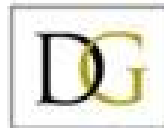


Structuring a Successful Outsourcing Contract

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ATTORNEYS AT LAW

OUR EXPERIENCE.
YOUR EDGE.

Introduction

- What is Outsourcing?
- What Companies are Outsourcing?
- Reasons to Outsource
- Types of Outsourcing
- Trends in Outsourcing Contracts
- The Outsourcing Process
- Pitfalls in Outsourcing and Keys to Success
- Contract Structure To Address the Pitfalls
- Specific Legal Issues
- Choosing A Law Firm
- Contact Information

What is Outsourcing?

- Transfer of a non-core function to a service provider.

What Companies Are Doing Outsourcing?

- Most All of Them (Domestic and International)
- Cuts Across All Industries
- Examples that Touch Our Lives
 - Airline Travel
 - ATM Machines
 - Banks/Credit Cards
 - Government/Military
 - Hotel Accommodations
 - Utilities
 - Pharmaceuticals

Reasons to Outsource

- Potential cost savings
- Improved performance (service levels)
- Redeploy capital/reduce headcount
- Strategic focus on core competencies
- Acquire desired people skills

Types of Outsourcing

Information Technology Outsourcing (ITO)

- Computer Infrastructure
- Network Connectivity
- Applications Development & Maintenance
- Cloud Sourcing

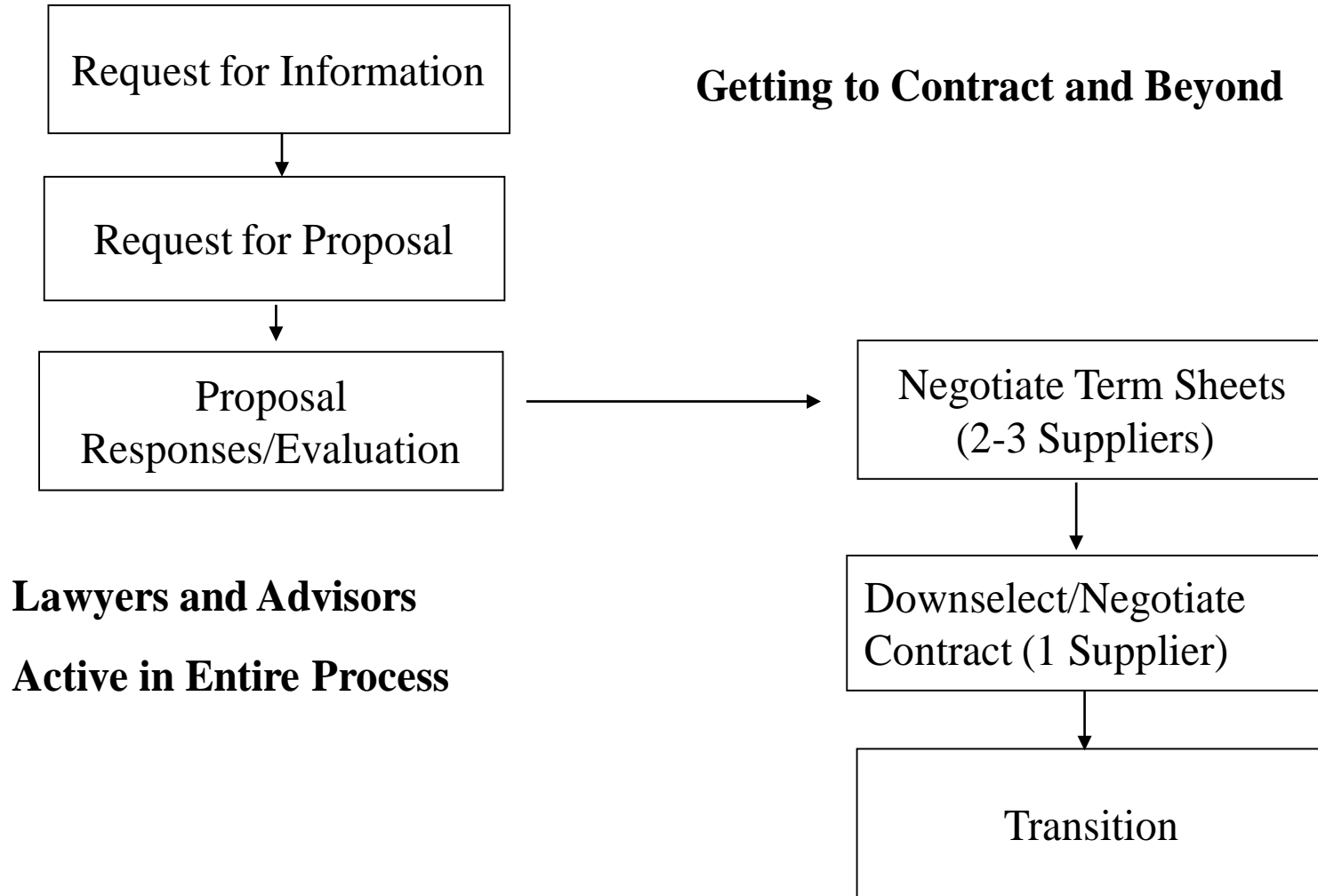
Business Process Outsourcing (BPO)

- Human Resources
- Call Center
- Finance & Accounting
- Claims Processing
- Meter Reading
- Energy Management
- Billing & Collections
- Print & Mail Operations
- Facilities Management
- Procurement

Trends in Outsourcing Contracts

- Selective (Single Process) Outsourcing Deals
- More Business Processing than IT Deals
- Terms of Deals Shorter
- Customer Shoulders More Risk
- Greater Variability in Offshore Sourcing
- More Restructurings and Incumbents Prevail
- Cloud Sourcing
- Automation/Robotics

