The 2004 Outsourcing World Summit
Conference & Exposition
February 23–25, 2004 • Disney's Yacht & Beach Club Resorts • Lake Buena Vista, Florida

Changing the Fundamental Way in Which Mission-Critical Solutions Are Built

Wednesday, February 25, 2004 1:10 – 2:00 PM

Joe Cipolla
Vice President, MIS
Circuit City Stores

Jim Moran
Chief Operating Officer
Virtusa

Michael F. Corbett & Associates, Ltd.
Lexington Park · North Building Suite B · 1133 Route 55 · LaGrangeville, NY 12540
tel. 845.452.0600 · fax. 845.452.6988 · www.CorbettAssociates.com

Joe Cipolla
Vice President, MIS
Circuit City Stores

Joe Cipolla is the Vice President of corporate applications in management information systems for Circuit City Stores, Inc. located in Richmond, Virginia. He was appointed to the post in 1999.

Cipolla had been Assistant Vice President of corporate applications since joining Circuit City Stores, Inc. in 1997. Before joining Circuit City Stores, Inc., he was the Vice President and Director of information services for Time Life Customer Service, Inc., a wholly owned subsidiary of Time Life Inc., located in Richmond, Virginia.

He was born September 11, 1952 in Chicago. He graduated from the College of the Holy Cross in 1974 and received a Master's in Computer Science in 1983 from DePaul University. Cipolla resides in Richmond, Va., with his wife, the former Sally A. Johnston, their two sons, Joe and Matt, and daughter, Mairin.

Association and is former Chairman of the Committee on Foreign and Comparative Law, Association of the Bar of the City of New York, which has over 20,000 members.

Jim Moran
Chief Operating Officer
Virtusa

Jim Moran is responsible for overseeing Virtusa's day to day operations which include the worldwide sales, marketing and delivery organizations. Prior to Virtusa, Jim Co-Founded edocs and has been EVP of Sales & Marketing at edocs since the company's inception. edocs was recently ranked the fastest growing private software company in the United States as ranked by Deloitte & Touche's Fast 500. Jim has been a featured speaker at numerous events hosted by Harvard Business School, H&Q Planet Wall Street, Internet World, Gartner, Jupiter, and America Banker and he has had several articles published in numerous industry publications regarding electronic billing & payment, electronic banking, and customer self-service.

Prior to co-founding edocs, Jim served as a Senior Vice President of Sales & GM in CheckFree's Electronic Commerce Division. His successful Sales and distribution strategy helped position CheckFree for a successful IPO, several acquisitions and revenue growth from $25M to $250M in four years. Prior to CheckFree, Jim held senior sales positions with Infinium Software, Storage Technology and EMC Corporation. He has also served as an outside Director of Unizan Financial Corp. (Nasdq:Uniz) and is currently serving as a Strategic Advisor & outside Director to edocs and is a member of the Board of Directors of Virtusa. He is a graduate of Northeastern University with a BA in Communications 1987.

Changing The Way Enterprise Software Is Built

Lessons In IT Outsourcing From Circuit City

Outsourcing World Summit
February 2004

Joe Cipolla, VP of MIS, Circuit City
Jim Moran, COO, Virtusa

Agenda

Welcome & Introduction to Virtusa
Circuit City Overview
Circuit City's IT Landscape, Vision, & Initiatives
Business Challenge
Virtusa Approach
Project ROI
Lessons Learned
Q&A

Who Are We: A Financially Strong, Rapidly Growing Global IT Outsourcing Company

Global provider of software development and related IT services

vir.tu.s
: *noun, Latin*
: inherent capacity, quality or power
: worthy of merit and excellence

Focus

Deliver measurable delta in
Productivity
Profitability
Shareholder value to our clients

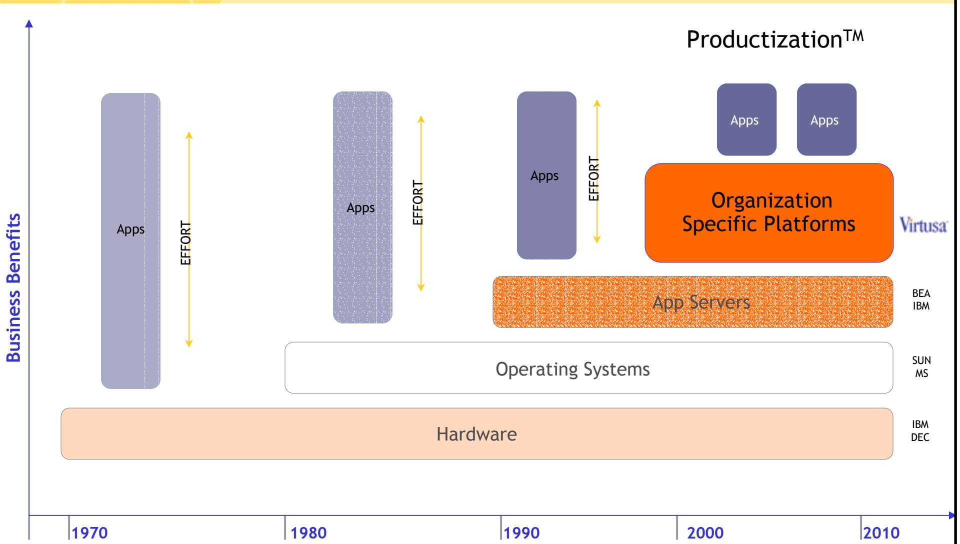
Locations

Headquartered in MA
Locations throughout US, Europe, Asia, Australia
Technology Centers in US, India, Sri Lanka

Growth

1800 world-class professionals
7 Years of Sequential Growth
90% growth in LTM

What We Do: Productization™



Why Are We Relevant: World's Best Known Companies Rely On Us

Software Products

edocs, VIGNETTE, Ascential Software, EMC², ANTENNA SOFTWARE, PEGASYSTEMS, ARASYS TECHNOLOGIES, imany, Initiate, openpages, Emptoris, empirix, Lotus, ProfitLogic, symantec.

Retail

TJX THE TJX COMPANIES, INC., Circuit City, Shaw's Supermarkets, JCPenney, STAPLES, FTD, ANNTAYLOR

Financial Services

BANK ONE, PNC, FannieMae, Metavante, CREDIT SUISSE FIRST BOSTON, PACIFIC EXCHANGE

Telecommunications

CONVERGYS, Lightbridge, Qwest, Sprint.

Manufacturing/Logistics

GE Power Systems, SIEMENS, XEROX, CSX World Terminals

Circuit City Overview

- Second largest electronics retailer
- 600 Circuit City Superstores across the US
- Fortune 200 company, with approximately $10B in revenues
- Approximately 40,000 employees
- Top-rated shopping experience
- Brand-name consumer electronics

Circuit City IT Landscape

Heterogeneous environment typical of large retailers

A mix of several systems and platforms

PeopleSoft Financials

Manugistics for some Supply Chain areas

Circuit City IT Key Initiatives

Increase Productivity and Profitability
- Increase efficiency
- Reduce operational cost
- Consolidate redundant, overlapping systems

Increase enterprise agility, flexibility, and leverage

Core IT Objectives

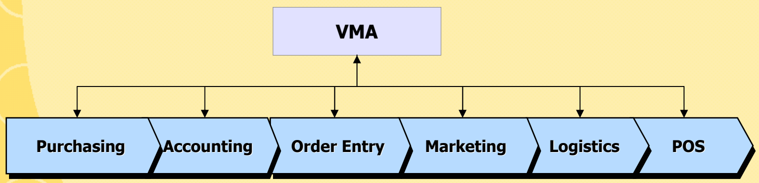
Enable systems to enhance corporate compliance

Improve customer service
- New POP and POS system
- New service processes

One Key 2003 Initiative: Improve Vendor Management

Vendor Management & Accounting (VMA) key to Circuit City's supply chain and merchandising effectiveness

- Approximately $10 billion of order flow per year
- Scores of buyers across several categories
- Cross-Functional collaboration required



Business Challenge: 2003 Situation

Merchandising
- Deals not standardized
- Insufficient documentation
- Missed funding
- Errors
- Lack of X-functional clarity

Accounting
- Inconsistent terms
- Lack of documentation
- Setup errors

Risk Management
- Compliance risk
- Lack of documentation

Reverse Logistics
- Unclear return policies
- Deficient communication
- Buyer intent mismatched with other functional areas

- Increased costs due to deal errors, missed funding
- Increased risks in accounting and compliance.
- No historic data on vendor relationship and performance.
- Often cross functional groups did not understand the buyer's intent

Vendor Management Project: Business and IT Objectives

Business Objectives

- Standardize, streamline, and integrate the cross-functional processes
- Enforce Standard Operating Procedures and rules across multiple functions
- Achieve over a million dollars in savings as projected from Six Sigma and Accounting

IT Objectives

- Get user buy-in from every function impacted by the system change
- Ensure existing or new assets can be leveraged in the future
- Flexible and change-ready app to respond to future policy changes
- Interoperable and scalable architecture

Build Versus Buy Decision

Build versus Buy

- No packaged software could meet the specific needs
- Customizing established packages cost prohibitive
- Need for integration with other legacy or new systems

Internal Development versus Outsource

- Skill-set bottlenecks: lack of resources with the required expertise to develop a Next-Gen enterprise solution
- Need for vendors who could build collaboratively and with an integrated team approach

Why Virtusa?

