also hard to prove. Those in post-award roles are often better positioned, both in terms of limiting erosion and in demonstrating growth or innovation. As the chart on this page shows, approximately one third of those responding to the survey indicate that they currently provide some measure of their financial value or impact to the business.

Once again, the groups with a wider and more integrated remit (covering both buy-side and sell-side) are ahead of the narrower and more specialist teams in their ability to identify business contribution – a key factor in the growth of investment and resourcing that they are experiencing.

Figure 5. Do you currently provide some measure of your financial value or impact to your business?





Conclusion

As you can see from this report, contract and commercial management is experiencing much more than a minor adjustment – and, if anything, the pace of change is accelerating. The pressures have been growing for years and 2020 proved to be a force multiplier for them. Most notably:

1

Technology improvements and adoption are on the uptick. Contract and commercial management has gone from a black box to a science.

2

A renewed focus on the people and the processes. Despite the advancements and adoption of technology, there is now a realization that it really is an enabler and not a panacea and that without a proper investment in the people, process and even the content, the best technology in the world will likely deliver only marginal improvement. But if you equip your legal and commercial teams with new insights from data, the opportunities are much greater.

3

Post-award contract management is finally getting its due focus, attention, and investment. Companies have heard about it in the past, but have started shifting their thinking to integrate the full contract lifecycle and not just streamline the creation and other pre-signature activities.

4

Data, or better yet, the use and connectivity of data is top of mind. When organizations think beyond the four corners of the contract, and link contractual data to data in finance, ERP, and CRM systems, they can monitor and realize contractual performance, ensuring obligations and milestones are met, and that discounts and other financial incentives are realized. If an organizations' customers are contractually obligated to purchase a certain volume of widgets, only by analyzing and aligning the contractual terms with the actual invoiced amounts – data that resides outside of the contract – only then can one identify and quantify instances of revenue leakage.

Equipped with these tools and data flows, commercial teams are able to shift their attention to value generation, ensuring market-competitive terms, increased ease of doing business and a focus on enabling innovation.

Transformation of the contracting function requires multi-disciplinary talent and approach – the approach must be one that embraces process standardization, automation, global delivery, alternative resource models, and continuous improvement – the talent includes knowledge engineers, technologists, process analysts, management consultants, data scientists, and yes of course, legally trained professionals. By streamlining the contracting process and removing bottlenecks, organizations can improve speed to execution. With intelligent contract triage driving delegation to alternative resources or self-help, you may free up in-house attorneys' time to work on more strategic matters, ensuring enabling the right resources to touch the right contracts at the right time.

By offering real-time management information and reporting that drives business intelligence, the end result can be enhanced relationships with internal clients as well as external vendors, partners and customers.

Contracting, rather than being viewed as a source of delay and confrontation, becomes a critical operational tool and the framework for collaboration.

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