

CHAPTER 2

CONSIDERING OUTSOURCING: THE REQUEST FOR PROPOSAL AND VENDOR SELECTION

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2.1 THE DIRECTIVE

With IT costs accounting for a significant percentage of a customer's¹ total expenses and with the emphasis on technology as a critical vehicle for changing the strategic direction of many customers, senior management is paying more attention to how the IT department is being run—looking for new ways to cut costs and increase profitability and performance. Outsourcing is seen by senior management as a means for handling either short-term or long-term IT issues and, in many cases, broader organizational needs. For example, the outsourcing vendor may be willing to pay the customer a much-needed upfront lump-sum payment for IT assets, or outsourcing may provide the resources to implement

1. Note: References to "customer" in this chapter refer to the potential outsourcing customer considering and evaluating outsourcing, and may include companies or government entities.

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new systems more rapidly than the customer would have been able to accomplish with its own in-house staff. It is no surprise then that, in many cases, the directive to consider outsourcing comes from senior management, particularly since IT personnel often view outsourcing as placing their jobs at risk.

The reasons for considering outsourcing vary from customer to customer and may depend on whether the directive comes from senior management or from within the IT department. Senior management typically decides to evaluate outsourcing as part of:

- An organization-wide directive to outsource noncore functions
- An effort to globalize/standardize functions throughout the organization
- An organization-wide directive to downsize or cut costs
- The reorganization of IT, often in response to a reengineering study
- The redirection of IT in an effort to remain competitive
- An effort to enhance public perception (and perhaps boost stock prices)

The IT department, whose reasons for considering outsourcing are often more focused, typically targets outsourcing as an option:

- As part of the reorganization of all or part of IT
- As a means to cut IT costs
- As a means to focus more resources on IT strategy
- In an effort to enhance performance
- As part of the rollout of new technology (e.g., client/server)
- In order to provide lacking expertise/experience

The reasons behind initiating the evaluation of outsourcing will affect the process, timetable, and scope of the transaction. If, for example, senior management has decided to outsource noncore capabilities as part of an organization-wide downsizing initiative or the customer wishes to sign the contract by the end of its fiscal year, the customer may spend less resources on assessing the benefits and risks of outsourcing and move more quickly to the request for proposal or vendor selection stage. In other instances, for example, where the go-ahead to consider outsourcing comes from IT management and the primary objective is to improve performance, the evaluation and negotiation process may be longer.

2.2 OBTAINING SUPPORT AND FORMING THE OUTSOURCING TEAM

Once the decision is made to consider outsourcing all or part of a customer's IT functions, it will be necessary to ensure that the outsourcing effort is supported by both the IT department and senior management and, in some cases, by the board of directors. Support from within the IT department and from senior man-

2.3 Guidelines and Internal Evaluation 45

agement is critical to moving the process along, particularly because the customer will need to commit significant resources to carrying out the evaluation, proposal, and negotiation processes. These resources include financial resources for such expenses as travel, meeting rooms, overtime, and consultant/legal fees, as well as personnel resources (top IT managers who will likely work exclusively on this project for several months). Many customers overlook the need to obtain board support or, with respect to government entities, fiscal appropriation. Because the total amounts to be expended in many outsourcing contracts can be substantial, the customer should consider whether the decision to outsource is subject to board approval before going forward with the evaluation process or, more likely, before signing a contract. Even if board approval is not necessary until later, it is often useful to get the board “on board” at an early stage so that any negative reactions can be dealt with before too many resources are expended.

The next step is selecting the customer’s project leader, typically the chief information officer (CIO) or a direct report. It is important that the project leader has (1) clear directions as to what the customer’s objectives are and the time frame for achieving these objectives and (2) the empowerment to carry out these directions and make decisions. The project leader typically organizes a team from:

- Within the IT department
- One or all of the following departments: purchasing, finance, human resources, legal, audit, tax, risk management, and other affected areas (e.g., mergers and acquisitions may get involved if there is an asset transfer)
- Outside consultants and lawyers

It is important to get all project team members involved at an early stage because some pieces of the transaction may require a substantial lead time.

2.3 GUIDELINES AND INTERNAL EVALUATION

Once the outsourcing team is formed, it should consider preparing guidelines for the project, including procedures relating to confidentiality and internal and external communications. It is prudent to implement a system for marking documents (e.g., proprietary and confidential, authorized access only). Many customers also set up separate working rooms for the team, with dedicated fax and telephone lines.

An essential step—before performing preliminary due diligence—is for the team to establish its top five to ten objectives for outsourcing. It is a common outsourcing myth that the main reason that companies or government entities outsource their IT operations is to cut IT costs. Although the potential for immediate capital and overall cost savings exists, it is not always realized, nor is it

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necessarily the primary or sole objective in pursuing outsourcing. In addition to cost savings, other common objectives include the following:

- Concentrating on core capabilities
- Implementing a variable cost approach
- Obtaining an immediate cash infusion (typically associated with the transfer of assets to the vendor)
- Improving overall performance
- Keeping current with industry IT trends
- Providing access to new technologies
- Reducing risk
- Sharing risks
- Implementing tools for growth
- Standardizing diverse systems
- Revamping the IT structure management
- Facilitating migration to new systems
- Refreshing existing systems
- Managing legacy systems
- Managing legacy systems while the customer implements new technology
- Obtaining new or additional resources
- Providing flexibility to increase or decrease resources

Once the list of objectives is compiled by the outsourcing team, it is useful to submit the list to senior and IT management at an early stage for their approval. This process enables the outsourcing team to evaluate whether its initial objectives were achieved when the final deal is presented to management.

The next step is for the outsourcing candidate to begin an internal evaluation process to determine whether outsourcing is desirable from a business, financial, technological, operational, regulatory, and legal perspective. Issues to consider as part of this initial due diligence include identifying what will be outsourced and whether there are any obstacles to outsourcing (e.g., corporate initiatives, acquisition, restructuring or divestiture plans, restrictive relationships with third parties, regulations). In addition, the customer will want to determine whether any precedent for outsourcing exists within its organization and learn how employee and asset issues were dealt with in previous transactions or are being dealt with in contemporaneous transactions. The customer should also investigate whether there are any existing IT outsourcing relationships, who the vendors are, and the status of the relationship.

The customer should also initiate at an early stage an investigation into whether any regulatory or local law approvals or authorizations may be required. In addition, the customer should determine what type of corporate approval is necessary (e.g., board approval, parent approval, legislative approval). Subject to the organizations' confidentiality obligations, due diligence that has proved

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very useful is for the outsourcing candidate to talk to other organizations that have outsourced similar IT functions to learn from their experience (and successes and mistakes).

Any customer deciding whether to outsource will need to outline the benefits and risks of outsourcing and assess whether the benefits outweigh the risks. An example of a common risk/benefit analysis follows:

- Benefits
 - Cost savings/benefits
 - Enhanced ability to concentrate on core business
 - Implementation of organization-wide initiatives
 - Sale of assets (i.e., moving assets off books, capital infusion)
 - Greater resources to move to new environment/systems in a faster time frame
 - More and varied skills and resources
 - Better access to new technology
 - Reduced training expense
 - Enhanced flexibility
- Risks
 - Loss of control
 - Cost management
 - Tax liability
 - Difficulties in reassuming responsibility (or “insourcing”)
 - Reduced flexibility

2.4 PREPARING A TIMETABLE

The period of time from which a customer decides to pursue the possibility of outsourcing until the actual outsourcing contract is signed may vary from two months to three years depending on the customer's reasons for outsourcing, the customer's and the vendor's negotiating flexibility, and the complexity of the transaction. For example, the outsourcing team may have only a couple of months to select a vendor and negotiate and sign a contract if senior management decides that the contract must be signed by a specific date so that the announcement of the outsourcing transaction coincides with the announcement of a larger organizational restructuring (e.g., a public offering). However, there may be fewer time constraints in situations where the IT department introduces the idea of outsourcing all or part of the customer's IT and wishes to perform due diligence before escalating the idea to a senior management level for approval. In more complex transactions (e.g., involving several international sites), regulatory and legal requirements, rather than the customer, may dictate

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the time frame of the transaction for the following reasons: (1) financial institutions may need to obtain the consent of regulatory authorities; (2) transborder data flow restrictions may require the customer to obtain government/agency consent; or (3) local law may impose a notice period before transitioning employees. From the vendor's perspective, it is almost always desirable to close the deal as quickly as possible.

The length of time that a customer has to conclude an outsourcing transaction often dictates the process. A truncated timetable invariably means cutting corners with respect to due diligence, vendor selection, and negotiation. The customer should weigh the advantages of completing the transaction within a certain period against the loss of leverage and thoroughness that may result from the short period of time. However, while it is desirable to spend time defining requirements, performing due diligence, preparing a comprehensive request for proposal, and negotiating the transaction, there are advantages to moving the process along as expeditiously as possible, most notably that the process uses a significant amount of personnel and may involve incurring significant expenses (e.g., travel, consultants, lawyers). In addition, some customers have found that a drawn-out process may be particularly damaging to employee morale. Timing is often used to obtain concessions from the party under time constraints. The vendor, for example, may wish to complete the transaction by the end of its fiscal year, which the customer may use to its advantage if it does not have similar time constraints.

Once the customer has determined, at least generally, the time that it wishes to commit to the due diligence and negotiation process, it is useful for the customer to prepare a timetable of key dates relating to the outsourcing process. What are considered key dates will depend on the scope of the transaction, whether the customer is putting the transaction out to bid, and whether there are regulatory restrictions. Exhibit 2.1 contains a list of key dates to keep in mind when developing the outsourcing timetable. This list is by no means exhaustive and will vary depending on the requirements of each deal. For example, a financial institution will likely have different time-sensitive regulatory requirements than a steel manufacturer.

2.5 INTERNAL COMMUNICATIONS

An important issue to consider early in the planning process is how employee/internal communications will be handled. Customers usually follow one of three general philosophies:

1. Wait until the deal is ready to be signed before telling employees.
2. Tell the employees that outsourcing is being considered and that no other information is available until contract negotiations are well underway (on a need-to-know basis).
3. Be very upfront with employees from the start.

2.5 Internal Communications 49

ISSUE	RESPONSIBILITY	TIME FRAME
Senior Management Directive		
Select and Form Internal Outsourcing Team		
List Outsourcing Objectives		
Obtain Management Support		
Determine Internal Communication Strategy		
Customer's Preliminary Evaluation		
Internal Meetings		
Site Visits		
Request for Information (RFI)		
Develop RFI		
Issue RFI		
Vendor Responses Due		
Evaluate Responses		
Request for Proposal (RFP)		
Issue RFP		
Vendor Responses Due		
Evaluate Responses		
Vendor Presentations		
Clarifications		
Develop Negotiation Strategy		
Select Preferred Vendor(s)		
Customer Due Diligence		
Financial		
Legal		
Regulatory		
Data Issues		
Employee-Related		
Site/Local Issues		
Vendor Due Diligence		
Begins		
Ends		
Term Sheet		
Prepare Term Sheet		
Negotiate Term Sheet		
Contract		
Prepare Contract		
Negotiate Contract		
Employee-Related Issues		
Develop Transition Plan		
Make Offers to Employees		
Employee Acceptance Date		
Employee Start Date		
Approvals/Authorizations		
Corporate Approvals		
Regulatory Approvals		
Local Approvals (for international transactions)		
Sign Contract		
Press Release		
Asset Transfer		
Notify Third-Party Vendors		
Contract Commencement Date		

EXHIBIT 2.1 OUTSOURCING TIMETABLE

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Pros and cons for each approach are as follows:

Wait Until There Is a Deal

PROS

- Negotiating position is not compromised by employee reactions and demands
- Negotiations are not strained by fear that employees will resign during negotiations (particularly if all employees are not being transferred and there will be no stay incentives)
- Less risk of leakage to the press
- Avoid false alarm if decision is made not to outsource

CONS

- Breeds distrust among general employee population
- Employees may claim that they were not treated fairly
- Allows employees little opportunity to evaluate options

On a Need-to-Know Basis

PROS

- Breeds trust with employees
- Likelihood that employees will not leave until they know what the situation is
- Mitigates claims from employees that they were not adequately informed

CONS

- Risk that employees will resign
- Employees may still claim that they were not fully informed
- Incomplete disclosure may result in unfounded rumors

Be Upfront from the Start

PROS

- Breeds trust/loyalty with employees
- Reduces risk of claims that employees were not fully informed
- Often helps in the negotiation process to learn what employee concerns are

CONS

- Risk that employees will resign (particularly those who will not be transferred to the vendor)
- Negotiation process may be driven by employee reactions and demands
- Poor employee morale may result in pressure to close the deal

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Once a customer has chosen its philosophy, a communication strategy will need to be prepared. The strategy may differ, and become more complicated, for multisite and international transactions. The customer will need to ensure that employees receive the same information at as close to the same time as possible. This typically involves close communication with all sites and “prepping” before employee communications. A more detailed discussion of employee-related issues is set forth in Chapter 7.

2.6 DEFINING THE SCOPE OF THE TRANSACTION

(a) DEFINING THE GENERAL SCOPE. What IT functions are being considered for outsourcing? Some customers wish to outsource all of their IT functions. This is particularly true in instances where the outsourcing customer has an ownership interest in the outsourcer (e.g., the customer is a joint venture partner or there is a parent/subsidiary relationship). Other customers target certain areas of IT that they wish to outsource (e.g., data center, telecommunications) or certain areas of IT that they wish to retain. For example, some customers believe that because application development in many ways controls the strategic direction of the customer, this function should be retained. Other customers feel that they are outsourcing as a means to change the strategic direction of the customer (e.g., to move to client/server, standardize systems) and that in order to facilitate the change, the vendor will need to assume at least some application development responsibility.

For some customers, defining what IT functions should be outsourced is easy. Part of the outsourcing directive, for example, may be to outsource all IT functions except for strategic planning and process control, or to outsource data center but not desktop. Other customers are not sure which functions to outsource, mostly because they are not sure what the vendor can deliver and how much it will cost. If a customer is not sure what to outsource, it may be beneficial to be overinclusive of what is to be outsourced and include a requirement that the vendor must unbundle, or provide separate pricing for, certain functions. For example, if a customer wants to outsource its data center but is not sure whether to outsource telecommunications, the customer may choose to include telecommunications in its initial plan, thereby giving the customer the flexibility to put out a bid for telecommunications with the right to withdraw this function from the deal after evaluating the outsourcing benefits and risks.

The IT functions that customers typically consider outsourcing either by themselves or bundled with other services include the following:

- Data center
- Application development
- Application maintenance
- Help desk
- Voice network

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- Data network
- Desktop
- Office/field support
- Telecommunications
- Asset acquisition
- Disaster recovery
- Print management
- Training

In addition to defining what IT functions are in scope, many customers have a difficult time determining which sites will be in scope. Is just one site or are all sites to be outsourced? Will the deal just include the United States or will it be global? Will particular countries be out of scope? Many customers, particularly larger ones with geographically dispersed locations, spend a great deal of time assessing which sites should be outsourced and which should either stay in-house or be part of a separate transaction. The decision as to whether certain sites should be included in scope is in some instances guided by local law requirements. For example, if a state or country has prohibitively high services taxes or laws relating to employee transfers, the customer may decide not to outsource services provided to or from that site or country. Another factor affecting the scope is the customer's management structure. If a customer has a decentralized structure, it is often difficult to achieve a consensus regarding what sites should be outsourced. The managers often have conflicting ideas about whether outsourcing is the right solution for all sites. An option for customers that are hesitant about outsourcing is to first enter into a "proof of concept" phase, where a few sites are outsourced with the understanding that other sites will follow if the trial period is successful. There have been mixed reviews regarding this approach.

