

Outsourcing Renegotiations and Rebids

Lessons learnt from the 10th February 2016 Radiant Law GC Breakfast

Introduction

The outsourcing market is fast-evolving. It has moved from mega-deals, to single tower deals, to service integrators and now to more tactical approaches - with fluid boundaries between services that should be performed internally and those that should be outsourced.

Principles such as the outsourcing of non-core activities have stood the test of time. However, new answers to old needs present themselves, as opportunities arise to apply technology such as cloud, robotic process automation and machine learning and to use suppliers who utilise these new approaches. Yesterday's major data centre deal may now be a cloud solution. Meanwhile, deals are becoming shorter (now averaging just over three years), giving more frequent opportunities to re-appraise the market. Yet, despite these new opportunities, too often a customer will stay with its existing supplier with a little-changed agreement.

In February 2016, a group of senior in-house lawyers gathered for a breakfast organised by Radiant Law and the Independent Advisory Network to discuss the opportunities and challenges presented as an outsourcing contract ends. The conversations drew together many perspectives from in-house and external lawyers and consultants and was informed by a Radiant Law survey. This paper highlights key learning points and suggests a roadmap to how to best approach the end of a contract term.

Key Takeaways

- To take your services to the next level, you need to take advantage of the end of your contract's term
- The starting point is always to identify your objectives for the services for the next term and understand your constraints and opportunities
- If you don't know what is now available, how can you evaluate whether it is worth moving service provider?
- If you do want to test the market, there are approaches that allow you to identify and evaluate options before committing to a full sourcing project
- Whether or not you do move, making a serious effort to explore opportunities will inevitably incentivise the incumbent to raise their game in terms of what they have to offer

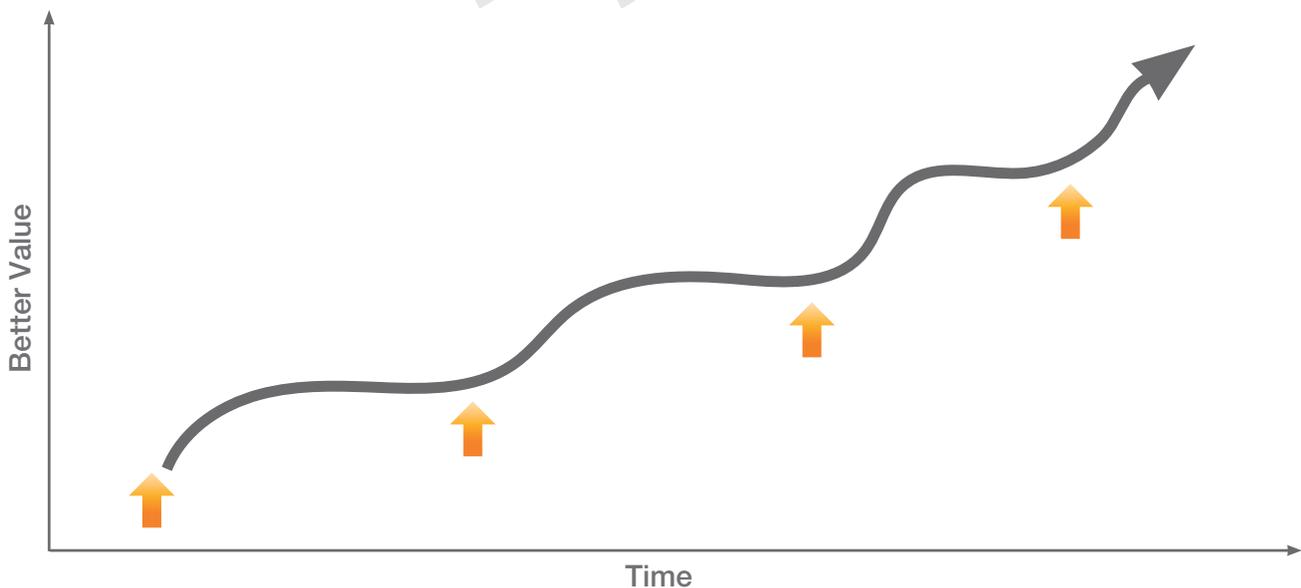
Opportunities

We all want increasing value, every day. The early lure of outsourcing was that expert suppliers could deliver this for all of your back office services. The reality hasn't been quite so straightforward.

