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MONDAY, JUNE 26, 2006

Managing Subcontractors



If All Else Fails.....

But what if, despite your best efforts, your organization still experiences problems as the result of a subcontractor arrangement?



Even if you have failed to put the necessary legal language into your outsourcing contract, experts say, any data or privacy breach caused by a subcontractor is considered a liability for your outsourcer, who hired the subcontractor — not your company.



That's little comfort, however, to a company whose reputation is compromised.



"If something goes wrong, everybody has a problem," says Bierce. "Although the contract generally puts the scope of loss on the shoulders of the prime contractor, the goodwill of the customer is damaged, and the relationship it has with its customers is damaged. Not only that, but it is legally liable in the country of loss to pay any fines that are due, and to make notifications required under various laws."



Although reputation is an issue, companies do have one recourse — mediation, and in extreme cases, termination of both the subcontractor and the prime contractor relationship for noncompliance.



Mediation, of course, is the first line of defense. By entering into mediation, the provider and client may be able to resolve differences amicably and salvage the relationship. But if all else fails, termination for noncompliance may be the only solution.



"If you can't remediate the problem through additional controls with the subvendor or additional lines of communication, you have to look at how you can terminate the contract and take the work back over or give it to another vendor," says Westby. "The priority is making sure you don't further jeopardize your operation."



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Next STEPS

- 8 Don't attempt any service provider relationship without competent legal input
- 8 Make sure your contract clearly states what type of subcontracting is acceptable, and that you must approve all potential subcontractors in writing
- 8 Monitor and audit all service providers on a periodic basis, including site visits
- 8 Communicate often and clearly with your primary outsourcer
- 8 Require that any approval is conditioned upon receiving appropriate information and documentation relating to the scope, nature and relationship of the prime to sub
- 8 Check the reputation of subcontractors
- 8 IT or business processes that include intellectual property or have the potential for data privacy and security risks and any process governed by government regulations
- 8 Be wary of subcontractors operating in different countries from your company and your primary outsourcer.

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