Determining where the services will be provided will aid in assessing the complexity and often the cost (and tax consequences) of the transaction. Even if the deal is United States only, questions are raised regarding state tax and state employment law issues. If foreign locations are to be included, more lead time will be necessary to assess the requirements for local consents and authorizations. It is often a time-consuming (and costly) task to coordinate with these foreign locations. One thing to keep in mind is that international transactions will often require local counsel and in some instances local consultants. The outsourcing team may need to be expanded to include representatives from the various local sites.

Other issues to consider when starting to define the scope of the transaction include the following:

- Does the customer currently provide IT services to other entities? Will such services be in scope?

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- Who are the end users (e.g., employees, customers, suppliers, independent consultants)?
- Are any existing outsourcing/subcontracting arrangements in effect that cover in-scope services? Are there any costs associated with terminating or transferring these relationships?
- Will assets be transferred to the vendor?
- Will employees be transferred to the vendor?
- Should any alternative structures be considered, such as forming a joint venture with the vendor or spinning the IT department off into a separate entity and then selling the entity to the vendor?

Just as important as defining what services are to be outsourced is defining what services the customer wishes to keep in house. The scope of retained responsibilities may vary from function to function with respect to financial, administrative, and operational responsibilities. For example, the vendor may assume responsibility for managing third-party application maintenance while the customer retains financial responsibility for third-party maintenance contracts. Areas that are often retained in whole or in part by the customer include the following:

- Process control
- Strategic planning
- Asset acquisition
- Hardware/software upgrades and replacements
- Application development
- Facilities
- Disaster recovery
- Office-related services
- Payment of third-party invoices
- Off-site storage
- Print
- Microfiche
- Report distribution
- Data entry
- Telephone charges

(b) UNDERSTANDING YOUR EXISTING IT RESOURCES. It is important for any customer wishing to outsource to have a strong understanding of the tasks its IT staff (those responsible for the functions to be outsourced) performs today. This is an important task to address early in the transaction for several reasons:

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(1) it is difficult to define what services the customer wants the vendor to provide if the customer does not know what it is doing today; (2) it makes writing the request for proposal and service exhibits to the outsourcing agreement less overwhelming; and (3) if the customer does not have a clear and comprehensive understanding of its current tasks, it loses much at the negotiating table, particularly if the vendor has done its due diligence. It is not uncommon for the vendor to know more about the customer's IT services than the customer thereby giving the vendor the upper hand.

Following is an overview of several areas that should be explored before issuing the request for proposal:

- *The IT budget.* A useful starting point in determining what the IT department's existing responsibilities are is a review of the IT budget. The budget is often what the vendor will use to show how it can perform the same services more efficiently and at a lower cost. It is important then to understand the IT budget and to be able to clearly define what is and what is not included.
- *Shadow support.* One thing the budget does not often reveal is the incidental or shadow support the IT department receives from other departments. If shadow organizations provide IT services that are not within the IT organization, the outsourcing team should be aware of these people and consider whether the outsourcing vendor should be responsible for these services. It is also helpful to understand all of the seemingly minor things for which the IT department is responsible. For example, if the president of the customer's organization receives special weekly reports, this should either be included in the list of services to be provided (or covered at least generally) or provided by some other group. If the service is not included, the president may request his or her report and the customer will have to pay extra for it if it is not an in-scope service or provide it through internal resources if possible.
- *Organizational structure.* If the customer has not already prepared a list of in-scope IT personnel, it is useful to do this early in the process. This can be done by preparing an organization chart, specifying the names, duties, and locations of each of the IT employees and subcontractors. For example, the chart should specify how many people (managers, full-time employees, part-time employees, contractors) are responsible for each function.
- *Management structure.* An area to pay particular attention to is the internal management structure. Does it work? Does it work efficiently? Outsourcing is a good time to reorganize or realign the existing management structure.
- *Inventories.* One area that is typically lacking (particularly with customers with numerous field sites) is the customer's inventory of hardware and software assets that it owns and that it leases or licenses. If the cus-

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tomer does not have an inventory of its assets, it will be difficult for the customer to evaluate whether to transfer its assets or simply allow the outsourcing vendor to use the assets to provide the services. In addition, it is difficult to understand what the upgrade, replacement, and refresh responsibilities will be without an inventory of existing assets.

- *Service levels.* Another topic to consider early on is service levels. What service levels does the customer measure today? What service levels does the customer want to measure that it does not measure today? What is industry standard? Service levels are one of the most important aspects of the outsourcing agreement, yet often little attention is paid to these levels until late in the transaction. Vendors typically will commit to what the customer is doing today or better. But what is the customer doing today? If the customer does not know before entering into the outsourcing transaction, or does not have historical data to look to, the vendor will often take the position that it will measure the service levels over a period of time ranging from 30 to 180 days after the effective date of the agreement. The more information the customer has regarding its existing service levels, the better service levels it will likely be able to negotiate.
- *Critical services.* Another area that is often overlooked until too late is the definition of critical services. The customer is outsourcing its IT functions. Which services does it really care about? Which services, if they are not provided for an hour, a couple of hours, a day, a week, would cause serious damage to the customer (would cause you to lose your job)? Customers often do not have a defined list of critical functions. If the customer has an understanding of its critical functions early on, it can negotiate more stringent remedies if these critical functions are not met. Defining a customer's critical functions is not always easy. In fact, in some instances, it may not be possible. For example, for a front-office outsourcing deal, what is critical? Is any function more important than the others? The question is easier to answer in mainframe deals, but for many customers may be just as important in desktop and network-related transactions.

(c) DEVELOPING A LONG-RANGE PLAN. Many customers find it useful to develop a long-range plan. Where does the customer see itself in the next five years? Where does it see its IT requirements? For example, does the customer wish to standardize? Globalize? In your analysis, it is important to keep in mind that the maintenance of the existing environments, as new or modified systems are rolled out, is just as important as planning for future environments.

The long-range plan should include, to the extent possible, a list of the projects that the customer foresees doing in the next five years. What are the anticipated costs of these projects? Does the customer want these projects included in scope? Does the customer want to include a pool of resources to perform these projects?

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Other aspects of the long-range plan should include anticipated software and hardware upgrades and replacements. What is the customer's anticipated refresh cycle for hardware and software? The customer will need to consider whether software, as well as hardware, refreshes are part of the deal. Similarly, the customer will need to evaluate what additional equipment it will require. Does the customer anticipate any major volume changes?

The customer should consider its current and future business needs. This includes new and divested sites and anticipated expansion. More often than not, the outsourcing team works in a vacuum, and partway into negotiations a businessperson will tell the team that some significant restructuring or organization-wide initiative will affect the transaction. The outsourcing team must be tapped into management—its own and often its parent company's—to understand the direction the customer is going in.

2.7 SELECTING A GROUP OF POTENTIAL VENDORS

(a) MAKING THE FIRST MOVE. The customer has obtained the commitment to move forward with exploring outsourcing as an option; now it must identify the potential vendor(s) that can provide the required services. In some cases, the customer will not have to look far. Unless the decision to evaluate outsourcing has been kept confidential, the vendors will hear about this decision through the grapevine, through an existing relationship with the customer, or through previous marketing efforts. The organization may already be targeted as a potential outsourcing customer. Even if the customer has an existing relationship with the vendor and thinks that in the long run this vendor is the right match for the customer, the customer should consider performing at least minimal due diligence to see who else is out there that can provide similar services. Such due diligence enables the outsourcing team to demonstrate that it has evaluated all of its alternatives. Government agencies, government contractors, and publicly held companies should keep in mind that government or security regulations may require them to look at more than one vendor.

Some customers have an idea whom they should talk to, whereas others are not as familiar with the possible vendors (this is particularly true for international outsourcing deals because U.S. IT departments typically do not have reason to be familiar with vendors in foreign markets). If you have an idea of whom to talk to, or if you know the vendors that you wish to target, it is useful to draw up a long list, and after doing due diligence on the vendors, shortening this list to three to five target vendors. If you do not know who all of the potential vendors are, you could obtain vendor information from industry reports and surveys or by talking to other outsourcing customers.

(b) VENDOR EXPERIENCE AND RESOURCES. The next step is to commence due diligence on the vendors that have been targeted. Due diligence may include the following:

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- Talking to the vendors' customers
- Visiting sites of the vendors' customers
- Visiting vendor sites
- Checking customer's previous experience with each of the vendors
- Performing a newspaper search for recent articles regarding the vendors
- Checking litigation involving the vendors
- Obtaining annual reports
- Obtaining industry surveys and reports

During due diligence, the customer is able to begin to sense which vendors have the resources and experience to provide the desired services. Useful questions to ask each of the vendors during due diligence include the following:

- *Vendor reputation.* What is the vendor's reputation in your industry? What is the vendor's reputation in each of the countries where the customer wishes to outsource? Are there any conflicts or problems? Will the vendor's reputation and culture fit with the customer's reputation and culture?
- *Vendor history.* What is the vendor's history? How long has it been in business? Have there been any unusual peaks or valleys? Has the vendor been in any significant or relevant disputes or litigations?
- *Financial security.* Is the vendor financially secure? What is the vendor's market share? Has the vendor acquired or divested entities recently? Ask for a copy of the most recent financial statement or annual report. Are there any pending or threatened claims that could affect the vendor's financial standing?
- *Organization.* How is the vendor organized? By industry? By value of contract? Is there one international outsourcing entity or is there a web of local entities that work together?
- *Resource distribution.* Where are the vendor's data centers? Where are the vendor's employees located? Does the vendor have resources in the locations where your organization requires them? What is the extent of these resources? (For example, does the vendor really have an office in Singapore?)
- *Experience: Technology.* Does the vendor have experience with your current and future environment? Does the vendor have the capabilities to provide other services (e.g., reengineering)? Ask for examples and references.
- *Experience: Industry.* Does the vendor have experience dealing with organizations in your particular industry? Ask for examples and references.

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- *Employee transition.* What is the vendor's experience with transitioning employees? How many transitions has the vendor done? In what states and countries? Has the vendor ever been sued in connection with a transition?
- *New system rollout.* What is the vendor's experience with implementing new systems?
- *Customer base and references.* Ask for references and contact names.
- *Subcontractors and partners.* Does the vendor typically partner with another entity to provide certain services? Who? What is the relationship with the partner?

If a customer does not have access to information regarding certain vendors in which it is interested, one way to approach vendors is to issue a request for information (RFI). RFIs have proven to be particularly useful to (1) customers looking to outsource overseas who do not know much about potential overseas vendors and (2) customers not necessarily looking to do business with one of the top outsourcers. However, customers that have targeted vendors or are dealing in an industry that they are very familiar with typically feel that issuing an RFI delays the selection process. Much of the information requested in the RFI could be requested in the customer's request for proposal. In addition, some customers feel that vendors will not answer the questions other than by providing promotional materials. An example of a generic RFI is set forth in Appendix 2.2. The RFI will need to be tailored to your organization's particular outsourcing requirements.

(c) **NARROWING THE VENDOR GROUP.** Most customers choose to narrow the actual group of vendors to whom the request for proposal will be distributed to between three and five vendors. The screening process typically involves taking the long list of vendors and determining who among the top vendors meets the customer's requirements. As part of the screening process, it is useful to distribute the following material to the outsourcing team (and members of management if appropriate): a list of the vendors, a list of criteria on which to judge the vendors, and a system by which the vendors can be ranked for each of the criteria. The results of the team's evaluations can then be compiled and used to select the top three to five vendors.

2.8 REQUEST FOR PROPOSAL

(a) **SINGLE BID VS. MULTIPLE BIDS.** In some cases, customers decide early in the process that they are going to issue the request for proposal (RFP) to only one vendor. This is generally not the recommended approach, but it may make sense in situations where:

2.8 Request for Proposal 59

- The customer has a history with one particular vendor who is familiar with the customer's systems and organization.
- The customer is under considerable and real pressures to get the deal done.

There are, however, significant disadvantages to requesting only one vendor to submit a bid. The most obvious is that the customer forfeits substantial negotiating leverage. Where else can the customer turn? Other disadvantages may include the following:

- Impact on pricing and service-level commitments because the bid is not competitive
- No comparative data or pricing
- The vendor may be less flexible
- Sending a negative message to other vendors (why bid on other projects if they do not have a chance?)

Single bidding is not an option for some outsourcing candidates, including:

- Government contractors
- Government entities (usually required to go out to competitive bid)
- In some cases with publicly held companies (this is particularly true where the aggregate contract value is substantial; it is also useful for corporate audit purposes to show that the contract is competitive)

For most customers, requesting multiple bids is the preferred approach because it:

- Adds to project legitimacy
- Demonstrates that due diligence was performed
- May lead to competitive pricing and service levels
- Enables the customer to use the possibility of other interested vendors as a negotiating tool
- Provides access to alternative solutions and technologies

(b) SINGLE VENDOR VS. MULTIPLE VENDORS. Before issuing an RFP, the outsourcing customer should determine whether it wishes to have one or multiple vendors provide the IT services to be outsourced. There are significant differences between unisourcing and multisourcing. The most compelling difference between the two approaches is that they require different internal management structures. Multisourcing will require a broader internal management equipped to manage several vendors at a time. In addition, there are liability issues. Unisourcing allows the customer to look to one party for performance,

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whereas multisourcing may allow a vendor to point to the other vendors in the event of a performance failure.

There are also cost benefits and risks associated with the two approaches. Bundling services together may allow the vendor to quote a better overall price for the services. However, if the vendor is not a telecommunications expert—and therefore has to build the necessary infrastructure or hire a subcontractor—it may be more cost effective for the customer to contract directly with the subcontracting organization.

(c) PREPARING THE REQUEST FOR PROPOSAL. The content of the RFP varies greatly from customer to customer. A checklist of common RFP topics is set forth below. A sample RFP is provided in Appendix 2.3.

Introduction

1. *Cover letter.*
 - Include a general cover letter outlining your intentions.
 - Note which provisions are binding on the vendor (e.g., confidentiality, response requirements).
 - Attach an Intent to Bid form and request the vendor to fill in the form within a week or so. This will give you early warning signs as to how many vendors will be bidding and whether there are any wild cards.
2. *RFP format.* Identify on the cover sheet what the document is meant to cover. Include a general confidentiality provision. Number the RFPs being distributed and fill in to whom the RFP was distributed. Include a table of contents and a list of appendices.
3. *Objectives and overview.* Describe in general terms the functions that the customer wishes to outsource. Describe what the customer's goals and objectives are (e.g., cost savings, enhanced performance, new environment).
4. *Proposal submission date.* Note the date the proposal is due.
5. *How to respond.* Describe how the vendor should respond—number of copies, copy on a disk (note disk requirements). Who should responses be sent to? Does the customer require sealed envelopes, no faxes?
6. *Proposal format.* Describe the format the proposal should follow. For evaluation purposes, it is useful for all proposals to follow the same format.
7. *Customer contacts.* Note whom the vendor may contact for which areas.
8. *Communications.* Outline how communications with the customer should be handled (e.g., in writing only, by phone).