The Outsourcing Process



Getting Started

- **Request for Information**
 - Getting feedback of interest from service providers
 - Customer gains knowledge
 - Best practices trend to be less prescriptive
- **Request for Proposal**
 - Critical that company does internal analysis first
 - Provides guidance to service providers (scope, SLA metrics, contract terms, etc.)
- **Evaluation of Responses**
 - Business/Technical Solution
 - Contract Terms (Allocation of Risk)
 - Price
 - SLA Metrics
 - Rapport with Customer

Term Sheet Methodology

- Develops your (not Supplier's) important requirements (technical, legal, financial and business for the transaction)
- Sent in "Cell Format" to suppliers with specific instructions to respond to each requirement [Agree/Not Agree & Counter Proposal]
- Facilitates
 - Comparing responses
 - Leverage suppliers
 - Keeping track of negotiations
 - Parallel negotiations
- Negotiations based on "terms of deal," not "language"
- Final terms in contract based on term sheet negotiations

Pitfalls in Outsourcing

(Real World Experiences)

- Entering a partnership type agreement without competition
- Focusing too much (exclusively) on potential cost savings
- Loss of strategic human resources capability
- Less flexibility to react to change without additional cost
- Understanding the time/resources required to “get to contract” and manage relationship
- Communication problems with offshore providers
- Failure to have exit strategy
- Vaguely defined scope of work
- Lack of measurable performance standards
- Complex and incomplete pricing algorithm
- Overlooking HIPAA and other regulatory compliance

Keys to Success

(Best Practices to Address the Pitfalls)

- Don't select service provider without some competition
- Focus on value added by service provider, not just price
- Candid communications with employees
- Stay tuned to political sensitivities and compliance requirements
- Set realistic goals and schedule with senior management support
- Plan to manage the relationship (do no "outsource" it)
- Be mindful of culture/dialect for offshore transactions

Keys to Success

(Best Practices to Address the Pitfalls Cont'd)

- Establish clear scope and measurable performance standards
- Keep pricing simple and predictable
- Implement effective controls over outsourced processes
- Follow a structured process with right (small) negotiating team
- Establish procedure for new services
- Incorporate various termination scenarios (cause, convenience, change of control, bankruptcy)
- Strong governance model, regular meetings and reports

Contract Structure

(One That's Clear and User Friendly)

- **Main Agreement (Terms and Conditions)**

- Objectives, Term, Governance, IP, Audits, Risk Allocation, Safeguarding Data/Confidentiality, Dispute Resolution, Liability, Termination Rights, etc.

Schedules

- Scope (“The Box”)
- Service Levels (“Performance Standards”)
- Price (“Charges”)
- Transfer of Employees/Benefits
- Key Personnel
- Termination/Expiration Assistance
- Transition Plan
- Approved Subcontractors
- Etc.

Contract Structure

(One That's Clear and User Friendly Cont'd)

Exhibits

- Assets Purchased/Transferred
- Company Travel Policy
- Customer Satisfaction Survey
- Diagrams
- Form of Invoice
- Hardware and Software
- SLA Metrics
- Etc.

Specific Legal Issues

- Terms and Conditions
- Services
- Performance
- Pricing
- Dispute Resolution
- Compliance with Laws

Terms and Conditions

- Issue: Expectations of Parties Differ
- Potential Solutions:
 - Clarifications of Key Terms in Contract
 - IP Rights/Transfer of IP
 - Data Protection/Data Privacy
 - Audit Requirements
 - Liability Exposure
 - Risk Allocation (Insurance, Indemnities, Taxes)
 - Termination Rights/Termination Assistance

Services

- Issue: What's Included
- Potential Solutions
 - Detailed SOW (Functions not Tasks)
 - Minimize Turnover Requirements
 - Rights to Approve/Dismiss Key Employees/Subcontractors
 - Implied Services/Evolution of Services
 - Reduction of Services
 - New Services

Performance

- Issue: How to Stay Current
- Potential Solutions:
 - Improved SLAs Across the Board
 - Right to Add/Modify SLAs
 - Benchmarking/Audit Rights
 - Customer Satisfaction Survey

Pricing

- Issue: Complicated and Open-Ended
- Potential Solutions:
 - Simple Algorithm
 - Define What's Included (Predictable)
 - Cost of Living Increases
 - T&M Rates
 - Termination Fees
 - Incidental and Pass-Through Expenses

Dispute Resolution

- Issue: How to Address Disagreements
- Potential Solutions:
 - Informal Mediation
 - Arbitration or Litigation
 - Venue & Governing Law
 - Local Rules

Compliance with Laws

- Issue: Applicability of Certain Laws
- Potential Solutions
 - Understanding Applicable Laws
 - Export Restrictions/OFAC List
 - Foreign Corrupt Practices Act
 - Allocation of Risk
 - Contract Requirements
 - Change in Laws

Choosing a Law Firm

- Lawyers Skilled and Active in the Entire Process
 - RFP Preparation/Evaluation
 - Term Sheet Negotiations
 - Team Approach with Client
- Lean Staffing/Road Warriors
- Knowledge of the Service Providers
- Collaborative Relationship with Consultants

Choosing a Law Firm Cont'd

- Broad Experience in All Types of Technology Transactions
 - Software Licensing
 - System Integration
 - Telecom Contracting
 - Technology Transfers
 - Knowledgeable about Developments and Trends

Contact



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Milton is actively involved in both ITO and BPO outsourcings and has in-depth experience leading transactions in multiple industries such as the banking/ financial, energy, computer, health care and hospital, insurance, manufacturing, retail and transportation industries.