We evaluated

- Traditional Offshore leaders, local consulting firms, Individual consultants, US strategy firms

Circuit City chose Virtusa because of their

- Exacting **rigor and quality** in software engineering
- **Productization** methodology
  - Build once, reuse forever
  - Leverage existing and new assets enterprise-wide
- Deep domain expertise in retail and Deal Management
- **US-based** executive, technology, and domain leadership
- Highly **collaborative** model that worked *with* us and not *on* us
- **Risk mitigation** through Incremental and iterative approach

Virtusa Approach: Collaboration & Process Rigor

Virtusa brought their process framework and spent time understanding our needs

- An integrated team of 9 from Circuit City and 12 from Virtusa
- Interviews with 20 groups and over 100 Circuit City employees
- 3-day workshops with combined teams to define and refine scope

Software Development Process Rigor

- Peer and third party code reviews, architecture reviews, cutting edge QA
- Context Diagrams, Technical Architecture Diagrams, Screen Flow, Prototypes
- Scope Matrix, Work Break Downs, Resource Plans, Project Plans, Milestones

Accelerated Time-To-Benefit

- Leveraged deep retail domain expertise
- Reused existing assets
- Built new assets with reuse in mind
- Executed on a global model to fuel further acceleration at a lower cost

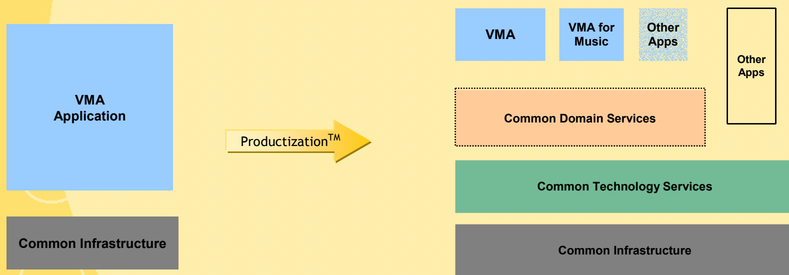
Circuit City's Vision: New VMA Platform

Silo Approach

Monolithic and inflexible
Overlapping functionality
High cost of ownership
Low Innovation Velocity

Productization™

Modular, adaptive, and agile
Rationalized redundancies
Economies of Scale
Time & Cost efficiencies



Virtusa Partnership Benefits So Far

Phase I of VMA went live on December 26th, 2003

Short Term Benefits

- About a million on going per year savings
- Standardization and enforcement of process
- Reduced response time and compliance risks
- Money recovered from bill-backs and charge-backs

Virtusa Partnership Benefits So Far

Long Term Benefits

- Economies of scale, Leverage, and Speed
  - Almost 70% of assets are reusable in a similar system such as VMA for Music
  - Utilized third-party, COTS, and open-source assets to accelerate development
- Flexible and adaptable architecture
  - Configurable SW rapidly respond to changes
  - Developed an open VMA core platform that can be leveraged across the enterprise
  - Produced long-term reusable assets for Circuit City

Lessons Learned

This was first major global development effort

Pick the right outsourcing vendor for the right job

- We spent some cycles to understand what specific capabilities we were looking for in our partner
- We did a lot of due diligence to understand each vendor's capabilities

Look for more than the commodity time/cost savings

- Lowest bidder can prove the most expensive in the long run
- We looked for thought leadership and long-term partnership potential
- Virtusa brought Productization methodology, domain and technology expertise

Lessons Learned

Take time to do your due diligence

- We did not hesitate to kick the tires
- Circuit City visited Virtusa's facilities, interviewed their delivery leadership

Establish executive level relationships

- We Spent a lot of time speaking with partner's executives
- We wanted to ensure their vision and commitment coincides with ours

Lessons Learned

New relationships take work

Communicate clearly, honestly and as often as possible

- We had done BPO before but not built highly visible, strategic solutions with an outside firm
- Problems are inevitable. We stumbled a few times as both teams tried to hit the ground running
- But both teams were committed to developing chemistry and trust through collaboration and regular communications
- We leveraged our partner's skills. We let Virtusa drive the Inception workshops to extract cross-functional requirements
- Transparency was critical. We stayed engaged to understand each other's culture and drivers

Q&A

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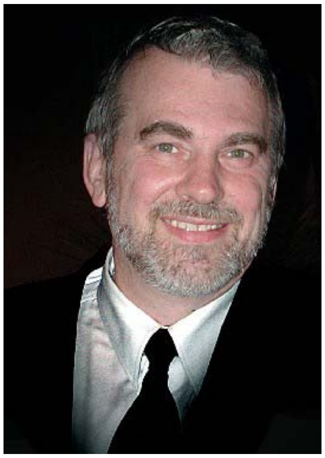
How the Business Relationship Impacts Contract Renewal

Wednesday, February 25, 2004 1:10 – 2:00 PM

Jean-Pierre Poliquin
Director Operations & Security
Canadian Broadcasting Corporation

Gilles Hébert
Senior Vice President
SNC-Lavalin ProFac



Jean-Pierre Poliquin
Director Operations & Security
Canadian Broadcasting Corporation

Mr. Poliquin has spent the last 25 years working for the Canadian Broadcasting Corporation. Out of these 25 years, 11 were spent delivering IT solutions and 14 managing CBC/Radio-Canada owned buildings and leased premises.

Mr. Poliquin has been at the forefront of the trend to adopt a global approach to outsourcing Building Operations Activities since CBC/Radio-Canada decided to go that way 8 years ago. He was part of the original team that prepared the RFI, then the RFP and finally negotiated the first outsourcing contract in CBC history.

Currently responsible for the management nation wide of the Building Operations Outsourcing Contract, his work is to create a dynamic and evolutive relation between CBC/Radio-Canada and SNC-Lavalin-ProFac to ensure that the corporation optimizes the business partnership while seeing that critical production processes associated with a national broadcaster's activities are conducted in a secure and reliable environment.

Gilles Hebert
Senior Vice President
SNC-Lavalin ProFac

A seasoned executive with over 29 years of National and International experience, Gilles Hebert has provided Operations and Management services for various Corporate Real Estate entities with mission critical environment in such industry sectors as Telecom, Postal Services, Broadcasting, Transportation, Distribution and general logistics support.

Mr. Hebert was key in the highly successful transition of Bell Canada and many of its subsidiaries to a realty services outsourced provider. At that time, he laid the cornerstones of solid customer processes and systems and simultaneously fostered a solid interactive relationship with the client stay-back team that has deepened to a solid partnership over the past four years.

Particularly focused on client and customer relationships, Gilles implemented an ISO centralized Customer support center and remote monitoring that ensures a highly reliable building systems.

Mr. Hebert is currently designing a business development approach that takes the outsourcing of operations and management services global and into various business sectors in both private and public entities.

Contract Renewal, an opportunity to evolve

« How Relationship Influences Contract Terms and Renewal Process »

Presented By: Jean-Pierre Poliquin
& Gilles Hébert

2004 Outsourcing World Summit
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Lake Buena Vista, Florida

CBC Radio-Canada

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Who We Are:

Canadian Broadcasting Corporation:

- Canadian National Broadcaster reaching 99,6% of Canadians
- 11,000 Employees
- Radio/TV (French & English), Shortwave, specialized networks
- 5.5 millions sq.ft. "30" Buildings owned and "46" Premises leased coast to coast
- Crown Corporation (Federal Government Agency)

Jean-Pierre Poliquin, Director Operations and Security

SNC-Lavalin ProFac:

- Leading operations and management services company
- 6,500 facilities, 80 million sq. ft., 250,000 infrastructure sites
- 1200 employees and 8000 suppliers and sub-contractors
- ISO 9001 (2000) certified

Gilles Hébert, Senior Vice-President Business Development

CBC Radio-Canada

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Session Agenda

- History and background
- Original Scope, terms and relationship
- Outsourcing Expectations
- Moving to a more collaborative approach
- Resulting scope, terms & transition process
- Lessons learned

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History

- **1995:** Decision to outsource Building management activities
- **1996:** Early pre selection through RFI
  RFP for 7 selected companies
- **1997:** Negotiation of fixed price contract with ProFac
  Signature of outsourcing agreement
- **2001:** Negotiations for renewal of a second term
- **2002:** Signature of second term agreement

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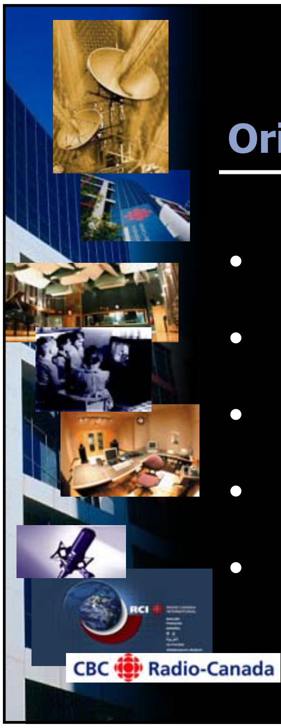

Original Scope

- Portfolio of 23 buildings & infrastructre sites, $15M of annual operating budget
- Building Operation & Maintenance (Elect., Mech., Mtce, Repair)
- Tenant Services (Security, Custodial Reproduction, Mail, Printing)
- Real Estate (Lease admin., Rent payment, Property tax payment)
- Churn Management

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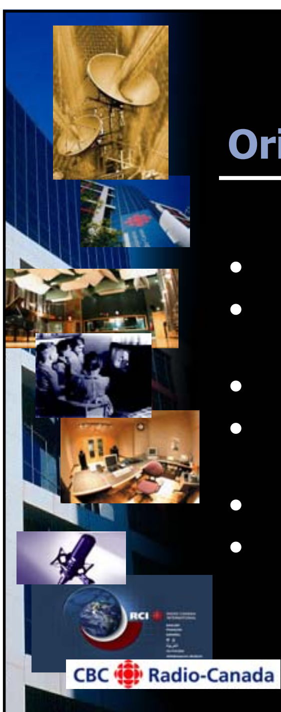

Original Terms

- Fixed price, 5years + 2X5 year options
- Focus on Network Reliability / Criticality of operations
- Remedies through Tier structure
- Service levels based on CBC's internal delivery prior to outsourcing
- "Typical" service provider contract
- Client and Provider initial interests were satisfied at signature ($, terms …)

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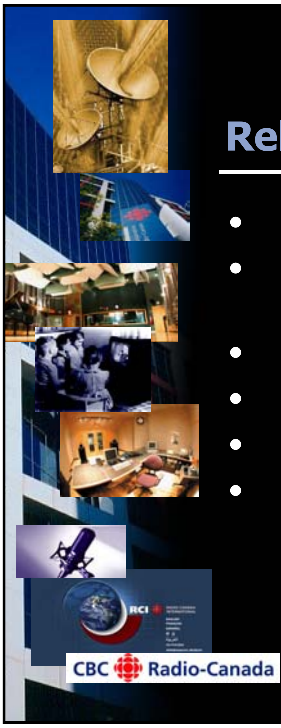

Relationship during initial term

- Client/provider normal relation
- Disincentive to provide innovative solutions
- Reverse incentive structure (Fixed Price)
- Difficult to adapt to changes
- Motivations not financially aligned
- “No surprise” relation

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Outsourcing Expectations after 3 years of operation

- Flexibility/Adaptability
- To align motivation
- To access specialized services
- To have an efficient Dashboard performance tool
- To allow CBC to react quickly to new technology and competitive pressure
- To adapt Real Estate services to continuous evolving broadcast processes