2.8 Request for Proposal 61

9. *Clarifications.* Describe how questions or clarifications should be handled.
10. *Vendor presentations.* Include a provision either requiring or giving you the option to require that the vendor make a presentation at the customer's site.
11. *Confidentiality.* This provision may prove to be very important. Include a detailed confidentiality provision. You may even wish to require the vendor to sign a confidentiality agreement before disseminating the RFPs.
12. *Ownership.* Note that the customer will retain ownership of all of its data and that the vendor must return all customer data upon request. The customer may wish to identify who owns the proposal, or at least that the customer has the right to use any materials in the proposal.
13. *Scope of proposal.* Note that the vendor's proposal should be as comprehensive as possible and reflect the vendor's best bid. If the vendor will not be bidding on some or all of the services, this should be noted upfront.
14. *Multivendor proposals.* If the vendor is partnering or plans to subcontract any portion of the services, this should be specified. The vendor should describe the services to be provided by the other party, the role of the other party in the outsourcing relationship, and the relationship between the responding vendor and the other party.
15. *Timetable.* Outline the key dates in the RFP/proposal process.
16. *Firm offer.* Note that all offers must be firm for a period of 60 to 180 days.
17. *No obligation.* Note that the customer is under no obligation to enter into an agreement with any vendor.
18. *Right to negotiate with other parties.* Include a sentence reserving the right to negotiate with other parties.
19. *Costs and expenses.* The vendor is typically responsible for paying all of its own costs and expenses incurred before contract signing.

Vendor Background Information

20. *General information.* Ask for general background information (e.g., number of employees, locations).
21. *Industry information.* What is the vendor's experience in the customer's industry?
22. *Financial information.* Ask for information regarding the vendor's financial status, annual revenue, and position in the industry. Ask for copies of vendor annual or quarterly reports and financial statements.

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- 23.** *Organization.* How is the vendor organized? What is the management structure?
- 24.** *Resources.* How are the vendor's resources dispersed? Where are they located?
- 25.** *Customer base and references.* Ask for a summary of the vendor's customer base and at least three references.
- 26.** *Partners/subcontractors.* Ask for the same information for any partners/subcontractors.

Customer Background Information

- 27.** *General description of customer.* Provide general background information—type of business, size, locations.
- 28.** *Description of existing services.* Describe existing services to be outsourced (e.g., types of systems, locations). Generally describe if any of the in-scope services are outsourced today.
- 29.** *Description of short- and long-term goals.* Describe where the customer would like to be in the future (e.g., 3, 5, 10 years).

Services to Be Provided

- 30.** *Services.* Provide a description of existing services and the services that the vendor will be required to provide.
- 31.** *Locations.* List affected locations and entities.
- 32.** *Transition.* Ask for a description of the plan pursuant to which the vendor will assume responsibility for the customer's IT functions.
- 33.** *Migration.* Ask for a description of the plan pursuant to which the vendor will migrate functions to vendor locations (if applicable).
- 34.** *New systems and environments.* Describe new systems and environments. Ask the vendor to describe a proposed solution and implementation strategy.
- 35.** *Projects.* Describe any projects that the vendor will be required to undertake.
- 36.** *Services not provided.* Ask the vendor to list any services that it expressly will not be providing. In addition, ask the vendor to list those services that it expects the customer to provide.

Performance

- 37.** *Service levels.* Describe current service-level measurements (if available). Specify service levels that the vendor will be required to meet.

2.8 Request for Proposal 63

38. *Liquidated damages.* Require the vendor to indicate how liquidated damages will be applied in the event that the vendor does not achieve service-level commitments.
39. *Root cause analysis.* Require the vendor to perform a root cause analysis for any service failures.
40. *Reports.* Describe reporting requirements with respect to service level.
41. *Benchmarking.* Describe benchmarking procedures.
42. *Customer satisfaction surveys.* How will the vendor implement customer satisfaction surveys?

Management and Control

43. *Management procedures.* Ask the vendor to describe these procedures.
44. *Change control.* How will changes be implemented?

Employee Issues

45. *Transfer of employees.* Will all employees be made offers by the vendor?
46. *Offers.* What compensation and benefits will offers include? The customer should clearly specify any desired employment terms (see Chapter 7).
47. *Transition plan.* How will the vendor transition the employees?
48. *Employment agreement.* Ask for a copy of any employment agreement that transferred employees will be asked to sign.

Project Staff

49. *Project executive.* There should be a requirement that the vendor provide the name and qualifications of the initial project executive. The customer should be provided the opportunity to meet and interview the candidate. The customer should also reserve approval rights over all project executive appointments. The vendor should also be prohibited from “churning” project executives (e.g., specify minimum duration of appointment).
50. *Key employees.* The vendor should be required to provide the names and qualifications of any employees who are key other than the project executive. This usually includes the project executive’s direct reports as well as employees key to certain projects. The customer should be provided the opportunity to meet and interview the candidates. The customer should reserve approval rights over all key employee appointments. The vendor should also be prohibited from “churning” key employees (e.g., specify minimum duration of appointment).
51. *Organization.* Ask the vendor to provide an organizational chart.

64 Ch. 2 Considering Outsourcing: The Request for Proposal and Vendor Selection***Pricing***

52. *Pricing.* Include IT budget. (Note: Some customers take the position that they do not want to provide their pricing information until they have chosen a preferred vendor.)
53. *Base case.* Ask the vendor to provide its best base case figures. The vendor should clearly specify what is included and what is not.
54. *Unbundle.* Ask the vendor to provide separate pricing for functions and projects (if desirable).
55. *Volumes.* How will changes in volume affect the price?
56. *Growth.* Is any growth built into the price?
57. *Hardware and software.* What is included or excluded?
58. *Baseline adjustments.* How will adjustments be handled? What are the customer's requirements?
59. *Incremental fees.* Describe the mechanism pursuant to which the vendor will increase or decrease services. Rates should be provided on an hourly, weekly, and monthly basis.
60. *Additional services.* How will additional services be priced?
61. *Significant changes.* Note that significant changes in business requirements should trigger renegotiation or changes to pricing structure.
62. *COLA.* How will cost-of-living adjustments (COLA) be handled?
63. *Currency.* What currency will payments be made in? Who bears the currency risk?
64. *Technology indexing.* How will unanticipated decreases in technology cost be handled? The customer and the vendor should share in unanticipated savings.
65. *Taxes.* Who will be responsible for services taxes?
66. *New and divested entities.* How will new and divested entities be handled?
67. *Invoicing.* Describe the desired timing for invoice payment. In addition, describe invoice detail.

Termination

68. *Termination.* Specify circumstances that may trigger termination, for example:
 - For convenience
 - For cause
 - For failure to provide critical services
 - For change of control
 - For certain unforeseen events

69. *Termination assistance.* What assistance will the vendor provide upon termination?

Contract Terms

70. *Intellectual property.* Who will own what rights?
71. *Required consents.* Who will be responsible for paying for and obtaining third-party consents?
72. *Insurance.* What are the customer's insurance requirements?

Appendices

73. *Reference exhibits.* In many cases, the customer will already have prepared a large amount of the information to be attached to the RFP (e.g., inventories).

Terms and Conditions

74. *T&Cs.* Consider attaching terms and conditions (T&Cs) to the RFP. Model terms and conditions are set forth in Appendix 3.1.

2.9 EVALUATING THE PROPOSALS

Once final proposals are received from the vendors, the outsourcing team will need to take some time to review each of the proposals and evaluate which vendor or vendors are best suited to provide the desired services. The time period allotted for proposal review and evaluation typically ranges from two to eight weeks. The structure and scope of the vendor evaluation process will vary depending on the customer's approach, the number of vendors being evaluated, time constraints, and audit and report requirements. Common steps include the following:

- Selecting key evaluation criteria
- Identifying who will be asked to participate in the ranking of vendors
- Establishing a scoring system
- Weighting the key criteria
- Implementing final sign-off procedures

By the end of the evaluation period, the customer should have identified a preferred vendor or vendors (depending on whether the customer elects to negotiate with one or more vendors).

(a) EVALUATION CRITERIA. In order to facilitate the evaluation process, it is helpful to prepare a list of key criteria on which to judge the vendors and their proposals. The items included on this list should reflect the customer's list of

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objectives for outsourcing. For example, if one of the customer's main objectives for outsourcing is to cut costs, then the vendors' financial proposals will likely be a key criteria. Similarly, if a key objective for outsourcing is to move the customer to a new environment, then the vendors' technical solutions will likely be considered key. The types of criteria that a customer considers key will vary depending on the scope, value, and complexity of the proposed outsourcing transaction. A customer wishing to outsource data center services in the United States will have different (and likely fewer) criteria than a customer wishing to outsource data center, help desk, application development, and network in 10 countries. Examples of key criteria include the following:

The Proposed Solution

- Technology (hardware/software/network)
- Configuration
- Committed resources
- Innovativeness
- Flexibility
- Fit with customer's environment
- Willingness to share risk

Ability to Deliver Services

- Experience/skill levels of staff
- Technology (hardware/software/network)
- Vendor reputation
- Vendor experience
- Proposed implementation schedules
- Physical security
- Data security
- Compliance
- Disaster recovery/business continuation

Ability to Implement New Systems

- Technical resources/ability
- Access to new technologies
- Flexibility
- Innovativeness
- Open systems versus proprietary systems
- Willingness to use third-party packages

2.9 Evaluating the Proposals 67

- Implementation schedules
- Remedies for failing to meet schedules

Ability to Meet Performance Standards

- Methodology
- Proposed service levels
- Remedies for failing to meet service levels
- Benchmarking technology
- Benchmarking service levels
- Technology indexing

Value-Added Services

- Profit sharing
- Incentive mechanisms
- Access to new technologies
- Cross-marketing

Financial Proposal

- Base pricing
- Variable pricing
- Cost savings
- IT budget comparison
- Ability to increase or decrease services
- Cost-of-living adjustments
- Taxes
- Payment schedule
- Expenses

Vendor Reputation/Financial Standing

- Financial stability
- Quality of personnel
- Vendor culture
- Prior/existing customer relationships
- Vendor presence in customer locations

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- Outsourcing experience
- Experience in industry
- Experience with compliance issues
- References
- Number of clients
- Experience in relevant locations

Vendor Flexibility

- Adjustment of services
- Adjustment of fees
- Adjustment of service levels
- Ability to add or take away entities
- Ability to terminate early
- Ability to terminate in part

Access to New Technologies

- Hardware
- Software
- Network
- Methodologies
- Processes
- Tools

Terms and Conditions

- Proprietary rights in software
- Third-party consents
- Indemnities
- Insurance
- Rights to terminate
- Rights upon termination
- Audit rights
- Damages

Human Resources

- Number of employees to be transitioned
- Salary

- Health benefits
- Deductibles/co-payment
- Bonuses
- Savings plans
- Retirement plans
- Severance
- Preemployment screening
- Employment agreement

(b) **THE RESPONDENTS.** Once the evaluation criteria are agreed on by the outsourcing team, the customer should rank the vendors based on their fulfillment of the criteria. This can be done on a formal or an informal basis. In order to benefit from the judgment of each member of the outsourcing team, many customers implement a voting system allowing each team member to submit his or her individual assessment of the proposals and vendors. In many cases, the group of people participating in the evaluation process extends beyond the outsourcing team and may include other key players, such as the CIO and members of senior management. Certain members of the outsourcing team may only be asked to submit evaluations on certain criteria; for example, human resources may be asked only to evaluate the human resources piece of the proposal, while other members of the outsourcing team may not be asked to participate in the evaluation process at all. It is useful for audit and reporting purposes for the customer to keep or ask the respondents to keep any documentation or data used to support the respondents' assessments.

(c) **SCORING.** Next, a scoring system should be established. Each of the criteria should be assigned a score ranging from poor to outstanding. A common (and easy to tally) scoring system is to rank the vendors in each category from 1 to 10 with: 1 = poor, 5 = acceptable, and 10 = outstanding.

(d) **WEIGHTING THE CRITERIA.** Not all evaluation criteria may be of equal importance. For example, the technical solution and human resources may each be considered key criteria, whereas greater importance may be placed on one rather than the other depending on the transaction. Customers engaging in more formal (or structured) evaluation processes should consider weighting each of the criteria to reflect the importance given to each. A common approach for weighting the criteria is to assign a weight or percentage to each general category, with the total of all of the weights equaling 100 percent (see Exhibit 2.2).

Some customers assign weights to subcategories of the general categories in order to allow for a more detailed analysis. Again, weights or percentages are assigned to each subcategory, with the total of all of the weights equaling 100 percent (see Exhibit 2.3).

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CRITERIA	WEIGHT	RAW SCORE	WEIGHTED SCORE
Proposed Solutions	25%		
Ability to Deliver Services	25%		
Financial Proposal	25%		
Terms and Conditions	5%		
Human Resources	20%		
Total	100%		

EXHIBIT 2.2 WEIGHTING THE CRITERIA USING GENERAL CATEGORIES

The Total Weighted Score of the subcategories should then be inserted as the Raw Score for the general category (i.e., Financial Proposal) on Exhibit 2.2.

(e) TALLYING THE BALLOTS. After the evaluation ballots have been filled out and returned to the outsourcing team leader or his or her designee, the results should be tallied. Although the customer typically chooses to keep the individual ballots confidential, the tally of all of the ballots is usually distributed to the outsourcing team and senior management.

(f) FINAL SELECTION PROCESS. Once the ballots have been tallied, the outsourcing team should take a final look at the top vendor or vendors. This can be done in several ways:

- An informal sign-off from the outsourcing team
- An informal sign-off from senior management
- A formal approval vote by the outsourcing team and/or senior management
- A formal letter of approval from senior management

FINANCIAL PROPOSAL	WEIGHT	RAW SCORE	WEIGHTED SCORE
Base Pricing	25%		
Variable Pricing	15%		
Overall Cost Savings	10%		
Ability to Increase/Decrease Services	20%		
Cost of Living Adjustments	10%		
Taxes	10%		
Payment Schedule	5%		
Expenses	5%		
Total	100%		

EXHIBIT 2.3 WEIGHTING THE CRITERIA USING SUBCATEGORIES

2.10 Notifying the Preferred Vendor(s) 71

Some customers go so far as to have respondents who disagree with the top vendor or vendors to note the reasons for such disagreement.