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Initial step changes in improvements are regularly delivered, but after the (often quickly-forgotten) initial transformation, the day-to-day reality is too often more of the same. For example in a Deloitte survey of outsourcing customers, 49% said the service was reactive rather than proactive, 48% said the service was poor (despite meeting service levels) and 37% reported a lack of innovation.

Continuous improvement is hard to find, and we suggest that the following model of inflection points at the time of renewal of deals, followed by stability, is a better description of the realities of outsourcing than a straight-line march to the sunny uplands in the top right of the graph:



What we have seen in practice is that improvements are achievable, but renewals and rebids of deals are the only times when you have the opportunity to substantially improve the status quo. If an agreement is merely extended then the inflection point for that round has been missed. This is true whether you move to a new supplier or stay with the incumbent. To achieve the reframing of a deal necessary to get to the next level of performance everything needs to be up for discussion, which only happens at the end of a term (although we have seen examples of such potential transformations and savings, that customers have terminated early for convenience). Even if the incumbent supplier is still the right answer, the scope and shape of the contract may not be.

The opportunities afforded by reframing, include:

- Getting access to new ideas from hungrier bidding suppliers
- Transforming services to really reduce costs
- Performance and other operational improvements
- Potentially splitting the services between suppliers who have particular expertise in different areas

Challenges

What we heard in the room and from the survey was that lock-in and transition concerns can be overcome by a tight, experienced and empowered team that understands the strengths and weaknesses of the existing arrangement and is focussed on clear new objectives for the next phase. These are understandable concerns, but the reality is easier than it may at first appear.

Lock-in

It is easy to perceive lock-in, whether from concerns over business continuity and the effect on service of a transition, or the concern that a new bid or major renegotiation will be expensive with unknown value. The reality is that services are transferred between suppliers every day and exit assistance rights are more likely to be robust and sufficient. Transition methods and tools have moved on significantly, reducing the operational risk of transition.

Costs

The time, effort and costs of a first-generation outsourcing can discourage a repeat, especially if there is a perception (sometimes justified) that the deal hasn't delivered the expected "value". However, a new bid can be significantly faster and cheaper, if you build on the previous service description and learnings, with the focus on new objectives for the service rather than reinventing the parts that are working well. Similarly, we see many organisations that now have a framework or at least existing agreements with alternative suppliers that can be used to cut through the need for extensive contractual negotiations. In the side-bar we give ideas for how to test the market before, or even without ever, having to commit to a full rebid.

Testing the Market

There is often an information gap of what new options are available at the beginning of projects

The cost of finding out through a major re-bid can be perceived as daunting and potentially unjustified. There are solutions however to finding out what options are available without having to incur large up-front costs:

- RFIs that contain enough information about your environment to allow potential suppliers to give indicative pricing and solutions
- Agile contracting, where suppliers are invited through a series of workshops to develop new solutions, that focus on the key technical, operational, commercial and risk issues before committing to a full contractual negotiation
- Benchmarking of the service and not just the price
- Using peers and external consultants to advise what is available in the market

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A tight, experienced and empowered team that understands the strengths and weaknesses of the existing arrangement and is focussed on clear new objectives for the next phase, can move fast in our experience. The operative word is agility, whether re-purposing existing materials and relationships, finding ways through the inevitable constraints of the existing deal or finding ways to test the market.