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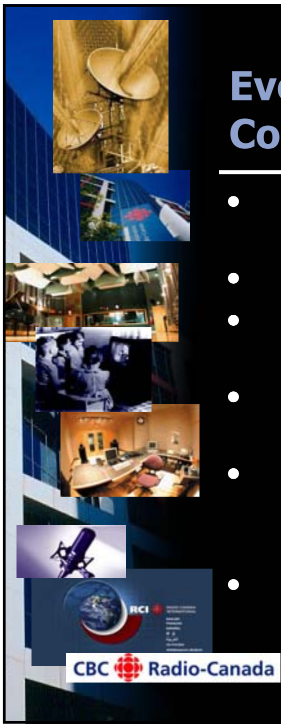

Evolution From a Provider to a Collaborative Relationship

- Develop a more adaptable contract framework
- Change of financial structure
- Create common interests, goals and objectives
- Take advantage of 4 years of trust building
- Enlarge scope of services: Call centre, project management, Energy, Tax management …
- Introduce new performance management criteria

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Change Success Factor

- Common acceptance of the need for a relation beyond the typical client/service provider
- Mutual respect
- Mutual trust
- Open minded approach
- Common will to succeed

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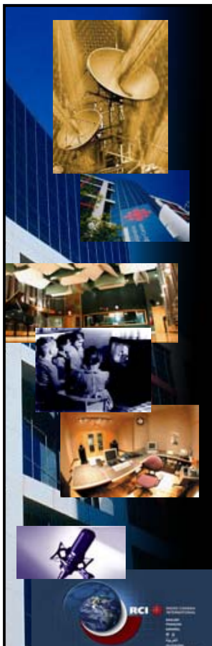

What did we do?

1. Negotiate renewal terms:

- Creation of a negotiation team based on common interests:
  - Identify areas of change
  - Negotiate openly and honestly
  - Open book
  - Define real service costs
  - Fair profit for good service

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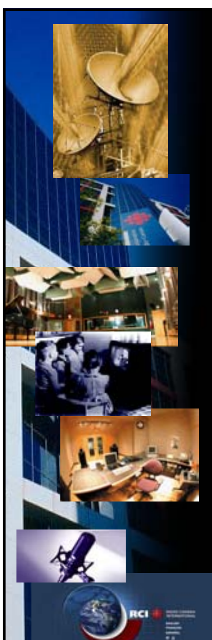

What Did We Do?

2. Implement the fundamental changes through the transition period:

- Creation of a joint steering committee
- Identification of transformation activities (Finance, It, Call Centre, BCR…)
- Creation of joint CBC/ProFac Subject Matter Experts (SME) work group
- Biweekly meetings for steering committee and ongoing process for the SME work group
- 6 months schedule and deadlines met

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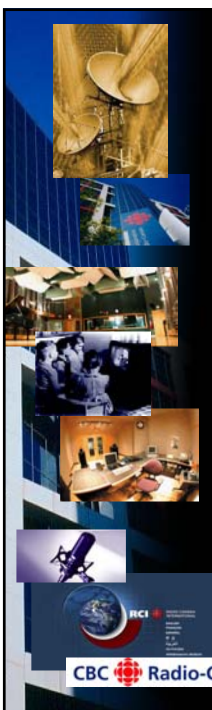
What Did We Do?

3. Review of the new contract after the transition period:

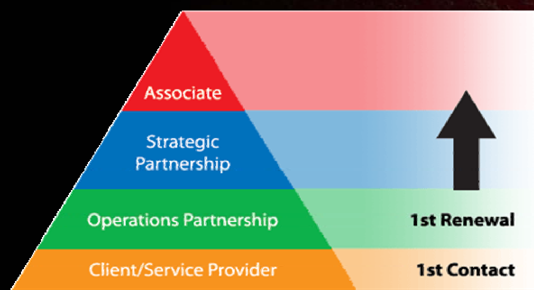
- Joint review for a common understanding of contract clauses
- Clarifications/Amendments produced and attached when necessary
- Major issues were resolved through a joint committee
- Escalation process not used as every contentious item resolved by joint committee



The Outcome

- Renewal signed 6 months prior to end of term
- Strengthening of trust
- Better sense of team work
- New momentum
- Needs have been fulfilled:
  - Flexibility
  - Alignment
  - Performance management

Evolution of CBC/ProFac Relationship



- This model does not apply to all outsourcing relationships
- Criticality and strategic content dictates the appropriate level

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Lessons learned

- Long term outsourcing relation must be able to evolve
- Evolution must be approached honestly
- Both sides must win
- Transition to new relation can strengthen the team

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For the future

- Heading for a Strategic Partnership by:
  - Sharing business plans (CBC/ProFac)
  - Staying updated on corporate evolution and implementation as changes arise (even non R.E. issues)
- Being more solution oriented
- Looking for mutual internal growth opportunities

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Negotiating a Robust HR Outsourcing Agreement

Wednesday, February 25, 2004 1:10 – 2:00 PM

Denis Chamberland
Partner
Gowling Lafleur Henderson

Denis Chamberland
Partner
Gowling Lafleur Henderson

Denis Chamberland is a member of the firm's Technology, Government Relations, and Corporate Finance, Securities and Public M&A practice groups.

Mr. Chamberland is a leading practitioner in the areas of commercial technology and procurement law, areas in which he provides both business and legal advice. He works with software, e-commerce, IT, telecommunications, management technology consulting and outsourcing companies in Canada and the United States. He specializes in outsourcing transactions and the laws of competitive bidding, including tendering, RFPs, and government contracting.

Recent outsourcing mandates include devising and negotiating several large-scale outsourcing arrangements involving the transfer from public sector agencies into special purpose companies of thousands of unionized employees for the purpose of providing IT, HR, Finance & Accounting services, among others, back to public sector bodies. Mr. Chamberland has also helped a global software company outsource its service bureau operations and advised on the transfer of the travel booking business of a major government to a private sector consortium. He advises both buyers and suppliers of outsourcing services.

Mr. Chamberland has significant experience advising on government contracting/procurement matters at all levels of government. He advises public issuers in the preparation of competitive bidding documents (RFPs/RFQs/RFIs) to ensure that all phases of the process – qualification, evaluation and selection – are lawful and effective and that the public policy interest is properly reflected. He is currently advising a large public sector agency in Ontario on the tendering issues and the creation of a technology-based joint venture with another public sector entity and a private sector supplier. On the bidder side, he advises on all stages of the procurement lifecycle, from offering legal and strategic advice prior to the release of RFPs/RFQs/RFIs to avoid breaches of the procurement rules under the major trade agreements; proposal submissions; and advising on the launch and defense of bid challenges at all levels of government.

Mr. Chamberland is a frequent speaker and writer in his main practice areas. He has published articles in Banking and Finance Law Review, Journal of International Banking Law, Ivey Business Journal, among other publications, and he publishes monthly columns on outsourcing and procurement. Prior to joining Gowlings, Mr. Chamberland was General Counsel (Canada) to a global technology management consulting/outsourcing organization. He started practicing law in 1991 in Ontario.

GOWLINGS

HUMAN RESOURCES OUTSOURCING

BUSINESS, LEGAL AND STRATEGIC CONSIDERATIONS

PAPER PRESENTED AT

THE 2004 OUTSOURCING WORLD SUMMIT
CONFERENCE & EXPOSITION
FEBRUARY 23-25, 2004

DISNEY'S YATCH & BEACH CLUB RESORTS
LAKE BUENA VISTA, FLORIDA

Denis Chamberland

Gowling Lafleur Henderson LLP

Toronto

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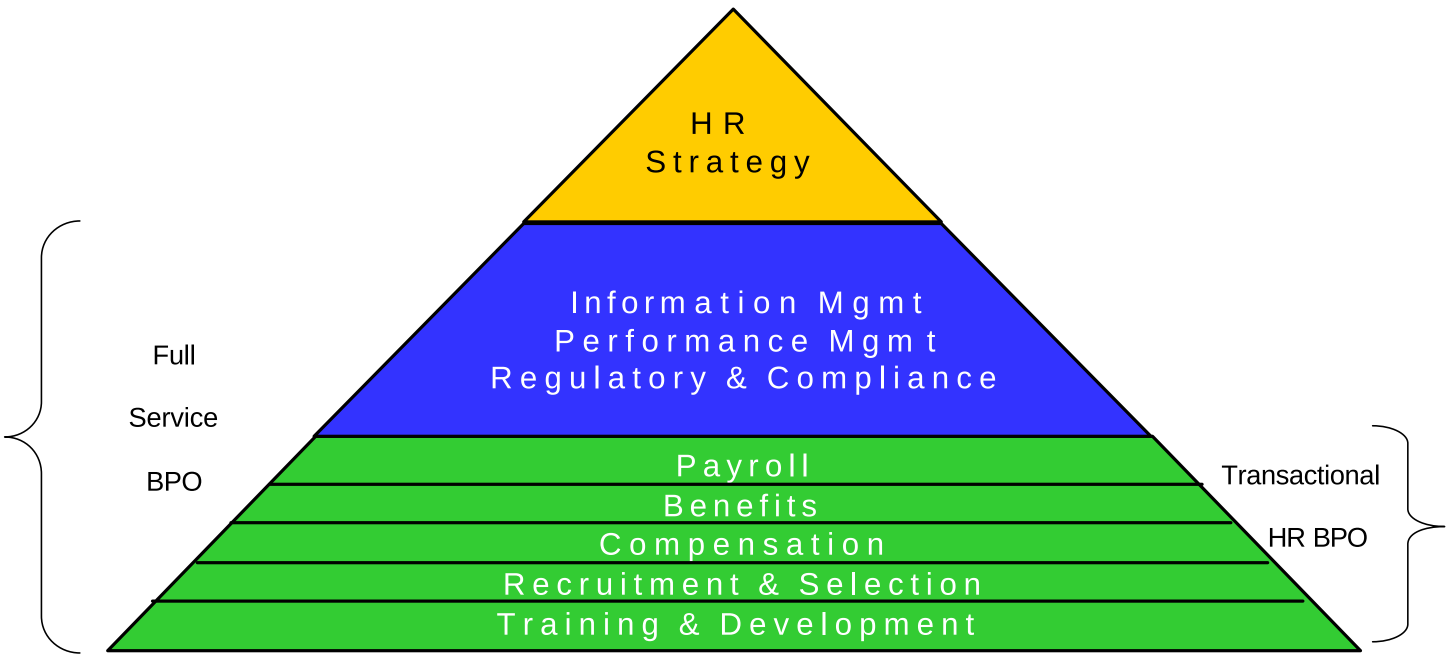
1. Introduction

Human Resources (HR) outsourcing is not new. HR departments have been outsourcing parts of their HR business in a piecemeal way for a long time. What is new is that organizations are now taking a macro perspective at HR outsourcing. The result is that more organizations are now outsourcing more complex HR processes, often referred to as business process outsourcing (or 'BPO').