2.10 NOTIFYING THE PREFERRED VENDOR(S)

(a) MAKING THE ANNOUNCEMENT. The manner in which the preferred vendor(s) are to be notified should be discussed by the outsourcing team with senior management. Depending on the size of the proposed transaction, a member of the customer's senior management may wish to contact a member of the vendor's senior management and advise him or her of the decision. In other cases, the outsourcing team leader will notify the lead contact person for the vendor or vendors of the decision. Issues for the customer to keep in mind when making the announcement include the following:

- Reserve the right to negotiate with other vendors
- Refrain from making any promises or representations regarding entering into a definitive agreement
- Identify key issues that must be resolved (e.g., the price must come down a certain percentage)
- Emphasize that all negotiations and communications are confidential
- Note that the vendor should not make statements to customer employees or the press without the customer's consent
- Obtain a commitment that the vendor will provide a top negotiating team that is empowered to make decisions
- Discuss the proposed schedule

(b) COMMITMENT AND COSTS. The preferred vendor(s) typically will need to (or be asked to) increase the number of personnel working on the potential deal. Such personnel may include the following:

- A senior manager empowered to make decisions
- Marketing representatives
- Proposed project executive(s)
- Systems experts
- Tax expert(s)
- A dedicated human resources representative
- Legal counsel
- Industry experts (e.g., retail consultant)
- Local representatives and counsel (for international deals)
- Temporary staff (if customer staff is at critically low levels)
- Due diligence team
- Contract administrators

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This commitment may also include increasing nonpersonnel resources (e.g., access to certain technologies, temporary loan of hardware, travel expenditures). The customer will likely also need to increase its commitment of personnel and resources in order to keep up with the team put together by the vendor(s).

With the increase in personnel and resources committed by the customer and the vendor(s), there should be at least an understanding between the customer and the vendor(s) as to how costs and expenses will be allocated. Typically, the customer and the vendor(s) each bear their own costs and expenses. In some cases, however, the customer may agree to pay for some or all of a vendor's expenses (e.g., the provision of temporary staff in the event that a definitive agreement is not entered into with the vendor or certain travel expenses).

(c) LETTERS OF INTENT. The preferred vendor may push for the customer to enter into a letter of intent with the vendor that, at a minimum, sets out the general objectives of the parties. Vendors typically want to include a provision in the letter of intent that provides that the customer will enter into exclusive negotiations with the vendor for a certain number of days. Other common provisions include allocating costs and expenses, indemnifications for representations made to customer employees, and restatement of the parties' confidentiality obligations.

Letters of intent are usually not appropriate if the customer is negotiating with two or more vendors simultaneously. Obviously, the customer could not commit to an exclusivity arrangement if it intended to negotiate with more than one vendor at a time. Most customers resist signing anything with the indicia that there is a commitment between the parties before the signing of the definitive agreement. In cases where the customers have agreed to sign a letter of intent, the customers have been confident that they would ultimately sign a definitive agreement with the vendor. Examples of letters of intent are set forth in Appendices 2.8 and 2.9.

(d) COMMUNICATION STRATEGY. Once the customer has selected the preferred vendor(s), the customer will need to decide whether to make an internal announcement to employees and/or a formal announcement to the press. A customer's decision to announce the selection of a preferred vendor will depend largely on whether it has chosen one or multiple vendors with whom to continue negotiations. If the customer has decided to engage in simultaneous negotiations with several vendors, it is unlikely that the customer (or the vendors) will wish to announce this strategy.

If one vendor is selected, the decision to announce the selection of a preferred vendor often depends on the customer's communication strategy with its employees. Announcing the selection to customer employees often leads to a leakage to the press. Many customers choosing to announce the selection of a preferred vendor to employees simultaneously issue a press release.

Customers that elect not to make an announcement to employees or to the press at the preferred vendor selection phase typically do so because they feel that they may forfeit negotiating power, lose the interest of other vendors, cause unwarranted public speculation or, possibly, impact public perception (including stock prices).

APPENDIX 2.1

NONDISCLOSURE AGREEMENT (MUTUAL PROTECTION)

CONFIDENTIAL

[ADDRESSEE]

[ADDRESS]

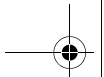
Dear [NAME]:

In connection with the evaluation, discussion, and negotiation of a potential arrangement with Customer pursuant to which Vendor would provide Customer with certain information technology services (the “Transaction”), each of Customer and Vendor hereby agree as follows:

1. To keep secret and confidential all information, specifications, know-how, trade secrets, materials, data and other communications, oral or written (“Confidential Information”), of the other Party and not reveal such Confidential Information to any person except such responsible employees of the Party as may be necessary for the purposes of evaluating, discussing, and negotiating the Transaction.
2. To ensure that it treat the Confidential Information of the other Party in the same manner and with the same degree of care as it applies with respect to its own confidential information of a similar character.
3. Not to use the Confidential Information of the other Party in any way whatever anywhere in the world except for the purpose stated in paragraph 1 above. Not to copy any Confidential Information of the other Party [Alt 1: except on a limited basis as necessary to effectively allow employees to evaluate the Transaction] [Alt 2: except as may be expressly approved in writing].
4. To keep safe all documents and other tangible property comprised within the Confidential Information of the other Party and not to release them or it out of its possession.
5. To immediately notify the other Party upon learning of any unauthorized use or disclosure of any Confidential Information.

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6. That Confidential Information being disclosed by the Parties pursuant to this Letter Agreement is with the express understanding that Parties shall not be obligated to enter into any further agreement. That should the Parties not enter into any agreement to return to the other Party all Confidential Information supplied by such Party on demand within 24 hours, and immediately cease all use whatever of the Confidential Information of the other Party.
7. Each Party agrees that the Confidential Information of the other Party and all copyright and other proprietary rights therein shall remain such Party's property at all times and that the receiving Party shall on demand return it to the disclosing Party within 24 hours of a written or oral demand.
8. The undertakings and agreements made by each of the Parties hereunder shall continue to be binding for a minimum period of [***] years whether or not the Confidential Information has been returned to the other Party until such time (if ever) as the Confidential Information falls into the public domain otherwise than as a result of or arising from any disclosure by the receiving Party.
9. Confidential Information being disclosed by each of Customer and Vendor pursuant to this Letter Agreement is with the express understanding that neither Vendor nor Customer shall be obligated to enter into any further agreement relating to the provision of information technology services.
10. Each of Customer and Vendor recognize that the disclosure of Confidential Information of the other party may give rise to irreparable injury and acknowledge that remedies other than injunctive relief may not be adequate. Accordingly, each of Customer and Vendor has the right to equitable and injunctive relief to prevent the unauthorized disclosure of its Confidential Information, as well as such damages or other relief as is occasioned by such unauthorized use or disclosure.
11. This Letter Agreement shall be governed by and construed in accordance with the laws of [***].
12. Each of Customer and Vendor represents that it has the full authority and right to enter into this Letter Agreement and to disclose to the other party Confidential Information and that such disclosure will not violate the rights of any third party.
13. This Letter Agreement sets forth the entire agreement between Customer and Vendor as to the subject matter of this Letter Agreement. The terms of this Letter Agreement shall not be amended or modified except in writing signed by each of Customer and Vendor.



Appendix 2.1 Nondisclosure Agreement (Mutual Protection) 75

Please evidence your agreement with this Letter Agreement by executing in the space provided and returning to Vendor one of the two original copies of this Letter Agreement sent to you.

Sincerely yours,

[VENDOR]

By: **[Name]**
Name: **[***]**
Title: **[***]**

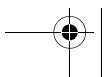
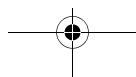
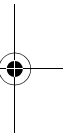
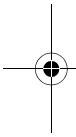
Date: **[***]**

ACKNOWLEDGED AND AGREED:

[CUSTOMER]

By: **[Name]**
Name: **[***]**
Title: **[***]**

Date: **[***]**



APPENDIX 2.2

REQUEST FOR INFORMATION

[NAME OF CUSTOMER OR, IF CUSTOMER WISHES TO RETAIN ANONYMITY, DESCRIBE TYPE OF COMPANY/ORGANIZATION, E.G., A MULTINATIONAL MANUFACTURING COMPANY] is considering outsourcing its [DESCRIBE FUNCTIONS] in [SPECIFY GEOGRAPHIC LOCATIONS]. [CUSTOMER OR A CONSULTANT ON CUSTOMER'S BEHALF] is issuing this request for information (this "RFI") to gain information regarding potential outsourcing vendors.

All questions and comments relating to this RFI should be directed to **[NAME OF CONTACT]** at **[CONTACT PHONE NUMBER/ADDRESS]**. Responses are due by **[TIME]** on **[DATE]**. Responses should be sent to: **[CONTACT NAME AND ADDRESS]**

Customer is interested in obtaining information about the vendor as set forth below. More specific questions and requests for information are set forth in the pages that follow. Please format your response so that it corresponds to the numbers in this RFI. If there is additional information that you think would be helpful, please attach the information to your response as appendices.

A. OVERVIEW

1. VENDOR HISTORY

[OBJECTIVE: What is the vendor's history? How long has it been in business? What has its market share been during the period that it has been in business? Have there been any unusual peaks/valleys? Has the vendor been in any significant/relevant disputes/litigations?]

2. FINANCIAL STANDING/ STABILITY

[OBJECTIVE: Is the vendor financially secure? What is the vendor's market share? Has the vendor acquired/divested entities recently? Ask for a copy of the most recent financial statements, annual report. Are there any pending or threatened claims that could affect the vendor's financial standing.]

3. ORGANIZATION

[OBJECTIVE: How is the vendor organized? By industry? By value of contract? Is there one international outsourcing entity or is there a network of local entities that work together?]

Appendix 2.2 Request for Information 77**4. RESOURCE DISTRIBUTION**

[OBJECTIVE: Where are the vendor's data centers? Where are the vendor's employees located? Does the vendor have resources in the locations that your organization requires them? What is the extent of these resources (e.g., does the vendor really have an office in Singapore?)]

5. EXPERIENCE: TECHNOLOGY

[OBJECTIVE: Does the vendor have experience with your current/future environment? Does the vendor have the capabilities to provide other services (e.g., reengineering)? Ask for examples and references.]

6. EXPERIENCE: INDUSTRY

[OBJECTIVE: Does the vendor have experience dealing with customers in your particular industry? Ask for examples and references.]

7. EMPLOYEE TRANSITION

[OBJECTIVE: What is the vendor's experience transitioning employees? How many transitions has the vendor done? In what states/countries? Has the vendor ever been sued in connection with a transition?]

8. NEW SYSTEM ROLLOUT

[OBJECTIVE: What is the vendor's experience with implementing new systems?]

9. CUSTOMER BASE/ REFERENCES

[OBJECTIVE: Obtaining references and contact names.]

10. SUBCONTRACTORS

[OBJECTIVE: Does the vendor typically partner with another entity to provide certain services? Who? What is the relationship with the partner?]

B. SPECIFIC INQUIRIES IN REQUEST OF GENERAL CATEGORIES SET FORTH IN (A) ABOVE**1. VENDOR HISTORY**

- a. Please provide marketing and other information regarding the vendor's business.
- b. Please describe the vendor's background, including how long it has been in business.

2. FINANCIALS

- a. Please provide the 200[*] annual report and (if available) the latest quarterly audited financial statements for your company.
- b. If applicable, please provide the 200[*] annual report and (if available) the latest quarterly financial statement for your parent.
- c. Specify any recent acquisitions, divestitures, and downsizings.
- d. Specify whether any pending or threatened claims could affect the vendor's financial standing.

3. ORGANIZATION

- a. Please describe how the vendor is organized (e.g., by industry, by value of contract).
- b. Please identify the vendor's main offices and service locations.

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- c. **[FOR INTERNATIONAL DEALS]** Please describe the vendor's global organization.

4. RESOURCE DISTRIBUTION

- a. Customer has sites in the following locations: **[SPECIFY]**. Please indicate the locations where the vendor has data centers. Please indicate the locations where the vendor has employees located and the number of employees in each location.
- b. Please indicate the annual revenue of the vendor allocable to each location listed pursuant to (a) above.
- c. Provide a list of customers for whom the vendor provides services in **[LIST LOCATION]**.

5. EXPERIENCE: TECHNOLOGY [DESCRIBE CURRENT AND FUTURE TECHNOLOGIES OF CUSTOMER]

- a. Please identify the location of vendor's data centers, include capacity of each data center.
- b. Please specify the number of vendor personnel trained to operate **[DESCRIBE TECHNOLOGY]**.
- c. Please specify the vendor's experience in implementing **[DESCRIBE FUTURE ENVIRONMENTS]**.
- d. Please specify the software and hardware tools and methodologies used by the vendor.
- e. **[CUSTOMER]** may decide to expand the scope of its outsourcing efforts. Please describe other areas in which the vendor has particular expertise.

6. EXPERIENCE: INDUSTRY

- a. Please describe the vendor's experience dealing with customers in **[DESCRIBE INDUSTRY]** in **[LIST LOCATIONS]**.
- b. Please provide **[***]** examples and contact names/numbers.

7. EMPLOYEE TRANSITION

- a. Please specify the types and numbers of employee transitions that the vendor has managed.
- b. Please identify the states and countries in which the vendor has managed employee transitions.
- c. Please indicate any litigation/disputes arising in connection with a transition that the vendor has been involved in.

8. SUBCONTRACTORS/PARTNERS

- a. Please indicate whether the vendor typically subcontracts, or enters into a teaming arrangement to provide, part of the services.
- b. Specify the functional areas and locations for which the subcontractor/partner is typically responsible.

APPENDIX 2.3

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[CUSTOMER]

INFORMATION TECHNOLOGY SERVICES
REQUEST FOR PROPOSAL

[DATE]

CUSTOMER PROPRIETARY AND CONFIDENTIAL

[NUMBER] Submitted to [NAME]

1. INTRODUCTION AND VENDOR INSTRUCTIONS

1.1 OVERVIEW. Customer currently is evaluating outsourcing in the following areas: **[LIST AREAS]**

This Request for Proposal (this “RFP”) is intended to serve as an overview of Customer's information technology environments and its outsourcing requirements.

1.2 OBJECTIVES. Customer’s overall business objective is to **[DESCRIBE]**.

Customer’s primary objectives in entering into an outsourcing arrangement are to: **[INSERT]**

1.3 EVALUATION CRITERIA. Key evaluation criteria will include:
[FOR ILLUSTRATIVE PURPOSES ONLY]

- Resources and ability to support and manage Customer’s current and long-term information technology needs
- Improved management of resources
- Total cost advantage to Customer
- Ability to provide continuous, measurable, and improving service
- Transition approach and plan (technical and employee transition)
- Cost-effective access to new technologies
- Vendor traits and characteristics

1.4 DISCLAIMER. EACH VENDOR MUST PERFORM ITS OWN EVALUATION OF ALL INFORMATION, AND DATA PROVIDED BY CUSTOMER. CUSTOMER MAKES NO REPRESENTATION OR WARRANTY REGARDING ANY INFORMATION OR DATA PROVIDED BY CUSTOMER.

1.5 CONFIDENTIALITY. The vendor should treat as confidential all information contained in this RFP and obtained in subsequent communications with

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Customer. None of the information described in this Section 1.5 may be duplicated, used, or disclosed without Customer's prior written consent.

[Prior to the receipt of this RFP, the vendor has entered into a Confidentiality Agreement with Customer. The information described in this Section 1.5 will be deemed confidential information for the purposes of such Confidentiality Agreement.]

