

Contingent Workforce strategies™



A tech giant plays it safe but smart when utilizing contingents

It has been a slog for business computer maker Sun Microsystems Inc. The Santa Clara, Calif.-based company has struggled to recover from the dot-com bust, which sent its stock price plummeting downward. But Sun has been restructuring its attitude and people to get back on track.

After the dot-com bust, about 4,000 jobs were cut through restructuring and attrition. The company's new effort also involved creating innovative product lines, alliances with traditional rivals, Microsoft and IBM, and a partnership with

Google. "The single best grade for my management team's performance is our share price. It's gone up," says Jonathan Schwartz, Sun president and CEO.

But Sun still has ways to go. One of the challenges of any technology company operating in the heart of Silicon Valley is attracting the best and brightest, and then retaining them. It's not easy wooing young IT professionals given their choices. The war for talent rages and that's where Sun's contingent workforce plays an important role. To stay competitive, the network computing infrastructure company needs to have quick access to temporary workers with specialized skills.

"Our strategy is to utilize contingent workers based on their specialties. It's much more cost-effective to have a contingent workforce ready and able to support us in specific projects that require skills we don't have on our full-time workforce," says Robert Cooney, senior global strategic spend manager, global contingent workforce program.

SUPPLIER COMPLIANCE

Specialty notwithstanding, Sun's contingent worker strategy is focused around compliance. It's great to have a wide range of skilled workers to draw on. But what is critical for the company when using those workers is mitigating risk. "As a Fortune 500 company, we are very susceptible to co-employment laws and taxes," Cooney says. The IRS is particularly interested in companies like Sun that use independent contractors and smaller suppliers that may not necessarily be financially stable and therefore not paying their taxes.

Further, the IRS looks for companies that misclassify their workers as independent contractors or 1099 workers. Regulators believe many contractors are lax in paying their taxes, so they are scrutinizing businesses to determine whether the workers should have been classified as employees and, therefore, subject to tax withholding during the course of their work. The concept: it is easier to collect money from a company than it is from millions of individuals. Sun does not want to be found liable for worker benefits and payroll taxes if the IRS rules that its contingent workers are in effect employees.

In response, Sun examines its relationships with suppliers — big and small — minutely. "We want to be sure that our engagement with the suppliers is an appropriate one," Cooney says. What that translates to is that Sun approaches engaging the supplier or independent contractor as a business providing a deliverable.

These staffing firms need to show that they are not dependent on the network computing company for employment or major profits, that they have other customers besides Sun. If the majority of a vendor's income comes from one client like Sun, the IRS or state departments might decide that Sun holds an unacceptable level of financial control over the firm, threatening its independent status.

So to be safe, Sun qualifies its suppliers within a managed service provider (MSP) program. Sun sets the rate card for all of the major skill sets utilized within the company. Suppliers are then qualified through a two part process. The first is a request for information (RFI). This involves gathering data on the suppliers, how and where they do business and whether they can meet the criteria to supply staffing proposals to Sun.

The second is the request for proposal stage (RFP). The supplier has to demonstrate how it would support the Sun account in terms of pricing and quality of people, given the skill set. Then comes the dynamic bidding event phase, where the qualified suppliers bid online on individual requirements as they come up. Depending on the number of positions that need to be filled, there can be more than one winner or supplier chosen.

Sun's logic behind qualifying its 80 or so suppliers is clear. "The key is that contingent workforce is a service to our company. It's isn't what we consider human capital," Cooney says. Contingent workers are provided by staffing suppliers to the company. What Sun buys from the supplier are services that these temporary workers provide, not necessarily the people.

"If we were buying the people, then they would be employees of Sun," Cooney says. By qualifying the supplier who provides personnel, Sun makes sure that the contingents are recruited in accordance with the law.

PROCUREMENT IS BOSS

The time to market with getting the right contingents to aid the process is crucial for Sun. That involves suppliers and contracts, traditionally procurement's province. In Sun's case, about 10 years ago the legal, procurement and HR departments met to discuss responsibility for the contingent workforce program. This task was handed over to procurement as it was agreed that pricing and managing suppliers are its expertise.

The company also views its MSP, PrO Unlimited (see sidebar, page 3), as the answer to managing its contingent workforce. Its reasoning: Supervise the MSP and it can secure the services of vendors to provide the appropriate contingent workers in a safe and consistent manner.

The legal department plays its part by dispensing advice on co-employment issues. But there is no formal process in place for working with the legal department. It's done on an ad hoc basis dictated by business needs. "It's very difficult to put a Sun-wide policy in place because we are a global company, affecting many different countries," Cooney says.

TEMPS AT SUN

But there are policies in place to alleviate perceived co-employment risks. Temps at Sun, the company's contingent worker program, has been in effect for the last four years. Contingents are categorized by different badges so they can be managed accordingly, depending on whether they are W-2 employees of a staffing firm or independent contractors.

Contingents are also tracked carefully by a headcount policy. At any point Sun knows who its temps are, where they are located and how much they are getting paid. They are all — temps and contractors — part of a database, separate from employees. Currently, Sun has around 1,750 temporary workers, five percent of its 35,000-strong workforce. Its annual expenditure on its contingent workers worldwide is to the tune of \$100 million, 65 percent of which is spent in the United States.