What is making this possible now are the developments in technology in the late 1990's. ERP and other common software engines matured, allowing for standardization of best practices across companies. When combined with both a desire by buyers to duplicate the successes of IT outsourcing and the increasing pressure on margins faced by suppliers, the push is on to outsource a broader range of HR functions and processes. As the diagram below shows, these include full-service and transactional BPO.



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In this paper, we look at some of the legal and strategic issues that must be considered as an organization prepares to outsource some or all of its HR functions or processes. It bears noting that HR outsourcing shares many of the same fundamental legal and business risks issues that arise in any other business process outsourcing, but that these issues often loom larger in HR outsourcing because of the complex web of laws and regulations that govern the workplace. We make no attempt here to set these out comprehensively – rather, we highlight some issues that seem especially important (in particular, see section 8, 'HR Legal Issues').

Also, while HR outsourcing is gaining ground in all market segments, we focus particularly on the larger arrangements where some or a significant number of the HR personnel of the outsourcing organization are transferred to the employ of the service provider. The transfer of employees from one organization to the other gives rise to unique business and legal issues that must be considered carefully. Our perspective is primarily the customer's, although many of the considerations noted in this paper apply equally to both sides. We make occasional references to the HR outsourcing arrangement of the Canadian Imperial Bank of Commerce, launched in 2001, to highlight some points.

2. The Canadian Imperial Bank of Commerce

In the spring of 2001, the Canadian Imperial Bank of Commerce ('CIBC') announced a $227 million business process outsourcing agreement with EDS. Under the agreement, CIBC transferred approximately 200 employees to EDS. The bank migrated over 30 systems involving over 100 interfaces, more than 330 processes and almost 1,000 HR procedures to EDS. CIBC outsourced the following services:

- Payroll Administration;
- Pension Administration;
- Benefits Administration;
- Restructuring Support / Central HR Administration;
- HR Contact Centre (Canada, US, ER Advice);
- Occupational Health / Executive Medicals;
- Training Administration;
- HR Program Management;
- HR Project Management;
- Business Analysis, Systems Development;
- HR Web Development;
- HR Intranet Management;
- Financial Controls / Reconciliations;
- Ex Pat / Relocation Administration;
- Vendor Management (sub-contractors);
- HRIS and HR Technology / PAS; and

- MIS/Reporting.To prepare for the outsourcing, CIBC's HR division started developing an e-HR strategy to reinvent HR services delivery in 1999. The goal was to refocus HR operations and technology to achieve the following objectives:

- Contributing to CIBC's business success by providing high value (low cost / high productivity) HR support on a global basis, and

- Providing HR leaders and HR staff with the processes and systems needed to work with senior business leaders and providing them with the advice and support needed for each of CIBC's businesses to achieve its own unique objectives through effective and efficient management of the firm's human assets. The bank also wanted to enable the electronic delivery of HR services with a view to achieving the following:

- One leading-edge platform;

- Consistent processes;

- Simple, effective, efficient services;

- More cost-effective services;Improved risk management; andBetter & faster service via "direct access".

3. Outsourcing Human Resources

There are many reasons to outsource, from costs savings to more strategic considerations, including everything in between. If the rationale is pure costs savings and nothing else, it is more likely that the outsourcing will be limited to one or two discrete functions, such as payroll and benefits administration. If, however, the goal goes beyond cost savings, as is the case with BPO arrangements, it will be critical to develop a robust business strategy upfront, and ask some hard questions, including the following: what are the drivers of the proposed HR outsourcing, how will the outsourcing fit into the broader company business strategy, and how will the HR outsourcing add or complement the company's competitive advantage?

Many things need to be clarified when doing any type of outsourcing. But if the goal is to transfer a number of HR functions or processes to a service provider, the direct impact on the organization after the cut-over date has the potential to be enormous. As was the case with CIBC's HR outsourcing arrangement, highlighted above, the functions and processes being outsourced are spread across the organization as a whole, directly affecting every single employee.

The bank decided to outsource to EDS all of the operational activities performed by the HR division. The goal was to position the remaining HR employees as consultants to the business units. As was noted above, a key objective was to have HR "work with senior business leaders and provide them with the advice and support needed for each of CIBC's businesses to achieve its own unique objectives…".

It is fundamental to align the HR outsourcing to the strategy of the business because this will help define the type of provider relationship the organization will be most comfortable with. For example, if the proposed HR outsourcing is more tactical – focused on cost savings and limited to one or two functions – then the appropriate service provider will more likely be a pure 'supplier'. A supplier's purpose is typically to provide the requested HR services in a way that meets the contractual requirements normally set out in the service level agreements (or 'SLAs'). In this type of arrangement, the supplier's role is well defined and its focus is on activity performance. The functions being outsourced here are typically distant from what the organization would define as its 'core competencies' and the pricing for the service generally reflects the service provider's efforts and results.

On the other hand, if the proposed outsourcing is more comprehensive – a la CIBC – then the appropriate service provider will more likely be a 'strategic partner'. A strategic partner's role will be much closer to the outsourcing organization's core competencies, either because the discrete functions being outsourced are mission critical, or because the sheer magnitude of the outsourcing will directly impact the organization's business in important ways. Typically, the strategic partner is so closely integrated into the customer's business that it participates in strategic planning meetings and shares in the strategic decision-making process. The pricing arrangement between the service provider and the organization is also often more closely designed to reflect results achieved, and may include some form of gain-sharing or incentivized fee-based structure.

Where a decision is made to outsource a broad range of HR functions or processes, outsourcing to the right service provider is particularly important. The cultural fit must be right. As was noted by Hugh MacDonald, Vice President of Alliances at CIBC, there are different skills and mindset for managing a BPO arrangement and these needs to be explored and understood as early as possible, preferably not later than during the bidding stage.

4. Preparing the Request for Proposals (RFP)

There may be circumstances when foregoing competition in favour of a sole source procurement award is desirable. If a key driver for doing an outsourcing is timing, despite the many advantages typically associated with conducting a competitive bid process, sole sourcing may be appropriate, provided the process is otherwise handled in a way that is designed to 'fast-track' the transaction. If sole sourcing is properly handled – and the process does not become contentious, as it often can – the shorter time period involved in negotiating the transaction may even translate into some actual cost savings when compared to the competitive bidding process.

More often than not, however, experience shows that sole sourcing does not generate any advantages over the competitive approach. If fact, unless there are cogent reasons for taking that path, in our opinion the competitive bidding process is more apt to produce significant advantages. We review those below.

The RFP document is the most important document in the competitive bidding process. It sets the rules of the competition. In an outsourcing, it is prepared and issued by the company that is proposing to outsource, known as the “issuer”. The RFP helps to achieve a number of key goals in an outsourcing, including the following:

- The RFP helps to identify and select the appropriate service provider. The RFP sets the process in place for receiving and evaluating the proposals that are submitted by the service providers (the “bidders”) in response to the RFP. It allows the issuer to compare which of the bidders has the most compelling value proposition.

- The RFP simplifies the negotiations with the successful bidder. The RFP streamlines and simplifies the outsourcing procurement process by making the bidders compete against each other in the early stages of the procurement process, for the benefit of the issuer. The competitive bidding process replaces direct negotiation with competition.

- The RFP helps to define the long-term relationship between the parties. In addition to setting the ‘rules of the road’ for the selection and negotiation process itself, the RFP also sets the framework for the relationship that will be established with the successful bidder/outsourcing service provider. The RFP should always include either a template of the agreement that will define the legal obligations of the parties to each other during the course of the outsourcing relationship, or at least the key legal provisions that are important to the issuer, and which the successful bidder will have agreed to in its proposal. The RFP provides a unique opportunity for the customer that is outsourcing to define what the relationship will be with the service provider.

- The RFP helps to avoid disputes. By clarifying the procurement process and the fundamentals of the long-term relationship that the issuer is looking to put in place, the RFP narrows the potential areas of dispute between the parties.

- Along with the many advantages noted above, the RFP acts as a powerful tool to achieve the best pricing available in the marketplace.

5. What goes into the RFP?

As was just mentioned above, the true value of the RFP is not just in serving as a useful tool in selecting a successful outsourcing service provider. No doubt, it serves that purpose. It is also the issuer's first shot at negotiating the deal. It is the issuer's first opportunity to set the terms and conditions under which the service provider will provide the outsourcing services. For example, the ownership of the intellectual capital that is developed during the course of the outsourcing is typically a contentious matter in most outsourcings, and can sometimes derail the negotiations late in the process. Flagging the issue in the RFP and taking a stand is an effective way of forcing service providers to come to terms with their ultimate contractual fate on an important issue.

Generally, the provisions of the RFP for the particular outsourcing should provide for a fair and transparent process that all bidding service providers readily understand. The following provisions, among others, should appear in the RFP.

(a) Some legalities

Having the required legal provisions will often go far in pre-empting disputes between the parties. It tends to act as a dis-incentive on bidders to challenge a decision of the issuer, and it tends to invite the issuer to stay within the parameters of what is explicitly prescribed in the RFP.

The RFP should include at least the following:

(i) The issuer may withdraw the RFP at any time, without penalty.

(ii) The issuer is entitled to re-issue the project/services.

(iii) The issuer is not obligated to award the contract to any bidder.

(iv) The issuer is entitled to extend any deadline and require the bidder to extend without amending their proposals, for a reasonable time.

(v) The issuer is entitled to negotiate with more than a single bidder, at its sole discretion.

(vi) The issuer is not obligated to award the contract to the lowest bidder.

The last element (f) may be especially important in industries where the norm is that the lowest bid is successful, or for 'commodity' goods and services where a broad number of bidders are qualified to provide the goods or services.

(b) Confidentiality

Confidentiality is almost always a reciprocal concern is an RFP process. Both sides are looking to protect what they see as their sensitive information, which each has a legitimate right to protect. The issue should be addressed directly in the RFP.