The vendor shall not, without Customer's written consent, refer to Customer or Customer's outsourcing efforts in any media release or public announcement.

1.6 PROPOSAL DUE DATE AND TIME TABLE. All Proposals must be received by [TIME] a.m. (Eastern Standard Time) on [DATE]. Customer may reject any proposal received after the due date (and time).

Other key dates include:

RFP Issued	[]
Proposals Due	[]
Proposal Presentations (if requested)	[]
Due Diligence	[]

1.7 DELIVERY OF PROPOSALS. In order to facilitate the preparation of your Proposal, a [***] CD-ROM containing this RFP has been included with the text files in [COMPUTER PROGRAM] format.

The vendor must submit [NUMBER] printed copies in loose-leaf binders and one electronic copy (on [DESCRIBE FORMAT]) of its Proposal to:
[SPECIFY CONTACT NAME AND ADDRESS]

1.8 USE OF PROPOSALS. Customer shall have the right to use the Proposals, including any content contained therein, as it deems necessary or appropriate regardless as to whether the vendor or another vendor is ultimately awarded a contract.

1.9 CONSENTS. The vendor hereby agrees to grant any consents or approvals necessary under an existing or further contracts with Customer in connection with the provision of the services contemplated by this RFP regardless as to whether the vendor or another vendor is ultimately awarded the contract.

1.10 RIGHT TO TERMINATE OR EXTEND EXISTING SERVICES
[ADD IF RELEVANT].

1.11 BINDING OFFER. The vendor's Proposal will remain valid until [TIME] (Eastern Standard Time) on [DATE].

1.12 VENDOR COSTS AND SELECTION. All costs incurred by the vendor in preparing the Proposal and providing any additional information to Customer,

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and in connection with performing due diligence, shall be borne by the vendor. The issuance of this RFP does not obligate Customer to accept any of the resulting proposals. Customer makes no commitments, implied or otherwise, that this RFP process will result in a business transaction with one or more of the vendors.

1.13 PRESENTATIONS. The vendor will, upon Customer's request, make an oral presentation of its Proposal. If requested to provide an oral presentation, Customer will make up to [NUMBER] hours available at Customer's [LOCATION] facility at an agreed-upon date and time.

1.14 AMENDMENTS TO THIS RFP. The vendor will consider, and incorporate into its Proposal, any additional information provided by Customer.

1.15 COMMUNICATIONS/CLARIFICATIONS. The Proposal, and all related questions and responses, must be submitted in writing to be considered part of the final vendor Proposal.

THIS PROJECT MAY BE DISCUSSED WITH ONLY THE FOLLOWING CUSTOMER PERSONNEL AT THE CONTACT NUMBERS PROVIDED BELOW:

[SPECIFY NAMES, ADDRESSES, AND TELEPHONE NUMBERS]

1.16 DUE DILIGENCE AND NEGOTIATIONS. As part of the vendor's initial due diligence, Customer intends to provide each of the vendors access to certain information and data, including third-party contracts, asset listings, and financial information, relating to Customer's information technology functions to be outsourced pursuant to this RFP. Such information and data will be made available in a data room at Customer's [LOCATION] facility at dates and times agreed upon by Customer and the vendor. Any information or data provided to vendor in connection with this due diligence shall be deemed Customer's confidential information and shall be treated as such in accordance with Section 1.5. The vendors may not duplicate any of the information or data provided in the data room. Upon Customer's request, the vendor will immediately destroy or cause to be destroyed all notes, memoranda, summaries, analyses, compilations, or other writings relating to this due diligence prepared by it or its agents. Such destruction shall be certified in writing by an authorized officer of the vendor supervising the destruction. The vendor will notify Customer of any inaccurate or incomplete information revealed during due diligence.

1.17 PROPOSAL FORMAT. The proposals must be submitted in a uniform format. The proposal sections are listed below and, except for Sections 1, 2, and 13, correspond to the numbers in this RFP. Except with respect to Sections [***] of the vendor's response, the requirements of which are described below, the sections of the Proposal should contain the vendor's response to all items listed in

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the corresponding section of this RFP. Additional information relevant to a section may be included at the end of such section of the vendor's response.

Section 1. Cover Letter. Submit a cover letter on your letterhead signed by an authorized representative of your organization, certifying the accuracy of all information in your proposal and acknowledging your agreement to be bound by and comply with the terms set forth in Section 1 of this RFP.

Section 2. Executive Summary. Submit an executive summary of your proposal, covering the main features and benefits that distinguish it.

Section 3. Vendor-Specific Information.

Section 4. Services to Be Provided by the Vendor.

Section 5. Performance Specifications and Service Levels.

Section 6. Transition Plan.

Section 7. Disaster Recovery.

Section 8. Services to Be Provided by Customer.

Section 9. Project Staff.

Section 10. Human Resources.

Section 11. Financial Information.

Section 12. Terms and Conditions.

Section 13. Appendices. Appendices are optional. The vendor may wish to submit additional material that it believes will clarify or enhance its proposal.

2. CUSTOMER: BACKGROUND INFORMATION AND STRATEGY

2.1 BACKGROUND INFORMATION. [STATISTICAL INFORMATION RE: CUSTOMER, E.G., TYPE OF BUSINESS, SIZE, LOCATION]

2.2 CUSTOMER'S INFORMATION TECHNOLOGY STRATEGY. [DESCRIBE STRATEGY]

3. VENDOR-SPECIFIC INFORMATION

3.1 VENDOR BACKGROUND. Provide an overview of your company, including a description of your company's organization, current or long-range plans, major contracts, any litigation and any other relevant information that may impact Customer's selection of your company.

3.2 VENDOR ORGANIZATION. Provide an organizational chart of the vendor, an overview of how you will staff/service the account, and information regarding all key employees to be assigned to the Customer account.

3.3 RESOURCES.

3.3.1 Document your company's [U.S.] [global] presence and approach to management of Customer's contract.

3.3.2 Describe your experience with the hardware and software used by Customer.

3.4 FINANCIAL PERFORMANCE. Attach financial statements for the last [NUMBER] years. Certified financial statements of annual reports must be submitted for all identified vendors and subcontractors to be used by the vendor to provide services to Customer.

3.5 MULTIVENDOR PROPOSALS.

3.5.1 All other vendors or subcontractors that vendor anticipates using to provide information technology services to Customer must be identified in the vendor's Proposal.

3.5.2 Specify the scope and duration of any third-party arrangements for the provision of services to Customer.

3.5.3 The vendor must retain all responsibility for services provided to Customer by third parties.

3.6 REFERENCES.

3.6.1 Provide at least [*] references from current clients who have similar arrangements in size, scope, and geographic dispersement of services.**

3.6.2 Provide the above information for at least [*] outsourcing clients who have terminated their contracts with vendor or whose contracts have expired.**

4. SERVICES TO BE PROVIDED

4.1 MAINFRAME OPERATIONS.

4.1.1 [Customer Environment]

[DESCRIBE CUSTOMER'S ENVIRONMENT INCLUDING DATA CENTER LOCATION(S); NUMBER AND TYPES OF CENTRAL PROCESSORS; VOLUMES (I.E., NUMBER OF MIPS AND GIGABYTES OF DASD STORAGE CAPACITY)]

4.1.2 [Data Center Migration]

(The transition of data center and other information technology responsibilities to the vendor are covered in Section 6.) Specify whether vendor plans to migrate Customer's data center(s) to a vendor facility. If so, identify benefits (including cost savings) associated with such migration and the vendor's plans/procedures for implementing such migration. The migration plan should specify scheduled downtime and reimplementation of parallel environments. The vendor should also propose a liquidated damages schedule in the event of excessive unscheduled down time.

- Customer reserves the right to approve the provision of service from or to any location other than locations set forth in the final outsourcing agreement.
- The proposal should include the cost for disconnect, packing materials, shipping preparation, shipping, and installation of all equipment at the vendor site.

86 Ch. 2 Considering Outsourcing: The Request for Proposal and Vendor Selection**4.1.3 [Computer Operations]**

Computer operations include:

- Console operations
- Printing and distribution
- Backups for all platforms
- Tape mounts
- Help desk and network operations
- Systems programming support
- Remote archive tape and documentation storage

Computer operations is available [NUMBER] hours a day, [NUMBER] days a week to support all production activities for all computing platforms.

4.1.4 [Production Control]

Production support includes job scheduling functions, job problem analysis, and resolution [INCLUDE OTHER FUNCTIONS].

4.1.5 [Inventory Management]

Inventory Management includes the maintenance of a database of all Customer MIS assets.

The inventory will be used to access information on an as-needed basis to verify billing reports and plan upgrades of equipment and to maintain information on Customer's technical architecture. The system should be on-line with download capability.

4.1.6 [Change Management]

Change Management includes the management of new processes and ongoing change in the Customer's IT environments.

Change must be introduced with as little impact to Customer's business as possible.

Provide a detailed change management process.

4.1.7 [Problem Management]

Problem management includes the problem determination, escalation, and resolution activities, such as problem reporting, problem assignment, problem resolution, problem escalation, dispatching repair personnel, and other associated problem management activities.

Provide a detailed problem management process.

4.1.8 [Capacity Planning/Analysis]

Capacity planning/analysis includes the forecasting and planning for ongoing resource and equipment users on a [MONTHLY, QUARTERLY AND ANNUAL] basis. [DESCRIBE ANY FORECASTED GROWTH]

Please provide incremental pricing for:

	Growth		Decrease	
	CPU	DASD	CPU	DASD
10%				
20%				
30%				

Provide a detailed plan for capacity planning/analysis, including the types and timing of capacity reports.

4.1.9 [Distribution Services]

Distribution Services include **[DESCRIBE CUSTOMER DISTRIBUTION SERVICES INCLUDING TYPES, VOLUMES AND FACILITY LOCATIONS]**.

4.1.10 [Hardware]

[DESCRIBE HARDWARE REQUIREMENTS]

4.1.11 [Software]

[DESCRIBE SOFTWARE REQUIREMENTS]

4.1.12 [Data Security]

Provide a detailed description as to how the vendor plans to ensure data security. Specify vendor and any Customer responsibilities, including procedures to be followed in the event of a security breach. Before migrating or relocating any Services to a shared environment, vendor will provide, for Customer's approval, a proposal for such migration or relocation, including benefits or risks to Customer during the term of the outsourcing agreement.

Vendor will implement arrangements, satisfactory to Customer, to ensure that competitors of Customer will not have access to Customer's information.

4.2 AS/400 OPERATIONS AND MANAGEMENT.

4.2.1 [Customer Environment]

[DESCRIBE LOCATION(S); NUMBERS AND TYPES OF MACHINES]

4.2.2 [Migration/Consolidation]

(The transition of AS/400 and other information technology responsibilities to the vendor are covered in Section 6.)

Specify any plans to migrate/consolidate Customer's AS/400s to a vendor facility. If so, identify benefits (including cost savings) associated with such migration/consolidation and the Vendor's plans/procedures for implementing such migration/consolidation. The migration/consolidation plan should specify scheduled downtime and implementation of parallel environments. The vendor should also propose a liquidated damages schedule in the event of excessive unscheduled downtime.

Customer reserves the right to approve the provision service from or to any location other than the locations set forth in the final outsourcing agreement.

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The proposal should include the cost for disconnect, packing materials, shipping preparation, shipping, and installation of all equipment at the vendor site.

4.2.3 [Production Control]

Production control includes job scheduling functions, job problem analysis, and resolution [INCLUDE OTHER FUNCTIONS].

4.2.4 [Change Management]

Change management includes the management of new processes and ongoing change to the Customer's I/T environments.

Change must be introduced with as little impact to Customer's business as possible.

Provide a detailed change management process for AS/400s.

4.2.5 [Problem Management]

Problem management includes problem determination, escalation, and resolution activities, such as problem reporting, problem assignment, problem resolution, problem escalation, dispatching repair personnel, and other associated problem management activities.

Provide a detailed problem management process.

4.2.6 [Capacity Planning/Analysis]

Capacity planning/analysis includes the forecasting and planning for ongoing resource and equipment needs on a [monthly, quarterly and annual] basis. [DESCRIBE ANY FORECASTED GROWTH]

4.2.7 [Distribution Services]

Distribution services include [DESCRIBE CUSTOMER DISTRIBUTION SERVICES INCLUDING TYPES, VOLUMES AND FACILITY LOCATIONS]

4.2.8 [Hardware]

[DESCRIBE HARDWARE REQUIREMENTS]

4.2.9 [Software]

[DESCRIBE SOFTWARE REQUIREMENTS]

4.3 DESKTOP SYSTEMS AND MANAGEMENT.

4.3.1 [Customer Environment]

[DESCRIBE CUSTOMER ENVIRONMENT]

4.3.2 [Requirements]

Customer currently supports and maintains the systems in Appendix [NUMBER]. [DESCRIBE CUSTOMER REQUIREMENTS]

4.3.3 [New Equipment/Refresh]

The selected vendor will be responsible for new terminal/workstation planning, configuration, and installation. Describe the scope of services vendor will provide and how vendor will provide them.

Customer anticipates that it will need to refresh approximately [NUMBER] percent of its workstations every year (resulting in [NUMBER] percent of the workstations being refreshed every [NUMBER] years). Please describe how vendor plans to manage and implement this refresh and provide a detailed listing of the costs associated with such refresh (including asset costs as well as deliv-

ery, installation, and testing costs). In addition, please provide incremental pricing in the event that Customer wishes to increase or decrease the number of workstations to be refreshed. (For inventory information, please refer to Appendix [NUMBER].)

4.4 DATA AND VOICE NETWORK.

4.4.1 [Data Network Environment]

[DESCRIBE DATA NETWORK ENVIRONMENT]

4.4.2 [Data Network Requirements]

[DESCRIBE DATA NETWORK REQUIREMENTS]

4.4.3 [Voice Network Environment]

[DESCRIBE VOICE NETWORK ENVIRONMENT]

4.4.4 [Voice Network Requirements]

[DESCRIBE VOICE NETWORK REQUIREMENTS]

4.4.5 [EDI Services]

[DESCRIBE EDI REQUIREMENTS]

4.5 HELP DESK.

4.5.1 [Customer Environment]

[DESCRIBE CUSTOMER ENVIRONMENT]

4.5.2 [Requirements]

[DESCRIBE CUSTOMER REQUIREMENTS]

4.6. LONG-RANGE INFORMATION TECHNOLOGY PLAN. The vendor will assist Customer in developing and maintaining a long range information technology plan. The objectives of this plan are to:

- Develop an understanding and confirm the business requirements
- Identify new projects, accompanied by a high-level cost-benefit analysis and a preliminary schedule
- Review and, where appropriate, update Customer hardware, software, and network architectures

5. PERFORMANCE SPECIFICATIONS AND SERVICE LEVELS

5.1 COMMITMENT AND APPROACH. The vendor should describe its commitment and approach to each of the following:

- Initial service-level commitments
- Commitment to improving service levels
- Approach to defining missing service levels
- Commitment to provide measurement tools
- Service level reporting

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5.2 SERVICE-LEVEL REQUIREMENTS.