Approach

Timing

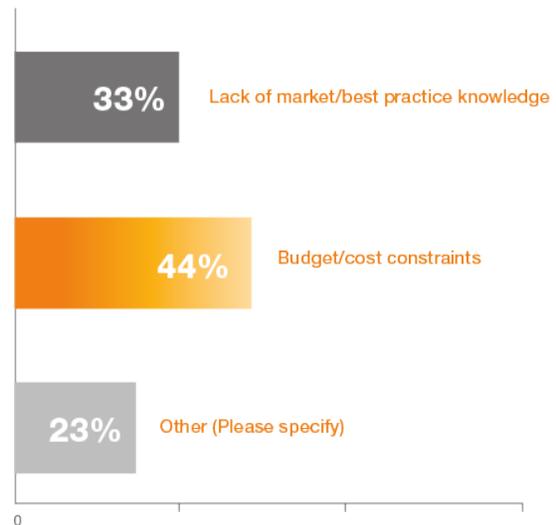
Few outsourcing agreements give the customer the right to extend the term perpetually. This means that once you are in an agreement, you have timing constraints that can undermine leverage if you don't start the rebid/renegotiation process soon enough. To ensure that you don't run out of time, you should be starting the project 24-18 months ahead of the end of the term.

Strategy

The starting point is always to stand back and look at what you are trying to achieve for the next 3-5 years. Objectives rarely stay exactly the same between deals. The business context will have changed and this is the chance to revisit aspirational goals that weren't achieved with the first deal.

These objectives will be fundamental throughout the negotiations and should be kept front of mind throughout the project. Consider sharing them with your incumbent supplier early in any discussions to seek their ideas on how they can be achieved.

What do you consider to be the biggest obstacles to your sourcing strategy?



Building from these objectives, you will need to analyse:

- how the current arrangement is performing against your objectives, including potentially reviewing the services with internal stakeholders outside the services team
- the constraints you are operating under (for example restrictions in the contract that will impact the approach to renegotiations or a rebid) and the timeline that must be met
- your alternatives, including known developments in the market

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This exercise will need to draw on the perspectives of the key stakeholders within the organisation. As you build out your strategy that draws on your objectives, constraints and options you also need to ensure that you are aligned as an organisation before you engage with your existing supplier and/or potentially the market.