(c) Pre-Qualification

Particularly where the RFP is about a large engagement or project, the issuer will usually want to pre-quality the bidders before focusing on the substance of their proposal. This exercise can focus on all, or a number of the following:

- Conflict of interest – the issuer will often want to consider the bidder's current and past corporate history – especially if the issuer is a public sector body – and may 'deem' certain situations to amount to conflicts of interest.

- Capability – the focus here is usually on the proven financial strength of the bidder, but it can also focus on the technical capability of the outsourcing service provider. On the financial side, the issuer may ask for copies of the most recent audited financial statements of the bidder, or it may go farther and ask for promises of financial support during the term of the outsourcing. This can take the form of a deposit, performance bond or the posting of a standby letter of credit. On the technical side, the issuer may be looking for proof that the bidder has performed or provided those types of services in another outsourcing situation. The requirement to provide references will be included in the RFP.

- Consortium – on large procurements – for example, where one party will provide the outsourced services and another the portal to operate the solution – the issuer may require the principal or nominal bidder to disclose, not only the identity of the subcontractor(s) who will provide the component parts of the overall solution, but may also require evidence that the proposed arrangement between the consortium participants has been sorted out and agreed to in principle, and put in writing.

- Regulatory – some RFPs require certain types of pre-qualification before the bidder's proposal will be considered. The most common of these on a public sector procurement is the requirement to meet or exceed a pre-set security clearance, at the organizational and sometimes at the individual level. Another common form of pre-qualification is the requirement to have carried on the business of the bidding company for a specified number of years, or the requirement to hold certain licenses (for example, being licensed to act as an insurance agent when operating a call centre for an insurance company).

(d) Project/services requirements

A critical part of the RFP is the one that sets out the goods or services, or the outsourcing solution the issuer is looking for. If the goods or services being sought are fairly specific, the RFP should describe the requirements in considerable detail. Typically, a part of this section will set out the requirements that the customer is looking and which the bidders must comply with, and those where the bidders have some flexibility in terms of how they respond. These are the ‘mandatory’ requirements and the ‘desirable’ or ‘optional’ requirements, respectively.

Where, on the other hand, the services or solution being sought are still fairly undefined in the issuer’s mind, the issuer may wish to keep its options open and invite innovative approaches to dealing with the proposed business activities to be outsourced. Note, however, that where ‘innovative’ ideas are actively sought, bidders who purport to be in possession of such a prized asset will tend to get nervous about the possibility of their intellectual capital being used by the issuer if they are unsuccessful, possibly with a competitor. Once again, the concern over confidentiality of sensitive information looms large.

(e) Formalities

One of the main purposes of preparing the RFP is to define the procurement process in as much detail as possible in order to receive meaningful responses. As was noted earlier, it is also designed to avoid disputes. Some formalities help achieve that objective, as follows:

- Bidders’ meeting – the RFP should provide details of the bidders’ pre-bid closing meeting. This is a good opportunity for the customer to both clarify what it is looking for, and to begin to develop an understanding of what will appear in the bidders’ proposals. The RFP should clarify whether attendance is mandatory, how questions of a complex nature will be dealt with, and whether bidders requesting anonymity will be entitled to submit questions in advance.

- Debriefing – the RFP should clarify whether unsuccessful bidders will have an opportunity to request a debriefing meeting with the issuer. If the issuer is a public sector entity that is subject to NAFTA, for example, the scope of the debriefing may be glanced from chapter 5 of the trade agreement. On the other hand, if the issuer is a private sector entity, it is advisable to describe the parameters of the debriefing exercise to avoid misunderstandings.

- Proposal format – the RFP should prescribe how the bidder’s proposal is to be submitted, whether it can be submitted electronically, the number of copies that are required, and whether a summary of the proposal is required. While issues of formatting are motivated by a need for convenience, there is also a substantive dimension to having uniformity of presentations. It allows the issuer to make a proper comparison of the proposed outsourcing solutions.

- Submission details – in order to treat all bidders fairly and equally, the RFP should clarify a variety of important details, which bidders must comply with. These include the time for submission of the proposal, the address for delivery, the number of copies, and any other detail of importance to the issuer.

As a rule, it is best in the RFP to make the formal requirements mandatory requirements.

(f) Pre-bid closing communications

Once the RFP in 'on the street', to prepare a proposal that responds well to the questions posed in the RFP, bidders often need more information about various aspects of the outsourcing solution being sought. By definition, this is particularly true with large or complex outsourcings where, for example, a number of software platforms will interface with each other to form the overall solution.

In addition to the bidders' meeting, mentioned above, the RFP should set out the manner in which questions can be forwarded to the issuer, the person to whom the questions should be directed, and the manner in which the answers will be communicated. The procedure established should be robust and be designed to ensure that all bidders are treated fairly and equally. The guiding principle at all times is that all of the information being communicated by the issuer must be available to all bidders.

(g) Evaluation details

The evaluation criteria in the RFP are often at the core of challenges to decisions of issuers. It is often a question of the weighing attributed to each of the main categories. The RFP should set out the evaluation criteria, and clarify the process through which bids will be evaluated.

(h) Legal and business terms

The RFP should always address the key business and legal terms that will form the basis of the contract. Although an issuer will sometimes attach a full pro-forma agreement to the RFP (more often the case in the public sector environment), where one is not available, the RFP should at least set out some select contract provisions that the customer will insist on. The RFP is the first opportunity for the organization that is outsourcing to define the relationship it will have with the service provider. It should take full advantage of this opportunity by considering those provisions at the time of the drafting of the RFP. Aside from defining the long-term relationship, the process also stands to reduce the time required to negotiate the contract. Some of the significant provisions include the following:

- warranty;
- indemnity;
- insurance;
- governing law;
- benchmarking;

- limitation of liability;
- most-favoured nation's clause;
- assignment and subcontracting; and
- termination and cancellation clauses

Where a bidder feels particularly strongly about one or more of these provisions (and others), an important decision will need to be made. The bidder can mark itself compliant in its proposal and then become obligated to live with the 'offensive' terms during the full term of the engagement. Or, the bidder can mark itself compliant but qualify its answer – for example, by proposing an alternative approach that the bidder hopes will be acceptable to the issuer while improving the bidder's position – and risk being declared non-compliant from the outset. This awkward position for the bidder often leads to some creative language being inserted into proposals. The bidder is obviously at pains to want to appear to be compliant, but the additional qualifying language is so diluted that it is sometimes not clear that the language qualifies anything.

6. Some Key Issues in HR Outsourcing

(a) Common Culture:

Finding an outsourcer that shares a common corporate culture with the outsourcing organization is always important, but perhaps more so in HR outsourcing – or any BPO outsourcing – given that the 'people' issues are amplified.

In the CIBC transaction, for example, the 'cultural gaps' between CIBC and EDS did not surface for months. According to Hugh MacDonald, Vice President, Operations and Knowledge Management Central Services, HR Division, it took many months to discover that the two organizations meant something different while using the same terminology.

(b) Keeping the High Performers:

The concern over keeping the 'star' performers in the process of conducting an outsourcing is directly related to the degree of anxiety felt by the 'in-scope' employees, who will be transferred. Fearing the worst, the better performers – those with transferable skills – will be tempted to jump to apparent safer shores. Anxiety, in turn, is often linked to the degree of secrecy surrounding the proposed outsourcing. If a decision has already been made to outsource, then it probably makes sense to develop a well-designed communications plan and to notify all of the employees. A well-implemented communications strategy can go far in helping to avoid the insidious rumours that can otherwise circulate.

On the other hand, if senior management is at the stage of exploring the outsourcing option, it may prefer to keep things discreet. The risk, however, is that employees who get their news through the grapevine are more likely to jump to the worst possible conclusions. To ensure that the in-scope employees – the high performers, in particular – stay around during the outsourcing process and are available to join the outsourcer, it is sometimes useful to offer personal oral re-assurances of continued employment on equal or better terms. If that proves to be insufficient, offering employees 'stay incentives' may be the answer. Stay incentives can take many forms, including the following:

- a lump sum payment can be offered to the high-performers, payable if the employee has not quit or been terminated for cause prior to the transition phase.

- a lump sum payment, representing a percentage of the payment offered to the high performers, can be offered to all in-scope employees, payable if the employee has not quit or been terminated for cause prior to the transition phase.

- an enhanced severance payment can be made to the in-scope employees if such employees stay around but are ultimately not offered employment with the service provider.

They many other variations on the above, including offering in-scope employees a more attractive career path with the service provider, for example. It is also worth noting that while the focus will be on the in-scope employees, similar concerns may be experienced by employees who are not intended to be transferred to the service provider. Whether dealing with 'stay behind' or transitioning employees, in all cases, it is generally best to stay ahead of the employee morale curve by keeping them well informed and dealing with the issues in a proactive way.

(c) Statement of Work:

Given that an HR outsourcing arrangement can embrace a broad range of discrete services – as exemplified by the CIBC transaction – input will be needed from a wide variety of subject matter experts from all of the affected areas. In a large scale outsourcing transaction, many of these subject matter experts will typically come within the group of employees who will be transferred. If these individuals are making decisions about aspects of the outsourcing, they will be in a conflict of interest position, in that they will be hard pressed to represent the best interest of their current employer knowing full well that their future lies elsewhere.

One way to handle this problem is for the customer to appoint retained staff to oversee and to be accountable for each step of the transaction. This works in the interest of both the customer and the service provider and takes the pressure off the employees who will be moving over to the service provider.

(d) Protecting the Customer's Knowledge Capital:

A customer's knowledge capital includes all forms of intellectual property, trade secrets and residual knowledge as it relates to all aspects of the customer's human resources operations.

This may not be a big issue where what is being outsourced are purely the transactional aspects of the HR services. That was the case at CIBC, noted above, where the goal was to retain in-house the advisory responsibilities. In this situation, the in-scope employees would execute non-disclosure agreements committing them to use the confidential information of the customer only for the purposes of providing the services back to their former employer.

The real issue here would focus on the ownership of the new knowledge capital that is created during the term of the outsourcing. How the ownership of the new knowledge capital is dealt with would depend on the answer to the following key questions, among others:

- what is being transferred to the service provider?
- which party supports the new capital investments?
- can the customer make offers of employment to its former employees at termination?
- is the service provider contractually obligated to improve the technology on an ongoing basis?
- what rights does the customer have if the new knowledge capital is owned by the service provider?