5.2.1 [Data Center]

[SPECIFY SERVICE LEVELS]

5.2.2 [AS/400]

[SPECIFY SERVICE LEVELS]

5.2.3 [Desktop]

[SPECIFY SERVICE LEVELS]

5.2.4 [Network]

Data Network: [SPECIFY SERVICE LEVELS]

Voice Network: [SPECIFY SERVICE LEVELS]

EDI: [SPECIFY SERVICE LEVELS]

5.3 MANAGEMENT AND ADJUSTMENT.

5.3.1 Describe the practices and procedures that the vendor will use to manage and monitor service levels.

5.3.2 All service levels must be reviewed quarterly and adjusted as required annually.

5.4 PERFORMANCE CREDITS. The vendor is required to describe its approach to defining and calculating performance credits in the event of a failure to meet agreed-upon service levels and other performance measurement standards. Include your approach for calculating performance credits and how these amounts will be paid or credited to Customer.

5.5 ROOT CAUSE ANALYSIS. In the event the vendor fails to provide the services in accordance with the service levels, the vendor will, at no cost to Customer, (1) perform root cause analysis to identify the cause of such failure, (2) correct such failure, (3) provide Customer with a report detailing the cause of, and procedure for correcting, such failure, and (4) provide Customer with reasonable evidence that such failure will not recur.

5.6 CUSTOMER SATISFACTION SURVEY. Describe the vendor's proposed approach for administering and evaluating customer satisfaction surveys, including how the survey results will be used by the vendor to improve performance.

5.7 BENCHMARKING. Customer expects the vendor to engage at [vendor's cost] an independent party agreed upon by Customer to conduct benchmarking of Customer's technology and service levels. Describe the vendor's proposed use of benchmarking to measure Customer's technology and service levels.

6. TRANSITION PLAN

The vendor will perform all functions and services necessary to accomplish a smooth transition of the outsourcing of the identified services.

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The vendor will perform the transition such that during the process of the transition, Customer will not experience any additional costs or expenses or any degradation in services or performance.

During and following the transition, the vendor will not change the way any services or processes are performed in a manner that materially and adversely impacts the way Customer conducts its business operations, including procedures for inputting data or formats of reports, without Customer's consent.

During the transition, the vendor will meet or exceed the service levels provided before the commencement of the transition.

Provide a detailed transition plan with key dates and responsibilities, including:

- Overall approach
- Major activities and schedules
- Specific staffing plan during transition
- Testing processes

7. DISASTER RECOVERY

7.1 DATA CENTER. [DESCRIBE DISASTER RECOVERY REQUIREMENTS]

7.2 AS/400. [DESCRIBE DISASTER RECOVERY REQUIREMENTS]

7.3 DESKTOP. [DESCRIBE DISASTER RECOVERY REQUIREMENTS]

7.4 DATA AND VOICE NETWORK. [DESCRIBE DISASTER RECOVERY REQUIREMENTS]

8. SERVICES TO BE PROVIDED BY CUSTOMER

8.1 OVERVIEW. Customer will retain responsibility for the following areas: [INSERT]

8.2 FACILITIES. Describe Customer's responsibilities with respect to facilities, office equipment, and computer equipment. The vendor will be responsible for all office and data processing equipment upgrades, replacements, and additions in use by all vendor personnel, including the transitioned personnel.

8.3 OTHER AREAS. Please detail any other areas for which Customer will retain responsibility.

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9. PROJECT STAFF AND MANAGEMENT

9.1 STRUCTURE.

9.1.1 Please describe the vendor's proposed account management structure.

9.1.2 Please describe the vendor's proposed staffing plans.

9.2 PROJECT MANAGER. The selected vendor will appoint a project executive to Customer's account. Customer must approve of such appointment. In addition, the vendor will not replace or reassign the project executive without Customer's consent.

9.3 KEY EMPLOYEES. Customer will designate certain members of the vendor's project staff as key employees. The vendor will not replace or reassign any of the key employees without Customer's consent.

9.4 SUBCONTRACTORS. The selected vendor will not subcontract any of the services to be provided without Customer's consent. In addition, specify any proposed subcontractors and the services they will provide.

9.5 PROCEDURES MANUALS AND PERIODIC MANAGEMENT REPORTS. Describe your approach to developing, providing, and maintaining a procedures manual and periodic management reports.

10. HUMAN RESOURCES

Note: This is applicable to U.S. employees only. Additional or replacement language will need to be added for non-U.S. employees.

Customer expects to transfer [all] [substantially all] of its information technology employees to the selected vendor (the "Affected Employees"). The Affected Employees are currently located in the United States. Customer anticipates that all vendors will offer employment compensation packages to the Affected Employees comparable to those being provided by Customer. The value of these packages should meet or exceed the current value of compensation and benefits currently enjoyed by each employee. In addition, it is intended that the transfer of the Affected Employees will not result in any severance or redundancy obligations on behalf of Customer.

10.1 EMPLOYMENT OFFERS.

10.1.1 [Affected Employees]

(a) The selected vendor will be required to offer employment to substantially all of the Affected Employees, including those Affected Employees on leave of absence or disability. Please describe your plans for offering employment to the Affected Employees.

(b) Specify whether any Affected Employees will be offered employment with a subcontractor or an affiliate of the vendor (rather than the vendor). In

addition, identify the proposed subcontractors and affiliates, as well as the Affected Employees who will be offered employment by such subcontractors and affiliates.

10.1.2 [Compensation]

Each offer of employment to an Affected Employee will include an initial base salary of not less than the base salary that each Affected Employee received from Customer.

10.1.3 [Positions]

(a) The selected vendor will be required to offer employment to the Affected Employees for positions comparable to the positions in which such Affected Employees are currently employed.

(b) [The Affected Employee will be offered a position at the same location where the Affected Employee was employed by Customer before that time.]

10.1.4 [Health Benefits]

(a) Each Affected Employee will be eligible as of his or her start date for enrollment in the vendor's health care plans, including major medical, life insurance, hospitalization, dental, vision, long-term disability, pharmacy, and personal accident coverage. The vendor will provide each Affected Employee with health care coverage so that on the start date, he or she (and any family and dependents) is covered by such health care plans and all preexisting condition exceptions and exclusionary provisions and waiting periods are waived with respect to the Affected Employee (and any family and dependents). The vendor will be responsible for any medical or health expenses incurred by the Affected Employees incurred on or after the start date.

(b) The vendor will credit to or reimburse each Affected Employee the amount paid by such Affected Employee toward his or her medical deductible and copayments under Customer's medical benefit plans for the plan year in effect as of the start date for such Affected Employee.

10.1.5 [Vacation]

(a) The Affected Employees will be allowed to carry over up to [NUMBER] days accrued but unused vacation.

(b) The selected vendor will calculate time off for paid vacation and sick leave for each Affected Employee using each Affected Employee's length of service with Customer and the vendor.

10.1.6 [Savings Benefits]

Describe how you will handle the Affected Employee's existing savings benefits (including 401(k)). If the Affected Employees will have the option to roll over their savings benefits into a vendor plan, please describe this option and how it could be implemented.

10.1.7 [Retirement Benefits]

(a) Describe how you will handle the Affected Employee's existing retirement benefits.

(b) Describe your retirement benefit plans.

10.1.8 [Severance/Redundancy]

[FURTHER DISCUSSION NECESSARY]

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10.1.9 [Other Benefits]

[The vendor will be responsible for providing (as part of the base fees) equal or substantially comparable benefits that the Affected Employees currently receive. This will be determined on a country-by-country basis and may include such benefits as car, housing, and meal allowances. It is the general intent of Customer that the transition to the vendor will not result in any severance or redundancy obligations on behalf of Customer. If any such obligations are triggered as a result of the transition, the vendor will be responsible for any severance/redundancy pay.]

10.1.10 [Work Hours]

The work days, including daily work hours and holidays, of the Affected Employees located at any Customer's location will be the same as the work hours in effect at that Customer's location.

10.1.11 [Service Credit]

The Affected Employees will be given credit for prior service with Customer for purposes of determining eligibility and accrual rates for vacation, sick leave, disability benefits, severance and health plans, and other plans and programs that are service-related. The Affected Employees will be given credit for prior service with Customer for purposes of determining retiree benefits eligibility.

10.1.12 [Hiring Requirements]

There will not be any conditions (e.g., preemployment screening) to the offers of employment to the Affected Employees.

10.2 TRANSITION TO VENDOR.

10.2.1 Specify the duration and timing of the employee transition period, the procedures that will be followed, and the date on which the Affected Employees accepting offers will start work with the vendor.

10.2.2 The selected vendor will be responsible for filling the positions of any Affected Employees not hired by vendor with replacements of comparable skill levels. The vendor will be responsible for the salary and benefits of such replacements.

10.2.3 The selected vendor will appoint a human resources representative who will be responsible for the transition of the Affected Employees from Customer to the vendor. The vendor will not replace or reassign the representative until after the Affected Employees' start date with the vendor.

10.2.4 Specify any planned reduction/relocation of any of the Affected Employees.

10.3 EMPLOYMENT AGREEMENT. Attach a copy of any employment contract or procedures that would apply to the Affected Employees.

11. FINANCIAL INFORMATION

11.1 BASE FEES.

11.1.1 Specify vendor's overall base fees, presented as fixed annual payments over the term.

11.1.2 At a minimum, the vendor's base charges should include information technology services that Customer provides for itself through its own personnel as of the date of the outsourcing agreement, as such services may evolve during the term.

11.1.3 [The base fees should include a compounded annual growth rate of [NUMBER] percent.]

11.1.4 [The vendor must reconcile its final pricing structure to Customer's [*] budget, which is attached as Appendix [NUMBER].]**

11.1.5 All cost areas, including vendor responsible, pass-through, and Customer-retained cost areas, should be detailed by subarea (e.g., data center, AS/400s) over each of the years of the term.

11.1.6 Provide your base fees, broken down into separate pricing for each of the following subareas for each of the years of the term:

- Data center
- AS/400s
- Desktop systems
- Voice and data network
- Help desk
- Projects

11.2 INCREMENTAL USAGE. Describe how increased/reduced usage will be handled. Provide unit rates that will be charged for any additional resources used and that will be credited for any resources not used by Customer (including hourly, daily, weekly, monthly rates). Rates will be the same for increased and reduced usage.

11.3 BASELINE ADJUSTMENTS. Customer wishes to have the flexibility to adjust the resource baselines upon notice to the vendor, with an appropriate adjustment to the fees. Describe the mechanism pursuant to which baselines will be adjusted.

11.4 INFLATION. There will not be any adjustments of the charges due to inflation or cost of living during the term.

11.5 NEW SERVICES.

11.5.1 Provide a detailed description of the approach, method, and treatment of the new services. These descriptions should be illustrated with examples whenever possible.

11.5.2 Customer reserves the right to solicit, negotiate, and award those capital and discretionary projects and services, which are outside the scope of this RFP, to a third-party vendor at its sole discretion.

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11.6 SAVINGS. Customer must achieve a [NUMBER] percent or more reduction in information technology expenses during the first year of the outsourcing agreement and [NUMBER] percent or more during each subsequent year during the term. Describe how the vendor will meet these requirements. In addition, identify how you will provide continuous cost savings to Customer.

11.7 TECHNOLOGY INDEXING. Each calendar year during the term of the outsourcing agreement, the vendor will review (1) the actual information technology price/performance benchmarks during the calendar year as determined by a third party agreed upon by Customer and the vendor and (2) how the vendor's price/performance benchmarks during such calendar year compare with the actual improvements. If the actual improvements are greater than those improvements anticipated by the vendor, the vendor will issue to Customer a credit against fees for the following calendar year by multiplying the fees by the percentage difference between the actual and anticipated improvements. The vendor will be responsible for paying the fees and expenses of any third party in connection with providing the services described in (1) above.

11.8 TAXES. [***] will be responsible for all worldwide taxes (other than for taxes based on Customer's net income) levied on payments made by Customer to the vendor or services provided by the vendor.

11.9 FOREIGN CURRENCY. [All payments will be in currencies designated by Customer.]

11.10 INVOICING.**11.10.1 [DESCRIBE REQUIRED INVOICE DETAIL]**

11.10.2 Customer will pay vendor fees within [NUMBER] days of the end of the month following the month during which services were provided.

11.11 MOST-FAVORED CUSTOMER. The vendor will provide Customer with its most-favored-customer status and benefits to Customer.

11.12 SERVICES FOR NEWLY ACQUIRED CUSTOMER ENTERPRISE OR ADDITIONAL CUSTOMER WORK. Customer reserves the right to add or remove business units to or from the scope of the outsourcing agreement.

11.13 TREATMENT OF DISPUTED AMOUNTS. Describe the procedure used to settle disputed payments or credit amounts, including the period of time to settle disputes, the process of verifying these disputed items, and the process of resolving disputes that cannot be resolved during the normal procedures specified above. The parties will be required to continue to perform under the outsourcing agreement in the event of a good faith dispute.

11.14 EXPENSES. All vendor expenses should be included in the base fee.

12. TERMS AND CONDITIONS

For each of the terms set forth in the chart below, the vendor must indicate whether the term is accepted. Each term must have a response of:

Yes: The term is accepted as stated. If the vendor wishes to propose a modification or alternative which is more favorable to Customer, please describe it in the “comments” column.

Or

No: The term is not accepted as stated. Propose specific alternative language that would be acceptable in the “comments” column.

In addition to responding to the items in the chart below, please attach to the end of Section 12 of your Proposal a copy of your standard contract for Customer’s review. Customer reserves the right to draft the outsourcing contract.

13. APPENDICES

Mainframe Data Center Operations and Management: **[LIST APPENDICES]**

AS/400 Operations and Management: **[LIST APPENDICES]**

Desktop Systems and Management: **[LIST APPENDICES]**

Voice and Data Network: **[LIST APPENDICES]**

Help Desk: **[LIST APPENDICES]**

Project Staff: Customer MIS Organization Charts

Human Resources

Personal Information

Customer Benefits Materials

Miscellaneous: Customer Annual Report

APPENDIX 2.4

CUSTOMER REFERENCE QUESTIONS: SAMPLE²

In addition to the obvious questions on vendor name, customer name, location, and contact, the following areas should be formally explored with each Vendor Customer Reference Account. The Customer may wish to format these questions into a formal questionnaire that is used by each caller so that it gets consistent information from each contact. Each contact should be formally documented with the answer to each question entered under the question. At a minimum, the following areas should be explored:

1. Why did the company decide to outsource?
2. What process did it go through to select a partner?
3. Who bid on the outsourcing program, who won, and why?
4. What is the scope of the effort?
 - Scope of what is done
 - Single site, multiple, global dimension
 - Number of devices outsourced
 - Is training included and to what extent?
 - What support model is being used (e.g., centralized off-site help desk)?
5. Contract-specific items:
 - Length
 - Incentive based and what was it tied to?
 - Assets transferred (HW/SW/People) and how much transitioned in what window of time?
 - Is there a guaranteed infrastructure upgrade provision (what was the state of the environment before they started)?
 - How did they deal with obsolescence/technology refresh?