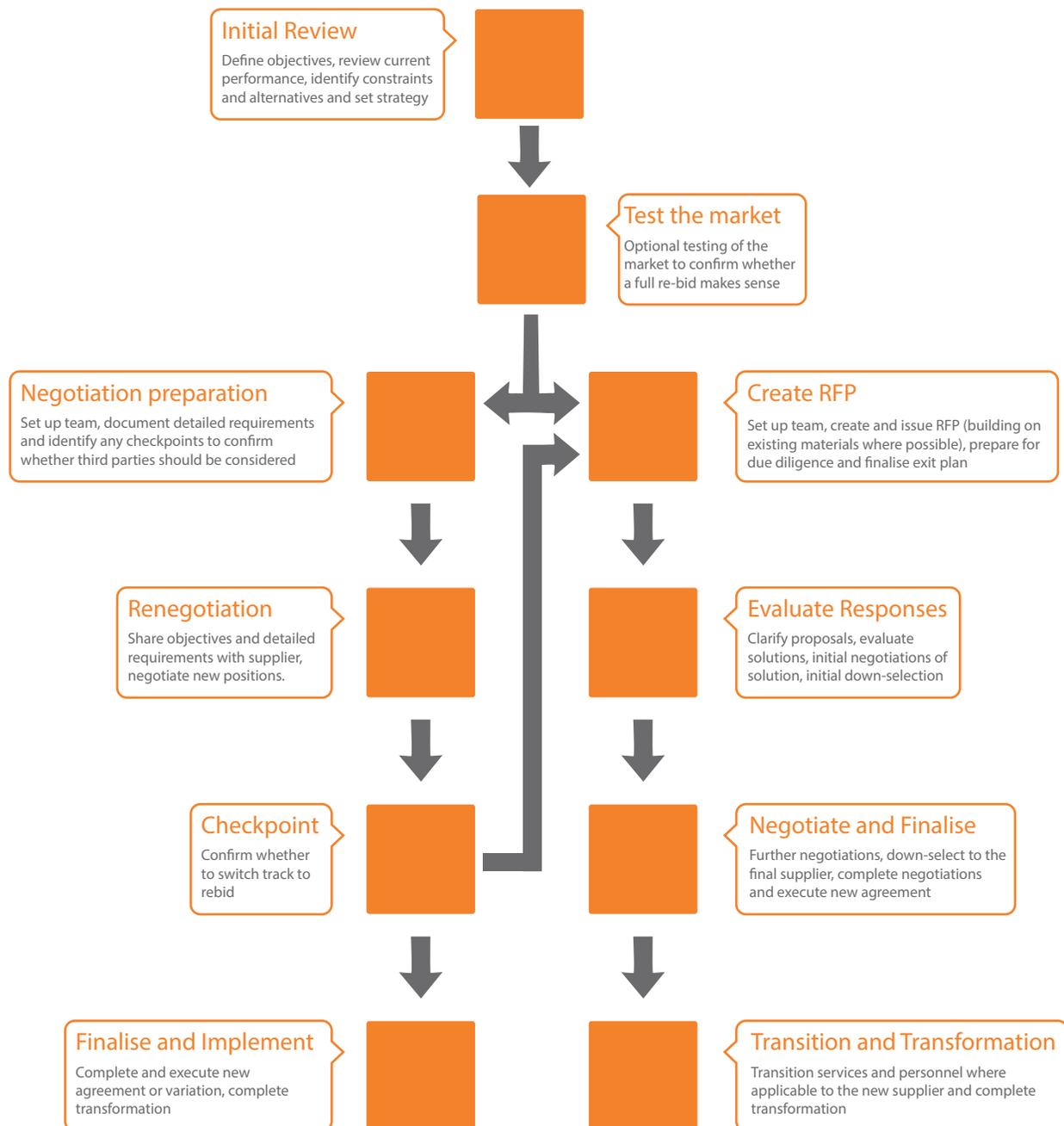
Your strategy needs to take account of how you are going to maximise leverage with your existing supplier if you are going to proceed to a renegotiation and having a 'plan B' in case renegotiations don't succeed. Consider having a milestone by which key issues need to have been resolved which still gives time to go to market.

Getting Your Lands in Order

Good practices should be adopted during the outsourcing relationship that will help with the renegotiation process, including evolving the relationship through ongoing governance as objectives change, documenting changes and maintaining an exit plan. But it's not too late if actual governance has fallen short. This is the time to make sure that you understand what is actually happening in practice, understanding where you want to get to and reviewing the exit plan.

The renegotiation or rebid is also going to require preparation, as you determine exactly what you are trying to achieve. The good news is that the base of many of the materials you need will already exist from your initial sourcing project.

Road Map



About Radiant Law

Radiant Law is a UK law firm with lawyers in London, Cape Town and Johannesburg that supports large companies and banks on their major outsourcing and technology contracts, day-to-day commercial contracts as a managed legal service and contract review projects.

We create value for our clients by meeting their needs and commercial objectives, as we design and deliver contracting processes and draft and negotiate the contracts themselves. We bring creativity and innovation to these services, combining legal judgement, processes and technology as well as commerciality and market knowledge.

Radiant Law has a highly-experienced team of commercial contracts lawyers with deep expertise in technology, IT and business process outsourcing and other commercial contracts. We combine project management, rigorous processes and proprietary software with a total focus on our clients' commercial objectives. Our fixed-price model ensures that our goals are aligned with those of our clients.

By doing this, we help clients deliver more business value from their contracts and build better commercial relationships.

To find out more, please visit: www.radiantlaw.com

THANK YOU

We thank all the participants for engaging and sharing in the way they did and Stephen Ashley and Brendan Mulreany for their help in leading the conversations on the morning and for contributing to this paper. We learnt a lot from them and from you and we hope this paper has helped you in turn.



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