There is no hard-and-fast rule on the ownership of knowledge capital in these situations. Most importantly, the customer needs to remember that what it gets at the termination of the outsourcing arrangement depends on what the parties negotiate upfront. There should be no surprises at the exit.

7. The Negotiating Process

(a) Objective

The primary objective in negotiating an outsourcing agreement should be, not to defeat the other side, but to produce a fair agreement, one that is well thought-out and well articulated. This typically requires a significant investment of time and a great deal of preparation. It matters that a robust strategy be developed at the outset, particularly in a large scale HR outsourcing, where the personnel issues loom especially large.

(b) Getting Ready

Customers are typically not experts in outsourcing. Vendors are experts (or at least purport to be). For this reason, customers should approach outsourcing in a very deliberate way. Following the steps set out below will go far in helping a customer negotiate an HR outsourcing it can live with comfortably over the longer term.

(i) Prepare, Prepare, Prepare – A customer that has made a decision to outsource and has conducted (or is conducting) its due diligence should spend a reasonable amount of time preparing for the upcoming negotiation. The vendor will be conducting its own due diligence, but since it is in the business of outsourcing, it will know what to look for and will be very well prepared for the negotiations. From the customer's perspective, the reasons or the 'drivers' for doing the outsourcing need to be well understood by the customer because they will define the negotiations. Once the drivers are well identified, the customer must prioritize what it is trying to achieve, and set the negotiating strategy accordingly. Of course, because the priorities will change over the course of the negotiations, the customer should be prepared to update its thinking and adjust the negotiating strategy to reflect the new agenda.

The customer will need to determine how it wants to position itself vis-à-vis the service provider during the negotiation. If the customer fails to take a stand in this respect, the service provider will be more than happy to lead the process, since it will probably have set that tone during the sale cycle, and may have already submitted its own form of contract to the customer. Unless the customer takes step to control the drafting process, set the timetable for the negotiations and prescribe the agenda for the meetings, the service provider will dominate the negotiation process.

One of the disadvantages of having the service provider 'own' the negotiation process is that often the legalities will not have been dealt with appropriately. They certainly will not have been raised as significant issues during the sale process. Where the legalities are addressed, perhaps for the first time, when the service provider delivers a first draft of its form of contract, it may be too late to level the playing field in respect of what may be some fundamental legal issues. Unless those issues are flagged fairly early in the process, experience shows that it becomes much more difficult to address them satisfactorily. It is harder to do so without risking destabilizing the business relationship. It is important to remember that negotiating a large scale HR outsourcing implies negotiating a business relationship. The customer knows that it needs the cooperation of the service provider after contract execution, if the outsourcing is to achieve its promised objectives. Therefore, taking a hard line on legal issues relatively late in the negotiation process may be perceived as having the potential to undermine the efforts that have been made to date to build the business relationship. The customer will be more inclined to soft-pedal the legal issues when they are brought up later in the process.

(ii) Internal Role Definition: What role each individual on the customer side will play in the negotiation is all-important. This question must be addressed early in the negotiation process and it should be monitored regularly to ensure that the customer's resources are optimized. Perhaps the most important question is 'who will lead the negotiation'? Although the goal is to establish a productive, long term relationship that recognizes the legitimate interests of both parties to the negotiation, it is a hard fact that the parties' interests will be adverse during the negotiation (that is why it is called a 'negotiation').

Because it can be assumed that the negotiation will have its difficult moments, it can make sense to appoint a lawyer to lead the process. This has the advantage of helping to protect the business relationship, in that it 'shields' the business people from being perceived by the service provider to be unfriendly. By interposing counsel in the relationship between the customer and the service provider, the business people on the customer side can position themselves as problem solvers.

One note on the role of lawyers in the outsourcing transaction. Some customers take the view that the legal role should be defined are narrowly as possible. In an outsourcing transaction, this is generally not a sensible approach, as many business and legal issues are tightly intertwined. It is preferable (the author recognizes the risk of appearing to be narrowly self-interested here) to bring counsel in early to ensure that the playing field remains levelled and that the issues are properly addressed.

(iii) Letter of Intent/Term Sheet: The letter of intent or term sheet sometimes serves the same purpose in a negotiation and as such are different terms for the same thing (for convenience, we refer to 'term sheet'). The purpose of the term sheet is to flesh out the key business and legal terms underlying the arrangement before getting into the nitty-gritty of the outsourcing contract. By reaching agreement on the general terms, many of the smaller issues will disappear, thus making the subsequent detailed discussions flow more smoothly.

The term sheet is used as a way to get the negotiation started. As was noted above, however, an early opportunity by a customer to negotiate those key business and legal terms arises in the drafting of the RFP. There the customer can insert either a pro forma contract (although this is usually difficult if not impossible to do in a large scale outsourcing where the value proposition will become defined during the subsequent negotiation) or a narrative setting out the customer's preferred position on key terms. Setting out the key business and legal terms in the RFP helps frame the negotiation. More commonly, the term sheet is negotiated after the bids have closed and the customer has selected one or more bidders to negotiate with.

A vital reason for developing a robust term sheet is that it forces the customer to consider more deeply, for the first time, how the business and legal issues will work in practice. It also forces the customer to determine its position on issues it may have never considered before. For example, as the customer transfers personnel and systems to the service provider, which party will own the knowledge capital during the outsourcing arrangement? This issue alone can have a significant impact on the pricing of the transaction.

By preparing a term sheet to kick-off the negotiation, the customer stands to gain a substantial advantage in the negotiation process. Not only will the customer have used the opportunity to deepen its understanding of its position, but it will frame the negotiation and force to service provider to define the issues in terms of the customer's position. If handled well, it will make the actual contract negotiation smoother and will accelerate the negotiation process.

(c) Dual Track Negotiations

A customer that has reviewed all of the proposals it has received may decide to negotiate simultaneously with two, rather than a single service provider. The purpose of conducting a dual track negotiation is to apply maximum pressure on the service providers, who experience the privilege of being actively 'played off' against each other. Experience shows that customers can make great gains that way, not only in terms of achieving better pricing, but also in all areas where the give-and-take of negotiations is apt to produce a concession from the service provider.

While this practice is particularly well suited to organizations planning a large scale outsourcing, it has its place even with smaller scale outsourcings. In the case of the latter, it is worth remembering that conducting a dual track negotiation has some obvious costs and resource-allocation implications. It will clearly prolong the process because the customer is negotiating with an additional party and because the customer must take the time to make the connections between the two separate negotiations with a view to assessing the pressure points in respect of each service provider. This takes time. It also takes a great deal of stamina on the customer side.

The individuals assigned to the negotiating team will normally continue to carry their day-to-day responsibilities, which typically will be significantly disrupted by the outsourcing effort. It will therefore be important re-organize existing resources and allocate new ones to ensure that the outsourcing negotiating team can dedicate itself to producing the desired results. It is also vital that there be continuity in the personnel that is assigned to negotiating the outsourcing arrangement, otherwise some important gaps will develop in the knowledge and strategy of the customer. This will not be the case on the side of the service provider.

An important note about dual-track negotiations: You should reserve the right to negotiate with more than a single service provider in your RFP, bearing in mind that it will not help you if the jurisdiction in which you are conducting business does not allow it. Some jurisdictions prohibit the practice. If there is no prohibition in law and the right is not provided for in your RFP, the practice could lead to a claim that the customer was negotiating in bad faith. An unsuccessful service provider might argue that good faith required the customer to negotiate sequentially, first with the highest ranking bidder – the one offering best value – and secondly, with the next highest ranking bidder, if negotiations with the first bidder failed. If you are a customer, the key message is: conduct your due diligence and make sure that your documentation is drafted in a way that reflects what you want to do and gives you options.

(d) Service Level Agreements (SLAs)

SLAs go right to the heart of the outsourcing relationship. Not surprisingly, they are often heavily negotiated. How do you measure service levels in an HR BPO? Unlike SLAs in IT outsourcing, which have become well known and more easily definable over the years, in an HR BPO it is often difficult to measure performance on the basis of traditional service level measurement approaches because the customer is doing something it has not done before.

Aside from measuring end-user satisfaction with a particular service or function, it can be challenging to set the level of a service provider's performance. Here's a suggested approach that can help optimize service effectiveness.

The first thing to do is to list or itemize the services or functions to be outsourced. Of course, this should have been done earlier in the process, before the RFP was issued. For example, the services being outsourced might include 'Employee Services' (Managing personnel information, skills inventory and job opportunity, e-learning and benefit program information and enrolment) and 'Employment Services' (external job postings, candidate resume database and candidate screening systems), with the former being set out on the customer's intranet and the latter on the internet.

Secondly, the severity level of each service element should be established, as follows, for example: "critical", "major" and "minor". If a service element is defined as "critical", for example, the performance measure assigned to the element in question will need to be achieved more consistently than if an element is defined as "minor". In other words, the performance measure is more demanding.

Thirdly, the performance measure needs to reflect the reason to outsource the specific service element. The goal should be to maintain or improve the level of service. So if the goal is to maintain the availability of a service over a computer system, then the quality of the service will be measured by “service level availability”, which could be measured in a range from, say, 85 per cent availability where the severity factor is “minor” to, say, 99.9 per cent availability where the severity level is deemed “critical”. Obviously, there are many ways to measure any service element and a variety of performance measures can be used to baseline the level of service being provided by the service provider. Remember that the specific performance measure attached to a service element should always relate to the reason to outsource in the first place.

The following are some common challenges that arise in setting service levels:

- The function was measured before the outsourcing but the service provider cannot rely on the accuracy of the data. Solution: The parties should recognize a post-contract commencement date verification period during which they will measure the actual service level, and make appropriate adjustments.

- An existing function is outsourced but it was not previously measured. Solution: The parties should recognize a post-contract commencement date verification period during which they will measure the service level for the first time, and set a baseline for the service level.

