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- **Implied Warranties in the Uniform Commercial Code** - by Robert Dunn, MBA, CPM
- **Tips for Retaining Top Performing Supply Management Staff** - by Mark Trowbridge, CPM

Over 6,000 Supply Chain Leaders Now Receive This Bi-Monthly Journal. Please feel free to forward it to a colleague, or have them join the distribution below.

Strategic Procurement Solutions, LLC is a niche professional services firm dedicated only to the advance practice of Supply Management.

Key Services include...

- **Staff Augmentation (Temporary, Project, Contingency Search)**
- **Online Skills Assessment Diagnostics**
- **Professional Develop Services (Training, Coaching, Org Development)**
- **Expertise in Strategic Sourcing of High ROI Spend Categories**
- **P2P Efficiency Enhancements, and**
- **Outsourcing Project Expertise (LCC & BPO).**

Strategic Procurement Solutions' clients range from Fortune 100 to Russell 2000 in size; and include numerous Global enterprises as well. We also work with leading public sector supply chain groups, and are one of a small group of consultancies pre-qualified by NASPO and WSCA to perform Strategic Sourcing consulting for member agencies.

Implied Warranties in the Uniform Commercial Code...by Robert Dunn, MBA, CPM, Principal

Within theUnited States, the purchase/sale of products is typically governed by each state government's version of the Uniform Commercial Code (UCC). Under the UCC, a seller's sale of a product inherently is made with two "implied" warranties:

1. **The Warranty of Merchantibility**

2. **The Warranty of Fitness for a Particular Purpose**

Whether or not offered by the seller, these two warranties are provided under the UCC's Article 2….unless specifically disclaimed in obvious writing (for example, ALL CAPITALS). If these implied warranties are not disclaimed in the seller's contract or sales proposal in obvious writing, then they are automatically part of the deal…to the benefit of the buyer.

<u>Let's discuss each of these types of implied warranties…</u>

Warranty of Merchantibility – This implied warranty says that the product will conform to other like products of similar intent or description, and will perform at the average level of other similar products. An example would be a company which generally advertises its product as a "forklift". If a buyer purchases this product, and finds it cannot lift pallets of a comparable weight to other similar forklifts available in the marketplace, they may have a valid claim in a civil lawsuit against the supplier. The purpose of this warranty is to protect buyers against damage resulting from products which don't meet the marketplace standard.

Warranty of Fitness for a Particular Purpose – This implied warranty protects buyers when the seller determines what the buyer has asked for in good faith. An example might be a fleet buyer who contacts an automotive dealer and says "Our firm needs a truck capable of towing a 10,000 lb trailer….you tell me which truck will work best for us". If the salesperson sells this fleet buyer a compact truck with a four-cylinder engine, which can't tow the trailer, it is the automotive dealer's fault. This warranty would protect the buyer, who should have been sold a ¾ or 1 Ton truck.

To receive the protection these two implied warranties provide, it is imperative that the buyer carefully review the seller's contract for disclaimer language. As noted above, the UCC requires any such disclaimers to be in noticeable form. ALL CAPITALS is the most common method.

If these implied warranties are disclaimed, it is important to carefully review the seller's express warranty language to determine whether it is fair and reasonable.

Note: More detail about the Uniform Commercial Code, Common Law (which covers Real Estate and Service Transactions), and the Convention on the International Sale of Goods (CISG) is available in Strategic Procurement Solutions' two day onsite Strategic Contracting™ workshop. Readers should consult with their own legal counsel with regards to the proper application of UCC principles.

For information about detailed contracts training, visit **www.StrategicProcurementSolutions.com**

Tips for Retaining Top Performing Supply Management Staff... by Mark Trowbridge, C.P.M., Principal

The low unemployment rates (just 4.5% in December 2006, US Department of Labor) and shortages of specialty personnel in today's workforce have created a "seller's marketplace" that favors talented professionals. Many firms and public sector agencies are now actively scrambling to recruit top talent away from their current jobs & employers.

So how can Supply Management CPOs, Directors and Managers retain their own top talent? *This article provides four tips which may help…*

Tip #1 - Compensate Competitively: One of the primary reasons personnel leave an existing job is for better compensation. In Strategic Procurement Solution's role of providing skilled talent (Project & Regular Hire) to leading companies and governmental agencies, our management team sees remarkable variations of compensation for similar positions. In fact, in two search processes we're managing for two Fortune 500 client companies, there is more than a 100% variance between their compensation ranges…for nearly identical positions.

So what is “competitive” for each position? Start by working with your Human Resources organization to make sure HR fully-understands both the position description and job requirements. Make sure the position title matches what the responsibilities really are, so that salary research will confirm competitive compensation ranges.

For example, if the responsibilities involve complex strategic sourcing (RFP & contract drafting, negotiations, category management, etc) but your organization’s position title is “Buyer”… salary research is going to result in an abnormally low compensation package for the job. Titles like “Commodity Manager” or “Sourcing Specialist” may more accurately describe these roles and benchmark competitive compensation in today’s marketplace.

Resource – The “Research Links” site page at **www.StrategicProcurementSolutions.com** contains website links to more than 50 supply management information sources, and wage & compensation source sites are available for the US and Europe marketplaces.