Sun's Temporary Staff

Contingent Categories	Percent
Software	50%
Hardware	17%
Light Industrial	13%
Other*	20%
Total	100%

* Temporary workers in areas of administrative, finance, R&D, and marketing

Contractor or Employee?

How the IRS decides

Whose job is it to prove that a person is an independent contractor and not an employee?

The IRS says it is the responsibility of the company that hires them to document all information. Often two to three years after an individual is contracted for a project, the IRS examines the relationship between the worker and the business.

The heart of the Sun Microsystems contingent workforce program is compliance. As a result, Sun's suppliers/workers have to meet all the necessary criteria outlined by the IRS.

According to the IRS, facts that provide evidence about misclassification fall into three categories: behavioral, financial and relationship controls.

Behavioral control refers to what control the company has over a contractor it hires. If a company directs or controls how the work is done through instructions, training, or other means, the worker is an employee.

With contractors the rules of engagement are different. Employees are trained to perform services in a particular manner. Contractors use their own ways. The independent contractor needs to behave like a vendor, should have business insurance, marketing materials, etcetera.

Financial control, meanwhile, covers facts that show whether the business has a right to direct or control the financial and business aspects of the worker's job.

These include:

- A contractor is more likely to have un-reimbursed business expenses.
- The scope of the worker's investment in the facilities and equipment used.
- The degree to which the worker makes his or her services available to the relevant market.
- Contractors normally seek out different business opportunities for themselves, employees don't.
- The extent to which the worker can realize a profit or incur a loss.
- How the business pays the worker. Employees are paid regular wages, contractors a flat fee.

Relationship control deals with details illustrating how the parties view their relationship. It covers:

- Written contracts describing the relationship the parties intended to create.
- The extent to which the worker is available to perform services for other similar businesses.
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.
- The permanency of the relationship.
- The extent to which services performed by the worker are a key aspect of the regular business of the company.

In addition, Sun has a length-of-stay policy for its contingents in the United States. Many businesses believe temporary workers should not exceed a certain time frame on site when utilized by a client or else they could be construed as employees. But expert legal counsel advise that assignment limits especially as far as independent contractors are concerned are only effective as long as the other features comprising the three-factor test (see page 4) are in place. Sun sets the bar up front by establishing rigid qualifications for its suppliers to meet.

THE PROCESS

A hiring manager would log into the Temps at Sun Web site, answer questions about the position, such as type of skill set and length of the project in question, and then he can add a worker to the temp database. In fact, by clicking on the links to the PrO Unlimited vendor management system (VMS), the hiring manager can engage a contingent worker.

Managers can also utilize the VMS to send out their project or statement of work so qualified suppliers can bid. Supervisors can then select their workers based on best price and quality. Temps at Sun also offers consultant consolidated services, which involves contracts between the MSP and other suppliers for contingent workers. In these instances, the network computing giant is taken out of the contracting

equation.

Regardless of how these contingents are acquired, they have to go through a stringent background check — Sun Screen — which involves a criminal background investigation, Homeland Security verification and drug testing. This assessment is outsourced by Sun to a third-party provider. If the project requires the contingent have access to Sun hardware and software systems, the candidates pass an IT security check.

In addition to the testing, these temporary workers have to come on board ready to hit the ground running. Sun expects to be able to draw on these workers' expertise as and when needed. There is not much time for training.

But it is the hiring manager's responsibility to make sure that the contingent workers' skills are up to date. The hiring manager can communicate any concerns about the temporary worker to the MSP, which also fields any questions on general contingent workforce issues.

Hiring managers are surveyed on suppliers' performances. Despite the stringent requirements that the suppliers have to meet to work with Sun, there are no formal evaluations in place. Managers provide feedback on candidate pricing and performance. Sun, however evaluates PrO Unlimited via management surveys, user reviews and service-level agreements. Sun realized a 10 percent cost savings when it began fully uti-

lizing the VMS in the Temps at Sun program in 2005.

Money aside, hiring managers saw the benefits of a paperless automated process. They find the VMS quick and informative. The VMS can also provide custom reports, a favorite feature with hiring managers. Supervisors and executives saw the dual benefits of cost savings and compliance. They were sold.

Not surprising, the biggest challenge was getting the suppliers to conform and adhere to the Temps at Sun program. The suppliers were used to doing business with Sun managers on an ad hoc basis. They liked the informal arrangements. But Cooney sold the suppliers on the benefits of Temps at Sun. He drew their attention to the fact that the program gave suppli-

ers visibility. Having all job requirements on the system has helped open market share for them.

Buoyed by the success of the contingent workforce program in the United States, Sun plans to implement it in its workplace worldwide over the next two years. First on the list is the United Kingdom, then the rest of Europe, the Pacific and Latin America Sun offices. The company hopes it will help Sun recruit talent in a 21st century global economy while keeping it compliant with labor laws and regulations regardless of the location. 🌐

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