- A new function is being introduced. Solution: The parties should recognize a post-contract commencement date verification period during which they will measure the service level for the first time, and set a baseline for the service level

The following are some best practices that can help mitigate the risks in connection with the service levels:

✓ Have the business unit personnel affected by the outsourcing deeply involved in the negotiations

✓ Have the personnel responsible for managing the outsourcing relationship deeply involved in the negotiations

✓ Ensure that your contract includes flexible change control mechanisms so that adjustment to the service levels can be made, if need be

✓ Ensure that your contract includes a ‘repatriation’ clause so that the customer can remove a set percentage of the services each year without having to pay an increase in unit charges for the remaining services

✓ Ensure that the contract allows for full or either partial termination of the agreement if certain key service levels are missed

✓ Keep the term of the contract short so that the service provider is incentive to cooperate

8. HR Legal Issues

(a) Labor Relations

The first order of business when considering an outsourcing where there is a unionized workforce is to make sure that the service provider has an in-depth understanding of the collective bargaining agreement very early in the process. There is no point in spending several months of yours and the service provider's time talking about the outsourcing unless (i) the collective agreement allows for it and (ii) the service provider is prepared to assume the obligations that will inevitably follow. Many collective bargaining agreements in the United States prohibit outsourcing of bargaining unit work. Others allow it but only subject to some restrictions. For example, some allow it if a commitment is made by the service not to lay off any bargaining unit employees, or if the service provider offers a comparable wages and benefits package. Where outsourcing is allowed, the collective agreement will typically set out notice requirements.

From the perspective of the service provider, the obligation to use the services of unionized employees to provide the outsourcing services will clearly have a major impact on the cost-reduction strategy being contemplated by the service provider. In turn, this will have a major impact on the value proposition being offered to the customer. Here are some issues that need to be well considered when outsourcing in a unionized environment:

(i) Successorship: Even where the collective bargaining agreement is silent on successorship, an outsourcing service provider is automatically deemed a 'successor' of the customer if more than 50% of the service provider's work force of the customer was composed of the customer's unionized employees. In such a case, the service provider is considered a 'primary' employer of the bargaining unit employees and needs to recognize, and bargain with, the union(s).

(ii) Join Employer: Circumstances may occur where a customer and a service provider are considered 'joint employers'. For example, where unionized employees formally remain the employees of the customer, but some of the management expertise is offered by the service provider, the service provider may be deemed a joint employer under the National Labor Relations Act. This would be the case where the service provider plays a role in determining key terms and conditions of employment, including supervising, assigning, directing and disciplining the employees.

(iii) New Company: An approach commonly used to isolate the bargaining unit employees assumed by the service provider from the service provider's current employees is to transfer the transitioning employees into a new company that is established for the purpose of providing the services back to the customer. While this approach protects the service provider's employees from the risk of becoming unionized themselves, it does not eliminate the labor relations issues. In fact, the approach recognizes that the newly established company will become a successor employer for labor relations' purpose, and be subjected to the program that is normally associated with being a unionized work environment. Here again, it is worth noting that setting up such a new company will probably have a significant impact on the 'economics' of the deal. This paper makes no attempt to address the many other related issues that will arise when outsourcing in a unionized environment.

Aside from the substantive legal issues prescribed in the collective bargaining agreement, the customer will need to decide when the union(s) and the service provider should meet for the first time. This is an important issue, as meeting too early when the business model has yet to come together may create unnecessary tensions between the union(s) and the service provider, whereas meeting too late will put too much leverage in the hands of the union(s). Obviously, there is no hard-and-fast rule in this regard.

(b) Notice requirement

Depending on how the transfer of employees is characterized under the applicable legislation, there may a requirement to give sixty days' notice before the transfer of the employees. The consequences for failure to comply with these types of statutory requirements are typically not trivial, and may include a fine in additional to termination pay in lieu of notice.

If at all possible, it is preferable to structure the outsourcing transaction as a 'sale of a business', involving the transfer of not only the personnel, but also the customer's hardware and software. Where a sale of a business is involved, the courts typically have determined that the employees' employment is deemed not to have been terminated. As such, no notice requirement applies.

Even where the notice requirement applies, the customer may wish to consider whether notice should be given at all. The customer may lose some leverage in its negotiations with the service provider if it appears irretrievably committed to 'doing the deal'. Of course, the customer will need to be prepared to assume the attendant risks where a decision is made to forego the notice requirement.

In addition to any statutory notice requirement, as a part of its due diligence process, the customer should closely review its employment contracts and personnel policies and manuals, which may contain onerous notice requirements that may be enforceable. Depending on the proposed outsourcing strategy, it may be desirable to modify these contractual commitments to simplify the transaction.

(c) ERISA

ERISA refers to the Employee Retirement Income Security Act of 1974, and is a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry. Its purpose is to provide protection for individuals in these plans. A company to which ERISA applies and which is planning to outsource should ensure that it has complied with the statute, or it may lose certain rights that may be available to and which could facilitate the transaction.

(d) Equal Employment Opportunity (EEO) Claims

It is often the case that where a number of employees are transferred to the service provider in an outsourcing, some will not be made offers of employment. In most cases, the party making the selection decision is the service provider and the risk of claims under the EEO laws concerning discrimination is assumed by the service provider. However, because the customer may feel it has a significant interest in ensuring that certain employees are made offers, the customer may participate in the employee selection process, thus making itself vulnerable to EEO claims. It is always a business matter to be negotiated between the parties as to which party assumes responsibility for defending EEO claims.

Note that the EEO laws apply not only at the time a decision to hire is made, but they also apply after the employees have transitioned, when management decisions are made by the service provider. In these cases, clearly the service provider would assume responsibility for defending EEO claims.

Regardless of the party that assumes responsibility for defending claims, having robust and well-documented practices in respect of personnel matters will go far in helping a defendant justify it's decisions during the outsourcing.

(e) Handling of Disputes

Aside from EEO claims, the outsourcing agreement should allocate the responsibility for all personnel disputes arising after the transition of the employees. As a rule, all claims based on events that occurred before the outsourcing should be treated as the responsibility of the customer, and all claims based on events that occurred after the outsourcing should be treated as the responsibility of the service provider.

While the allocation of the legal responsibilities is important, the handling of disputes is important. Poorly handled disputes, or disputes which fall subject to a protracted procedure can have a significant demoralizing effect on the workforce of both the customer and the service provider. For that reason, disputes should be handled promptly and steps taken to ensure that the 'right' decisions are communicated to the workforce.

9. Concluding Remarks

As was noted at the outset of this paper, HR outsourcing shares many of the same fundamental legal and business risks issues that arise in any other business process outsourcing, but these issues tend to loom larger in HR outsourcing because of the complex web of laws and regulations that govern the workplace. It is therefore critical that counsel with employment law and human resources experience be brought in to work closely with the lead outsourcing attorney to make sure that these issues are fully canvassed and addressed satisfactorily before the transaction closes. Remember that the costs and inconvenience associated with the administration and resolution of a mismanaged employee transition may preclude the customer from realizing many of the benefits that were anticipated from the outsourcing. In a worse case scenario, it may also have a devastating effect on the morale of the remaining customer employees, who may come to doubt the commitment of the customer to its workforce.

Whether you are a customer considering outsourcing for the first time, or a service provider with a long track record of successful outsourcings, the potential pitfalls along the outsourcing road are many. In all cases, appropriate counsel should be consulted to ensure that the right advice is brought to bear at the right time.

The 2004
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Conference & Exposition
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Proving the Value of Your Outsourcing Solution

Wednesday, February 25, 2004 1:10 – 2:00 PM

Bill Hall
President
Pretium Partners

Kyle Andrews
Vice President
Pretium Partners

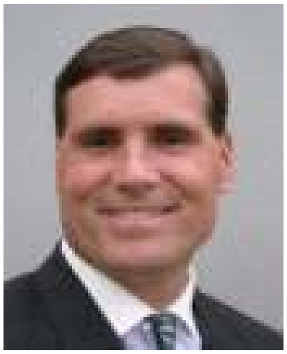
William P. Hall
President
Pretium Partners,
Inc.

William P. Hall is a founding partner of Pretium Partners, Inc., a firm dedicated to helping high technology companies sell the business impact of their solutions; thus increasing sales effectiveness.

Mr. Hall has spent nearly 20 years dedicated to selling and marketing technology solutions and services. His expertise was developed in systems sales, worldwide services marketing and services management. The most recent nine years focused on developing methodologies for improved sales performance.

His training experience crosses a broad array of industries and companies in over 10 countries. Clients are from a wide set of industries such as telecom, information technology, payroll/human resource, medical, manufacturing, financial technologies and document management. Notable clients include Verizon Information Technologies, Diebold Incorporated, Logical USA, ABB, Hewlett Packard, Xerox, Siemens, ADP, NCR, International Billing Services and Philips Medical Systems.

Mr. Hall was co-author of "Value Assessment in Outsourcing, A Study of Outsourcing Justification Practices." The study was conducted by Pretium and The Fisher College of Business at The Ohio State University.



Kyle J. Andrews
Vice President
Pretium Partners,
Inc.

Kyle J. Andrews is a founding partner of Pretium Partners, Inc., a firm dedicated to assisting high technology companies in raising their value proposition and selling the business impact of their solutions; thus increasing sales effectiveness.

Mr. Andrews enjoyed an 11½-year career as a U.S. Marine Corps Officer where he began his instructional career as an attack jet flight instructor. During a four year period as the AV-8B Harrier Program Analyst, his research, presentations and recommendations were highly influential on decisions for operational improvements to the AV-8B aircraft and the training of its pilots.

During his nine years of selling experience in the high technology marketplace, he helped many companies develop and institute business recovery plans. The most recent 7 years have been devoted to developing, selling, delivering and facilitating solution selling and return-on-investment programs and seminars for companies such as Cranel, Diebold, Logical USA, NCR, Philips Medical Systems and UUNet Worldcom.

Mr. Andrews was co-author of "Value Assessment in Outsourcing, A Study of Outsourcing Justification Practices." The study was conducted by Pretium and The Fisher College of Business at The Ohio State University.

Mr. Andrews has been a speaker on value assessment in selling for technology solutions, outsourcing and services at Michael F. Corbett & Associates' *Outsourcing World Summit*, The Outsourcing Institute's *Vendor Summit*, the *Information Technology Council*, *AFSM International World Conferences*, *Federal Sourcing Partnering and Privatization Conference* and other events.

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Sharpen
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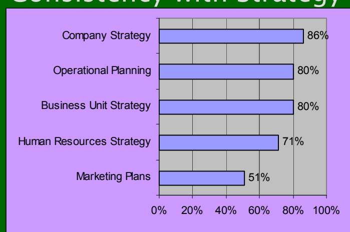
Differentiating Sales Forces Worldwide

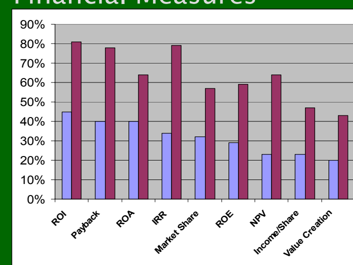
Outsourcing Justification

Source: Outsourcing Justification study by Pretium Partners, Inc.