2. This appendix has been reprinted with permission from Ron Gallagher, President of Oust Consulting, Inc.

Appendix 2.4 Customer Reference Questions: Sample 99

- Did they project forward pricing for technology, and was benchmarking used (if so, how, what services, and what benchmarking service)?
 - Productivity clause
 - Is this a per-seat agreement or something else (e.g., fixed fee with bonus)?
6. How long has the contract been in effect and what have the results been so far?
 7. What was projected as the return to the business?
 - First-year savings percentage
 - Year-by-year savings
 - Response time/service improvement
 - Customer satisfaction improvements
 8. How are they doing against the targets?
 9. How was the asset and people transfer handled? What were the biggest problems encountered? What was the transition process?
 10. What treatment was offered to the transitioned employees, and are they happy on the whole?
 11. Did they use outside resources to help and, if so, who?
 12. What service-level objectives and goals did they set, and are they being achieved? If not, what is preventing them from getting there?
 13. What contract oversight/management organization did they put in place?
 - Number of people
 - Responsibilities
 14. What other services/responsibilities did they retain?
 15. Given the process and experience to date, what would they do differently? Would they still outsource?
 16. Do they have a formal exit plan?
 - For cause
 - For convenience
 - Other
 17. How did they deal with out-of-contract/scope work? How is the outsourcer responding to changing requirements and ongoing support for normal business programs?
 18. What provisions do they have for continuous service (high availability/DRP)? What were they doing before, and what did they ask the outsourcer to do to improve the situation?
 19. Others that are specific to the planned outsourcing effort.

APPENDIX 2.5

VENDOR PROPOSALS RELATING TO THE PROVISION OF INFORMATION TECHNOLOGY SERVICES EVALUATION

A. OVERVIEW OF VENDORS BEING CONSIDERED

Vendor	Vendor Representative	Address	Status

B. EVALUATION CRITERIA

[To be modified by Customer Project Team]

Criteria	Explanation

Examples of criteria:

- **Vendor Resources** (Financial stability of Vendor, ability of Vendor to meet its commitments over the term of the contract)
- **Experience in Customer's Industry** (Specialized skills in Customer's industry to ensure quality)
- **Previous Experience with Customer** (Past experience Customer has with Vendor that may impact selection)
- **Financial Considerations** (Anticipated savings, improved cash flow, increased revenues)
- **Services to Be Provided** (Experience, resources, and ability of Vendor to provide in-scope services)

Appendix 2.5 Vendor Proposals 101

- **Mainframe Support** (Experience, resources, and ability of Vendor in consolidating data center locations and providing mainframe services)
- **AS/400 Support** (Experience, resources, and ability of Vendor in consolidating AS/400 locations and resources and providing AS/400 services)
- **Desktop Support** (Experience, resources, and ability of Vendor in providing end-user support, including LAN, personal computer, and remote site support)
- **Help Desk Support** (Experience, resources, and ability of Vendor in consolidating help desk resources and providing help desk services)
- **Network Support** (Experience, resources, and ability of Vendor in providing network services)
- **Disaster Recovery** (Experience, resources, and ability of Vendor in providing disaster recovery services)
- **Human Resources** (Transition of Customer employees to Vendor; terms of offers)
- **Terms and Conditions** (Responses to Customer's terms and conditions)

C. OVERALL WEIGHTED RANKING

[To be modified by Customer Project Team]

	Criteria	Weight	Justification
1.	Vendor Resources		
2.	Experience in Customer's Industry		
3.	Previous Experience with Customer		
4.	Financial Considerations		
5.	Services to be Provided		
6.	Human Resources		
7.	Terms and Conditions		
	Total	100%	

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Vendor	Annual Revenue	Parent Company Revenue	Overall Rank

Key:

10 = Superior

8 = Very Good

6 = Good

4 = Adequate

2 = Fair

0 = Poor

E. EXPERIENCE IN CUSTOMER'S INDUSTRY

Vendor	Related Experience: United States	Related Experience: International	Overall Rank

F. PREVIOUS EXPERIENCE WITH CUSTOMER*

Vendor	Description of Work	Fees	Comments	Overall Rank

* This shall be a brief description of any services provided by the relevant Vendor to Customer prior to the date of the RFP and any services provided by Vendor to Customer.

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G. FINANCIAL CONSIDERATIONS

Vendor	Cost Structure	Overall Savings	Value-Added Services	Comments	Overall Ranking
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H. SERVICES TO BE PROVIDED

	Mainframe		AS/400		Desktop		Help Desk		Network		Disaster Recovery		Overall Ranking
Weight	%		%		%		%		%		%		100%
	Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score	Total of Weighted Scores

1. WEIGHTING FOR “SERVICES TO BE PROVIDED” CATEGORY. [To be modified by Customer Project Team]

	Criteria	Weight	Justification
1.	Mainframe		
2.	AS/400		
3.	Desktop		
4.	Help Desk		
5.	Network		
6.	Disaster Recovery		
	Total	100%	

2. MAINFRAME.

Vendor	Experience	Resources	Ability	Overall Rank

3. AS/400S.

Vendor	Experience	Resources	Ability	Overall Rank

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Vendor	Experience	Resources	Ability	Overall Rank

5. NETWORK.

Vendor	Experience	Resources	Ability	Overall Rank

6. DISASTER RECOVERY.

Vendor	Experience	Resources	Ability	Overall Rank

I. HUMAN RESOURCES

Vendor	Transition	Terms of Offer	Overall Rank

J. TERMS AND CONDITIONS

Vendor	Compliance with RFP Requirements	Overall Rank

Appendix 2.5 Vendor Proposals 105

K. OVERALL RANKING OF VENDOR

	Vendor Resources		Experience in Customer Industry		Financial Considerations		Services to Be Provided		Human Resources		Terms and Conditions		Overall Ranking
Weight	%		%		%		%		%		%		100%
	Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score	Total of Weighted Scores

* Represents final score for each vendor for this ballot. To tally scores of all of the ballots, add final scores together. For example,

	Vendor #1	Vendor #2
Ballot #1	8	6
Ballot #2	9	8
Ballot #3	7	7
Ballot #4	8	5
Ballot #5	<u>9</u>	<u>6</u>
Total Score:	41	32

APPENDIX **2.6****ASSESSING LEGAL RESOURCES
REQUIRED (CUSTOMER FORM):
QUESTIONNAIRE**

*CONFIDENTIAL
FOR INTERNAL [CUSTOMER] USE ONLY*

[CUSTOMER]

**QUESTIONNAIRE FOR ASSESSING NECESSARY LEGAL RESOURCES
TO BE ASSIGNED TO BPO TRANSACTION**

The purpose of this questionnaire is to provide to the [CUSTOMER] Legal Department general background information regarding the proposed BPO transaction. The information gathered through this questionnaire is intended to assist the [CUSTOMER] Legal Department in assessing the types and amount of legal resources that should be assigned or made available to the particular transaction. Please take the time to review this questionnaire and provide as much information as possible, with the understanding that the transaction and the required legal resources may change over the course of the transaction.

1. **KEY OBJECTIVES:** (List key objectives for outsourcing, e.g., cost savings, move to new environment)
2. **CONTRACT STRUCTURE:** (Describe proposed contract structure, e.g., two-phase transaction, including business process reengineering and ongoing day-to-day operations and services; joint venture/strategic alliance)
3. **SCOPE OF SERVICES:** (Describe scope of services to be outsourced)
4. **GEOGRAPHIC SCOPE:** (List all states/countries from which services will be provided, as well as all states/countries to which services will be provided)
5. **AFFECTED SITES:** (Name all [CUSTOMER] sites that will be outsourced)
6. **TRANSFER OF EMPLOYEES:** (If employees will be transferred to the vendor or a vendor subcontractor or affiliate, specify approximate

Appendix 2.6 Assessing Legal Resources Required (Customer Form): Questionnaire 107

number of employees to be transferred (by [CUSTOMER] location if possible) and describe any other personnel issues)

7. SALE/LEASE:

- a. ASSETS:** (If any assets will be sold/leased to the vendor, specify types of assets and general terms of sale/lease if known)
- b. FACILITIES:** (If any facilities will be sold/leased to the vendor, specify facilities and general terms of sale/lease if known)

8. VALUE OF TRANSACTION: (Specify proposed value of outsourcing contract)**9. DEGREE OF "CRITICALNESS":** (Indicate the importance of the outsourcing arrangement to [CUSTOMER], e.g., contract value may be small but vendor nonperformance would greatly damage [CUSTOMER])**10. PROPOSED TERM:** (Specify proposed term of transaction)**11. RELEVANT ISSUES:** (Specify any particular concerns in the following areas)

- a. REGULATORY COMPLIANCE**
- b. PERMITS/LICENSES**
- c. ENVIRONMENTAL**
- d. AUDIT**
- e. TAX**
- f. DATA PRIVACY**
- g. INSURANCE**
- h. SPECIAL ISSUES**

12. CORPORATE ACTIONS: (Specify any corporate actions that are required if known, e.g., board approval)**13. COMMUNICATIONS/PR:** (Specify any particular communications/public relation actions that have been or will be taken, e.g., employee communication plan, press release)**14. TRANSACTION STATUS:** (Describe status of transaction, e.g., RFP prepared; RFP issued)**15. SELECTION OF VENDOR:** (Indicate whether a vendor(s) has (have) been selected (at least preliminarily))**16. HISTORY WITH VENDOR:** (Describe any existing or previous relationships between [CUSTOMER] and preferred vendor(s))**17. TIMELINE:** (Describe the proposed schedule for the outsourcing process)**18. ROLE OF COUNSEL:** (Describe desired role that counsel should take in transaction, e.g., review documents, negotiate)

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- 19. DESIRED LEGAL RESOURCES/TIME COMMITMENT:** (Indicate any specific legal resources desired at this time)
- 20. DRAFTING RESPONSIBILITY:** (Indicate whether [CUSTOMER] or the vendor will have drafting responsibility for the contract (if known))
- 21. EXHIBIT REVIEW:** (Describe the resources to be used to review the exhibits to the contract, e.g., technical experts, business team members; define the anticipated role legal will have in the exhibit review)
- 22. TEAM MEMBERS:**
 - a. [CUSTOMER] TEAM** (Specify all of the members of the [CUSTOMER'S] outsourcing team)
 - b. VENDOR TEAM** (Specify all of the members of the vendor's outsourcing team)
- 23. LOCATION OF DUE DILIGENCE/NEGOTIATIONS:** (Specify the location where due diligence and negotiations will take place)
- 24. OTHER CONCERNS/NOTES:** (List any additional concerns or comments)

APPENDIX **2.7****DUE DILIGENCE AGREEMENT³****[TO BE IN LETTER FORMAT]**

Dear [***]:

I am writing to confirm that [**Customer**] (“Customer”) and [**Vendor**] (“Vendor”) have agreed to proceed with negotiations for the provision by Vendor of certain information technology services to Customer. In connection with such negotiations and prior to the execution of a definitive outsourcing agreement (the “Definitive Agreement”), Vendor will perform due diligence, as described in more detail in the due diligence plan prepared by Vendor set forth in Appendix 1 (“Due Diligence”) to (a) verify the data and information provided by Customer in its Request for Proposal, dated [**DATE**], as amended by [***] (collectively, the “RFP”); (b) verify certain assumptions made by Vendor in its Proposal, dated [**DATE**], as amended by [***] (collectively, the “Proposal”); and (c) enable Vendor to offer services, pricing, and baselines that reflect Customer’s existing and future information technology environments.

This letter agreement (this “Letter Agreement”) shall set forth the terms and conditions governing Due Diligence. In this regard:

1. *Due Diligence Representative.* Vendor shall appoint an individual who shall (a) be in charge of performing Due Diligence, (b) serve as the primary contact for Customer in dealing with Vendor with respect to Due Diligence, and (c) be empowered to act and make decisions on behalf of Vendor in connection with Due Diligence.
2. *Due Diligence Objectives.* Due Diligence shall be performed in respect of the following Customer locations: [**LOCATION(S)**]. Due Diligence shall involve the evaluation of the following functions: [**FUNCTION(S)**]. Due Diligence shall include an evaluation of the following areas: (a) Customer’s budget items, (b) operating expenses, (c) inventories of machines, peripheral equipment, and software to be transferred, (d) third-party leases, licenses, maintenance, and services agreements,
3. Note: This sample agreement is intended to illustrate the types of legal issues that vendors typically wish to address in connection with information technology outsourcing transactions. The provisions included in this sample agreement, while comprehensive, may not cover all of the issues that may arise in a particular transaction. Legal issues will likely vary depending on the type of information technology process being outsourced and the scope of the outsourcing transaction. This sample agreement or any part thereof should only be used after consultation with your legal counsel. Legal counsel should be consulted prior to entering into or negotiating any outsourcing transaction.

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- (e) Customer's existing and proposed future environments, (f) charge-back procedures, and (g) **[ADD ADDITIONAL ITEMS]**. A more detailed description of the activities to be performed during due diligence is set forth in Appendix 1.
3. *Scheduling.* Customer and Vendor shall agree upon the times during which and locations where Due Diligence shall take place. Vendor shall not contact any Customer employee or agent or attempt access to any Customer data, information, or facilities without Customer's consent. Customer reserves the right, in its sole discretion, to deny access to any facility or data and withhold consent to any due diligence activity. Customer shall cooperate with Vendor to identify other means for achieving the objectives of such activity.
 4. *Completion.* Vendor shall complete all Due Diligence by **[DATE]**.
 5. *Documentation.* By **[DATE]**, Vendor shall submit to Customer a detailed report summarizing the due diligence performed and documenting the findings and results of such due diligence.
 6. *Discrepancies/Additional Information.* Vendor shall be responsible for informing Customer of any discrepancies, inaccuracies, errors, or omissions learned or disclosed during Due Diligence. Customer shall not be responsible for any discrepancies, inaccuracies, errors, or omissions that it is not informed of prior to the execution of the Definitive Agreement.
 7. **[OPTIONAL: In connection with the proposed transaction between Customer and Vendor, Customer intends to transition certain of its employees to Vendor (the "Transitioned Employees"). In the event Customer and Vendor execute the Definitive Agreement, Customer and Vendor wish to complete the transition of the Transitioned Employees to Vendor on [DATE]. In order to complete such a transition, it will be necessary for Vendor to commence preemployment screenings and similar employee-related tasks prior to the date of the Definitive Agreement between Customer and Vendor. In this regard, Customer and Vendor have agreed to certain terms and conditions relating to the transition of the Transitioned Employees, attached as Appendix 2. Substantially similar terms and conditions will be included in the Definitive Agreement between Customer and Vendor in the event the Definitive Agreement is executed. The agreement of Customer and Vendor on such terms and conditions does not in any way obligate Customer and Vendor to enter into the Definitive Agreement. Each party shall indemnify the other party against and hold the other party harmless from any claims by the Transitioned Employees arising out of such party's conduct or representations during the period through [DATE].]**
 8. *Customer's Responsibilities.* Customer shall cooperate with Vendor as may be necessary to enable Vendor to perform Due Diligence. Vendor acknowledges and agrees that completion of Due Diligence is primarily

Appendix 2.7 Due Diligence Agreement 111

the responsibility of Vendor and that Customer shall not be required to expend any significant level of effort or resources toward Due Diligence.