Tip #2 – Measure “Up” or “Out”: A stagnant organization makes advancement difficult or impossible for talented staff members. Eventually, they will turn to other employment options to find opportunity. As a director in a large supply management organization, I learned that my department flourished when opportunities for advancement existed…and superior performance was rewarded.

As a general rule of thumb (while keeping your own company/agency guidelines in mind), consider the following when doing employee performance evaluations:

10% of Employees are typically those who “Far Exceed” their objectives. These employees should be rewarded with promotion opportunities, challenging projects, mentoring, and superior compensation increases.

20% of employees are usually those who "Exceed" their objectives. These employees should be rewarded with challenging projects, mentoring, and good compensation increases.

50% of employees are those who "Meet" their objectives. These employees should be rewarded with important work and "cost of living" increases. They should be coached on how to "Exceed" their objectives, and given opportunities to succeed.

15% of employees are those who "Met Some, But Not All" of their objectives. If you don't have approximately this number of employees in this classification, it probably means that the organization's objectives aren't challenging enough. These employees should be coached on improvement, but if they do not rise to the challenge of "Meeting" their important objectives within 3 to 6 months, move them "Out" of the organization.

5% of employees may be those who "Did Not Meet" their objectives. This group should be put onto probation and given a chance to improve over a measured period of time. But if they cannot or will not improve, they should also be moved "Out" of the organization.

Adhering to this rule of thumb will result in (A) Superior employees being rewarded and promoted, (B) Fresh blood being brought into the organization to replace dead wood; and (C) High performing junior level employees remaining loyal rather than looking for opportunity elsewhere.

Editorial Comment: There is little worse as a new manager than finding your predecessor gave good reviews to non-performing employees. And d*on't get me started telling about a few situations I've inherited either...* Years of good reviews make it very difficult to properly coach these staff members, or to bring non-performance to a decision point. Don't do the same thing to the next person in your position. Be consistent in measuring and managing employee performance. Your organization will benefit greatly as a result.

<u>Tip #3 – Train & Equip Staff Members</u>**:** Good employees want to develop their skills and learn new techniques. Failure to invest into their growth will result in feelings of stagnation. While advanced training does make staff members more marketable, it also tells staff professionals they are important to the organization…and worth "investing" in. If your organization is small, send individual employees to offsite training in key competencies (Foundational Procurement Concepts, Laws of Purchasing, Contracts Management, Commodity Specifics, etc)….or have your leadership team impart their knowledge of various supply chain subjects. Conferences put on by group trade associations like ISM, NCMA, NIGP, etc can provide very good general training.

If you have more than 6 - 10 procurement employees, however, consider bringing specialized training onsite to provide more comprehensive education (for example, Strategic Procurement Solutions' clients have found our firm can usually train their employees more cost-effectively than sending this number of employees to offsite training).

<u>Tip #4 - Recognize the "Cost" of Replacing Good Employees:</u> Any time you replace a top performing employee, it results in lost productivity and great expense. Consider the following…

A *<u>Gartner Group</u>* survey found that "A new employee is at 50% productivity for their first 3 to 6 months on the job."

<u>Career Lab</u> says "Most companies haven't calculated the true costs of hiring new employees or the impact of lost productivity for getting employees up to speed …easily 150 percent of their annual salary for mid-level managers."

<u>About: Management</u> quotes a study evaluating the effects of the US Family Medical Leave Act, which also found that "turnover costs for a manager average 150% of salary, including tangible costs of hiring new workers and relocation, and intangible costs such as the new worker's inefficiency and lost productivity while

the job is vacant." This expense includes:

- Recruiting/advertisement expenses
- Time to review resumes
- Time to interview candidates
- Interview expenses for candidates
- Possible travel expenses for new hire or recruiter
- Possible relocation expenses for new hire
- Additional bookkeeping; payroll, 401k, etc.
- Additional record keeping for government agencies
- Increased unemployment insurance costs
- Intellectual property lost
- Company history lost

Other reputable studies also indicate ranges of 30% to 150% of a worker's annual salary, to find a suitable replacement. *So what's the best business decision when a high-performing worker comes into your office and says, "I've been offered a 10% increase from another firm"?* Maybe they're bluffing, but it might be a good idea to dig out your calculator and figure the expense of replacing them before your respond.

Good leaders will take time to understand how their employees feel about the organization and their own career path. In coaching sessions, they should take time to ask employees what they like and what they'd like to have changed. The employees may not feel comfortable sharing too much information at first, but patience will help you to understand any concerns they might have.

If and when employees do leave the organization, be sure to conduct an "exit" interview. This is an ideal time to understand the "good" and "bad" of an employee's perceptions. They may also be willing to share more fully about the "bad" aspects of their employment…information which can be used to improve others' employment experience.

Strategic Procurement Solutions provides clients with specialized assistance in (A) Finding and retaining top quality staff members (temporary, project, and permanent); (B) Training & equipping employees; and (C) Matching employee skills to supply management organization challenges. Please contact us at email us for more information at **Info@StrategicProcurementSolutions.com**

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