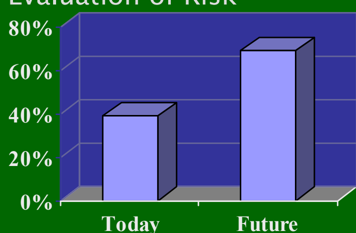
Consistency with Strategy



Financial Measures



Evaluation of Risk



Benefits Analysis

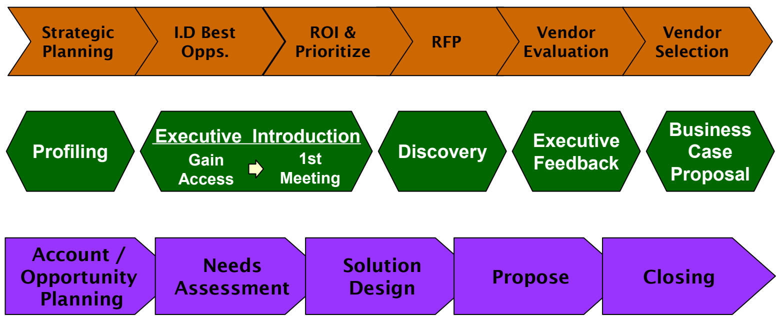
Most Important Benefits *Ranked on a scale or 1 to 5 where 5 is the most important.*		**Most Often Quantified** *Ranked according to the percent of respondents that quantified the benefit.*	
1. Improve Productivity of department or function	4.04	1. Reduce operating cost	78%
2. Reduce operating cost	3.84	2. Improve Productivity of department or function	59%
3. Upgrade, introduce or transform skills	3.57	3. Better manage the department or function	52%
4. Better manage the department or function	3.52	4. Improve cash flow	45%
5. Make resources available for core areas	3.38	5. Implement business change	39%

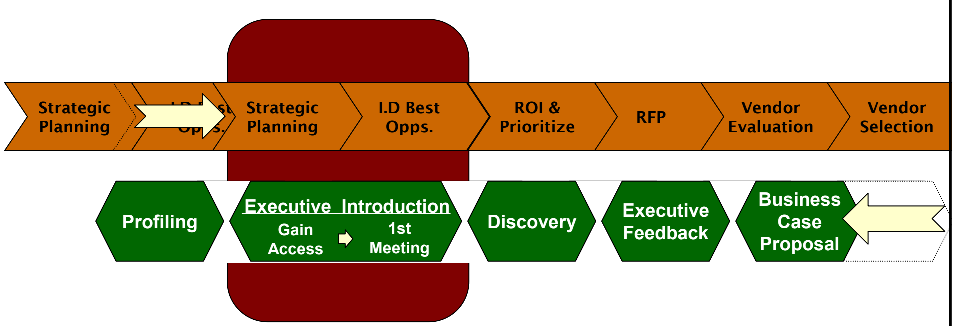
Value Assessment Defined

Value Assessment *is the consultative process of identifying the business impact of an investment, according to the buyers' decision-making criteria, and assembling the business case that explains it.*

A document that advocates a solution based on its ability to improve the customers business and is framed according to executive decision making criteria.

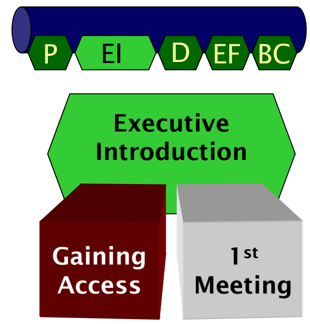
Aligning Value Assessment and Your Sales Process





Executive Introduction

Credibility, Viability, Control

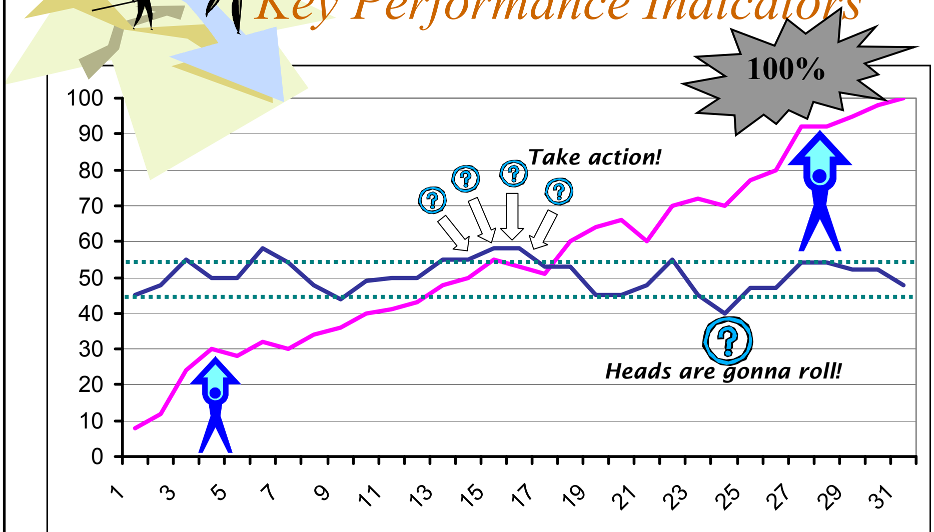


- What: All activities necessary to launch a **high level relationship** in the account.
- Objective: Establish your **credibility**; plant the seed of **viability** of your solution; assert **control** over the sales process.
- Outcomes: Gain **access**, obtain **commitment**, build **sponsorship**

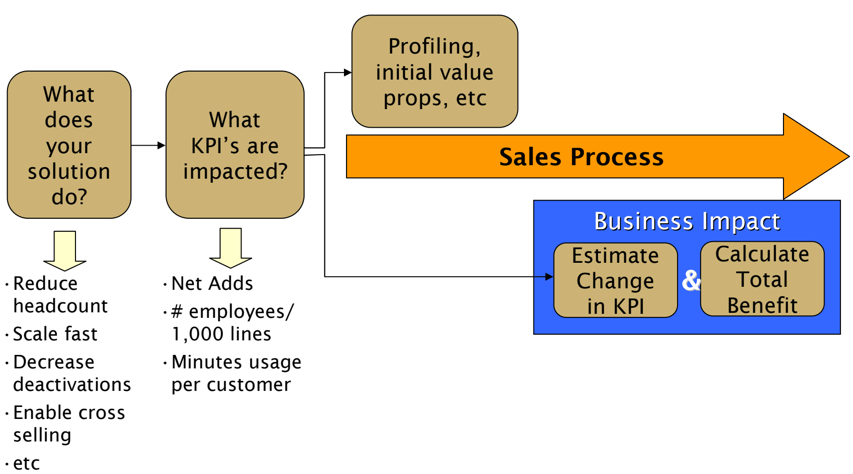
Selected Keys to Executive Introduction

- Key Performance Indicators
- Strategic Alignment
- Risk Assessment
- Initial Value Message

Key Performance Indicators



Key Performance Indicators



Using KPI's Early in Sales Process

Compare them to industry targets

Look at company trends

- Profiling
- Gaining Access
- Executive Dialogue Questions
- Initial Value Message

Strategic Alignment

Risk Assessment

1. Engagement Risks

- Particulars/politics of releasing/transferring employees
- Investment Return
- Cultural/Organizational Impact
- Track Record (of ATS and of total maintenance outsourcing)
- Transition Troubles
- Size of the investment

2. Outsourcing Risks

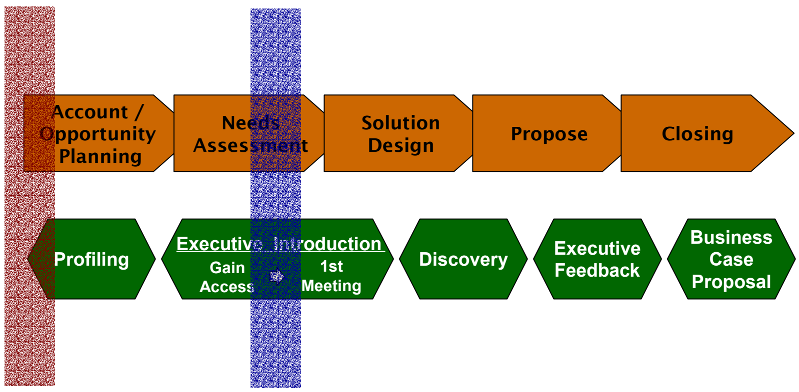
See "18 Common Risks of Outsourcing"

3. Business Risks

- Currency exchange rate fluctuations
- Competition (new ones, major moves by)
- Weather effects
- Changing consumer preferences
- Economy
- Labor unrest/Labor costs
- Disasters
- Disgruntled employees

"Can you hear me now?"

Initial Value Message



Overall Value Proposition
✓ Create Awareness

Initial Value Message
✓ Create Interest
✓ A reason to listen

Initial Value Message

Based on our expertise in **Expertise**,
(what you do)

and validated through our work with **Experience**,
(direct or indirect references to customers)

we have proven our ability to **Business Impact**
(business problems you solve)

resulting in **Value Created**.
(value you create)

Initial Value Message example

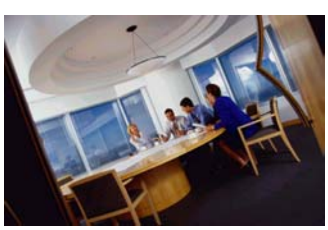
Initial Value Message Made Stronger

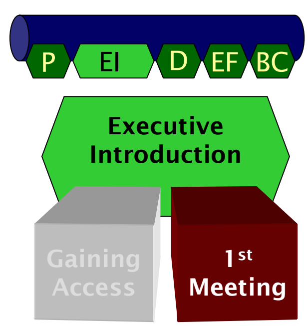
- ❑ Proof points/Statistics
- ❑ KPIs
- ❑ Specific to solution
- ❑ Publicly available information about the company
- ❑ Specific to the buyer or buyer's role

Initial Value Message example

The First Meeting

Credibility, Viability, Control





Gain commitment for building a business case and securing an executive feedback session

Proving the Value of Your Outsourcing Solution

Thank You!

Pretium Partners, Inc.
1631 Northwest Professional Plaza
Columbus, Ohio 43220
1.614.457.1726

Bill Hall - BHall@PretiumPartners.com

Kyle Andrews – KAndrews@PretiumPartners.com

www.PretiumPartners.com