9. *Binding Nature.* It is understood that while this Letter Agreement constitutes a statement of mutual intentions of Customer and Vendor with respect to the proposed provision of certain information technology and related services by Vendor to Customer, it does not constitute an obligation binding on either side, nor does it contain all matters upon which agreement must be reached and, except with respect to Paragraphs 7, 10, and 11, this Letter Agreement shall create no rights in favor of either party. A binding commitment with respect to the proposed project will result only from the execution of the Definitive Agreement.
10. *Expenses.* In the event Customer and Vendor do not execute the Definitive Agreement, each of the parties will bear its own costs and expenses incurred in negotiating the Definitive Agreement, including any costs and expenses relating to the preliminary work performed by Vendor in connection with Due Diligence for the proposed transition of the Transitioned Employees.
11. *Confidentiality.* During the pendency of formal corporate approvals from Customer [and its parent] and final preparation and execution of the Definitive Agreement, it is expected the parties will exchange confidential information, including business data, budgets, inventories, strategies, and customer information ("Confidential Information"). In addition, the parties agree that negotiations that are intended to result in the Definitive Agreement and the terms, conditions, or other facts with respect to such possible agreement, including the status thereof, shall be treated as Confidential Information. Each of the parties undertakes and agrees to (a) keep secret and confidential all Confidential Information and not reveal such Confidential Information to any person except such responsible employees as may be necessary for the purposes of performing Due Diligence; (b) ensure that it treats the Confidential Information in the same manner and with the same degree of care as it applies with respect to its own confidential information of a similar character; (c) keep safe all documents and other tangible property comprised within the Confidential Information and not to release them or it out of its possession; (d) immediately notify the other party upon learning of any unauthorized use or disclosure of such party's Confidential Information; and (e) return all Confidential Information on demand within 24 hours and immediately cease all use whatsoever of the Confidential Information.
12. *Term of Agreement.* Formalization of this relationship is subject to appropriate corporate approvals by Customer [**and its parent**] and final preparation and execution of the Definitive Agreement. If the Definitive Agreement has not been executed or has not received the appropriate corporate approvals of Customer [and its parent] on or before [**DATE**], this Letter Agreement shall be of no further force and effect, except as provided herein with respect to the terms of Paragraphs 7, 10, and 11.

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13. *Miscellaneous.*

- a. *Publicity.* Each party shall not publish or use any advertising, written sales promotion, press releases, or other publicity matters relating to this Letter Agreement in which the other party's name or mark is mentioned or language from which the connection of said name or mark may be inferred or implied without the other party's consent.
- b. *Entire Agreement.* This Letter Agreement represents the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties relative to such subject matter. No amendment to, or change, waiver, or discharge of, any provision of this Letter Agreement shall be valid unless in writing and signed by an authorized representative of the party against which such amendment, change, waiver, or discharge is sought to be enforced.
- c. *Counterparts.* This Letter Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.
- d. *Exclusivity.* Neither this Letter Agreement nor any other arrangement between the parties grants Vendor any exclusive right to negotiate with Customer.
- e. *Assignment/Subcontracting.* Neither party may assign or subcontract its rights or obligations under this Letter Agreement in whole or in part without the consent of the other party. Any purported assignment in contravention of this Paragraph shall be null and void.
- f. *Governing Law.* **THIS LETTER AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF [STATE], WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO THE CONFLICTS OF LAW.**

Please evidence your agreement and acceptance of the terms and conditions of this Letter Agreement by signing both of the two copies enclosed and returning one of the original, fully executed copies to me.

Sincerely yours,

[Name, Title]

AGREED TO AND ACCEPTED THIS
[DAY] DAY OF [MONTH], [YEAR]

By: [Name, Title]

APPENDIX **2.8****LETTER OF INTENT (CUSTOMER FORM)**

[CUSTOMER LETTERHEAD]

[DATE]

CONFIDENTIAL

[NAME]

[TITLE]

[ADDRESS]

Dear _____:

1. This letter is addressed to **[VENDOR]** (“*Vendor*”) to confirm the interest of Vendor and **[CUSTOMER]** (“*Customer*”) in entering into a **[SPECIFY TYPE OF BUSINESS PROCESS]** services agreement (the “*Services Agreement*”) for Vendor’s provision of certain **[SPECIFY TYPE OF BUSINESS PROCESS]** and related services to Customer.
2. Formalization of our relationship is subject to appropriate corporate approvals by Customer **[and its parent]** and final preparation and execution of the Services Agreement. If the Services Agreement has not been executed or has not received the appropriate corporate approvals of Customer **[and its parent]** on or before **[DATE]**, this letter shall be of no further force and effect, except as provided herein with respect to the terms of paragraphs 3, 5, and 6.
3. During the pendency of formal corporate approvals from Customer **[and its parent]** and final preparation and execution of the Services Agreement, it is expected the parties will exchange confidential information. The parties agree to treat such confidential information in accordance with the confidentiality provisions attached as *Attachment 1*. Substantially similar provisions will be included in the Services Agreement. In addition, the parties agree that negotiations that are intended to result in a definitive agreement are taking place between Customer and Vendor, and the terms, conditions, or other facts with respect to such possible agreement, including the status thereof, shall be treated as “Confidential Information” in accordance with the same confidentiality provisions.
4. **[In connection with the proposed transaction between Customer and Vendor, Customer intends to transition certain of its employees to Vendor (the “Transitioned Employees”). In the event Customer and**

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Vendor execute the Services Agreement, Customer and Vendor wish to complete the transition of the Transitioned Employees to Vendor on [DATE]. In order to complete such a transition, it will be necessary for Vendor to commence preemployment screenings and similar employee-related tasks prior to the date of the Services Agreement between Customer and Vendor. In this regard, Customer and Vendor have agreed to certain terms and conditions relating to the transition of the Transitioned Employees, attached as *Attachment 2*. Substantially similar terms and conditions will be included in the Services Agreement between Customer and Vendor in the event the Services Agreement is executed. The agreement of Customer and Vendor on such terms and conditions does not in any way obligate Customer and Vendor to enter into the Services Agreement.]

5. Each party shall indemnify the other party against and hold the other party harmless from any claims by the Transitioned Employees arising out of such party's conduct or representations during the period through [DATE].
6. In the event Customer and Vendor do not execute the Services Agreement, each of the parties will bear its own costs and expenses incurred in negotiating the Services Agreement, including any costs and expenses relating to the preliminary work performed by Vendor in connection with the proposed transition of the Transitioned Employees.
7. It is understood that while this letter constitutes a statement of mutual intentions of Customer and Vendor with respect to the proposed provision of certain **[SPECIFY TYPE OF BUSINESS PROCESS]** and related services by Vendor to Customer, it does not constitute an obligation binding on either side, nor does it contain all matters upon which agreement must be reached and, except with respect to paragraphs 3, 5, and 6, this letter shall create no rights in favor of either party. A binding commitment with respect to the proposed project will result only from the execution of the Services Agreement.

Very truly yours,

[CUSTOMER]

By: _____

[NAME]

[TITLE]

AGREED TO AND ACCEPTED THIS ____ DAY OF _____, ____

[VENDOR]

By: _____

[NAME]

[TITLE]

APPENDIX **2.9****LETTER OF INTENT (VENDOR FORM)**

[VENDOR LETTERHEAD]

[DATE]

CONFIDENTIAL

[NAME]

[TITLE]

[ADDRESS]

Dear _____:

This letter (this “*Letter Agreement*”) is addressed to [CUSTOMER] (“*Customer*”) to confirm the interest of Customer in entering into a services agreement with [VENDOR] (“*Vendor*”) (the “*Services Agreement*”) for Vendor’s provision of [DESCRIBE SERVICES] (the “*Services*”) to Customer.

[IF EXCLUSIVE NEGOTIATIONS: In consideration of the time and efforts of each of the parties in negotiating the Services Agreement, Customer agrees and acknowledges that it will negotiate exclusively with Vendor for the provision of the Services, and will not contact, respond to proposals from, or negotiate with any other vendor or third party for or in connection with the provision of the Services, as of the date of this Letter Agreement and continuing up to and including [SPECIFY DATE] (the “*Exclusivity Period*”). **[IF CERTAIN RATES/TERMS ARE FIRM DURING EXCLUSIVITY PERIOD:** The rates set forth in [SPECIFY DOCUMENT] are only applicable during the Exclusivity Period only, unless otherwise agreed upon by the parties.] If the Services Agreement has not been executed before the expiration of the Exclusivity Period, the parties shall agree to either: (a) agree upon an extension to the Exclusivity Period, (b) continue to negotiate the Services Agreement in accordance with the terms of this Letter Agreement on a nonexclusive basis, or (c) cease negotiations and terminate this Letter Agreement, subject to the terms of this Letter Agreement.]

[IF SERVICES WILL BE COMMENCED PRIOR TO EXECUTION OF SERVICES AGREEMENT: Customer desires Vendor to commence the provision of [OPTION 1: those Services described in [SPECIFY DOCUMENT] (the “*Interim Services*”)] [OPTION 2: the resources described in [SPECIFY DOCUMENT] (the “*Interim Resources*”)] as of [SPECIFY DATE] until the earlier of the execution of the Services Agreement and the termination of this Letter Agreement (the “*Interim Service Period*”). Customer agrees and acknowledges that time

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is critical and that Vendor agrees to provide the [**OPTION 1: Interim Services**] [**OPTION 2: Interim Resources**] to Customer solely as a convenience to Customer. Vendor shall therefore not be liable for any damages incurred in connection with the provision of the [**OPTION 1: Interim Services**] [**OPTION 2: Interim Resources**] and Customer agrees to indemnify Vendor in connection with any claims relating to the provision of the Services pursuant to paragraph ____ below. Customer shall pay the fees for the [**OPTION 1: Interim Services**] [**OPTION 2: Interim Resources**] during the Interim Service Period [**OPTIONS FOR PRICING: [OPT A: set forth in [SPECIFY DOCUMENT] on the terms and according to the time frames set forth in [SPECIFY DOCUMENT]] [OPT B: as agreed upon by the parties or where not so agreed in advance fair and reasonable remuneration when directed to do so by Vendor] [OPT C: on a time and materials basis] [OPT D: at Vendor's then-current commercial rates]. [Vendor may change the fees upon ____ days' notice to Customer.]**]

During the negotiation of the Services Agreement, it is expected the parties will exchange confidential information. The parties agree to treat such confidential information in accordance with the confidentiality provisions set forth in [**SPECIFY DOCUMENT**]. Substantially similar provisions will be included in the Services Agreement. In addition, the parties agree that negotiations that are intended to result in a definitive agreement are taking place between Customer and Vendor and the terms, conditions, or other facts with respect to such possible agreement, including the status thereof, shall be treated as "Confidential Information" in accordance with the same confidentiality provisions.

[IF EMPLOYEE TRANSFERS WILL COMMENCE PRIOR TO EXECUTION OF SERVICES AGREEMENT: In connection with the proposed transaction between Customer and Vendor, Customer intends to transition certain of its employees to Vendor (the "*Transitioned Employees*"). In the event Customer and Vendor execute the Services Agreement, Customer and Vendor wish to complete the transition of the Transitioned Employees to Vendor on [**SPECIFY DATE**]. In order to complete such a transition, it will be necessary for Vendor to commence preemployment screenings and similar employee-related tasks prior to the date of the Services Agreement between Customer and Vendor. In this regard, Customer and Vendor have agreed to certain terms and conditions relating to the transition of the Transitioned Employees, set forth in [**SPECIFY DOCUMENT**]. Substantially similar terms and conditions will be included in the Services Agreement between Customer and Vendor in the event the Services Agreement is executed. The agreement of Customer and Vendor on such terms and conditions does not in any way obligate Customer and Vendor to enter into the Services Agreement.]

[IF INTERIM SERVICES OR EMPLOYEE TRANSFER PARAGRAPHS INCLUDED: Customer shall indemnify Vendor against and hold Vendor harmless from any claims (a) relating to the provision of services described in paragraph ____ above and (b) by or relating to the Transitioned Employees.]

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Upon the termination of this Letter Agreement, [**OPTION 1:** each of the parties will bear its own costs and expenses incurred in negotiating the Services Agreement.] [**OPTION 2:** Customer shall (a) reimburse Vendor for any costs and expenses relating to **[the negotiation and due diligence performed in connection with the Services Agreement [up to [SPECIFY DOLLAR AMOUNT] and] [IF EMPLOYEE TRANSFER PARAGRAPH APPLIES:** the preliminary work performed by Vendor in connection with the proposed transition of the Transitioned Employees] [IF INTERIM SERVICES PARAGRAPH APPLIES: and (b) pay to Vendor any amounts incurred in connection with the provision of the services described in paragraph ____].] This paragraph and paragraphs **[LIST CONFIDENTIALITY AND INDEMNITY]** shall survive the termination of this Letter Agreement.

[When the Services Agreement is executed, the terms and conditions of the Services Agreement shall apply retroactively to any work performed under this Letter Agreement.] This Letter Agreement shall be governed by, and construed in accordance with, the laws of [SPECIFY LAW].

Upon your understanding of and agreement to the foregoing, please sign the two original copies of this Letter Agreement provided to you and return one fully executed original to me.

Very truly yours,

[CUSTOMER]

By: _____

[NAME]

[TITLE]

AGREED TO AND ACCEPTED THIS ____ DAY OF _____, ____

[VENDOR]

By: _____

[NAME]

[TITLE]

APPENDIX

2.10

**CONSENT LETTER (MANAGEMENT OF
THIRD-PARTY PRODUCTS/SERVICES)****[DATE]****Re:** Outsourcing Agreement Between **[CUSTOMER]** and **[VENDOR]****[THIRD PARTY VENDOR]****[ADDRESS]**

To whom it may concern:

This is to inform you that Customer (“Customer”) and Vendor (“Vendor”) have entered into an agreement pursuant to which Vendor will provide certain information technology and related services to Customer. In connection with this transaction, **[Customer will provide Vendor and its affiliates and subcontractors access to and/or require the right to install on machines of vendor and its affiliates and subcontractors] [Vendor will have managerial, administrative, and financial responsibility for] [FILL IN PRODUCT/SERVICE]** (the “Third-Party Product/Service”). **[Note: Add worldwide if access/use will be outside the United States.]** Please confirm your consent to such access/assumption of responsibility by to Vendor by signing both copies of this letter and returning one signed original to me as soon as possible.

Vendor will be **[financially]** responsible for Customer’s obligations to you for the Third-Party Product/Service. Vendor will also have managerial and administrative responsibility of the agreements relating to the Third-Party Product/Service. Therefore, all correspondence and invoices concerning such agreements as of this date should be mailed to the address currently used by Customer, c/o Vendor.

I would appreciate if the signed original was sent no later than **[***]** to the following: **[CUSTOMER]**

Sincerely yours,

[CUSTOMER]

ACCEPTED AND AGREED:

[THIRD-PARTY VENDOR]By: **[NAME]****[Title:]****[Date:]**