



Demystifying Global, Multi-Tower BPO Transactions: Six Key Issues

By Barbara Melby, Partner, Global Outsourcing Practice, Morgan, Lewis & Bockius LLP

Any company seeking to outsource multiple business processes to a single supplier on a global basis must establish an appropriate agreement and relationship structure, taking into account the potential areas of tax, currency and operational risk at the global, regional and local levels. The outsourcing customer should be aware of six key issues inherent in structuring global, multi-tower BPOs. This article is an effort to help demystify what can be a very complex activity.

1. The Master Services Agreement (MSA)

A common structure for this type of transaction is an umbrella Master Services Agreement that includes general terms applicable to all of the different service towers. Attached to the MSA are typically Exhibits that are applicable regardless of the type of service being provided. Examples of "master" exhibits include governance, customer policies and physical and data security requirements. Under the MSA and its Exhibits typically sit the specific service tower documents, including service-specific schedules such as scope, SLA metrics and price. The service tower documents in effect act as large statements of work that outline the specific requirements of the service tower, but are governed by and subject to the terms of the overarching MSA.

2. Multi-Country Transactions

For a global company with enterprise-wide business processes, the company's sourcing strategy often involves looking at outsourcing business processes across multiple geographies. When handling a multi-country transaction, the company (together with its internal and external advisors) will need to consider the best structure to effect the most cost-effective and tax neutral solution while at the same time allowing the company and the supplier to implement a top-to-top governance and operational model. There are in essence three models to consider:

- A single MSA with invoicing and payment in a currency such as U.S. dollars, billed by one supplier entity to one customer entity, with the customer responsible for allocating the fees back to the customer service recipients;
- Regional or local agreements that reference the MSA with invoicing and payment in local currency by the local supplier entity to the local customer entity;
- A hybrid of these two models that takes into account whether (a) the services are provided locally or from a central service center, (b) the extent of withholding tax exposure running to the customer and (c) the cost of implementing a localized contract billing and possibly governance structure.

The decision of which structure to select is in most cases driven by the customer's tax and treasury departments and involves a cost/benefit analysis of potential withholding and services tax exposure vs. the potential cost of implementing a localized model.

3. Currency and Inflation

An assessment of currency risk is relevant for multi-country as well as offshore transactions. How a customer wishes to address currency exposure is often determined by their treasury group and involves an assessment of whether one currency model versus payments in local currency, or a hybrid for centralized and local services, is appropriate.

Inflation exposure goes hand-in-hand with currency risk. Many suppliers will seek to include a mechanism in the agreement for increasing price to account for inflation. The applicable formula may vary on a country-by-country basis and be handled differently for high inflation countries. In addition to capping currency and inflationary risk, mechanisms for handling inflation risk include the right to relocate service sites and termination if the exposure exceeds certain levels.

4. Governance

Key to any successful outsourcing relationship is the establishment of a post-contract governance structure. Typically for multi-tower transactions, each party identifies an account lead with overall responsibility for the entire outsourcing relationship across all service towers. The account lead has a program management staff that includes resources to handle contract management and change management. In addition, each service tower has its own “mini” governance organization that is focused on operations and service delivery and that reports up to the governance organization at the master level. In addition, the customer should consider whether there is a need for governance roles at the regional or local levels and, if so, how approvals and decision making will be handled.

5. Service Levels

The MSA will need to outline how performance measurement and monitoring will be handled at the master and service tower level. For global transactions, the parties should consider whether “global” service levels or regional or local service levels are more appropriate. Related to performance monitoring is the allocation of service credits and other remedies for service level failures. Will the amounts at risk for service level failures be calculated at the master or service tower level? Similarly, how will service credits be allocated among the various customer service recipients?

6. Termination and Liability

Unwinding the outsourcing relationship should receive as much attention in the contract drafting process as transition into the relationship. The right to terminate a service tower on a global or partial basis, as well as the events allowing multi-tower termination or termination at the master level, must be clearly spelled out in the MSA.

One of the more contentious points during contract negotiations is how liability will be allocated between the parties. From the customer’s perspective, it is most favorable to aggregate liability across all service towers and geographies to form one overall liability cap. The parties will usually discuss at length whether this is an equitable position for the specific transaction at hand.

Drafting a multi-tower services agreement is a complex endeavor that involves looking at the inter-relationship of the service towers at the global, regional and local level. It is critical for the customer and the supplier to have a clear understanding of how the MSA will work, as well as each party’s objectives with respect to contract structure and the cost (including tax) and operational impact of the potential structures. ■

About the Author

Ms. Melby specializes in advising clients on the legal aspects of a wide range of outsourcing transactions including information technology and business process outsourcing. She is co-author of *Information Technology Outsourcing: Process, Strategies, and Contracts* (John Wiley, 2005) and *Business Process Outsourcing: Process, Strategies, and Contracts* (John Wiley, 2000). Address comments or questions to Barbara Melby, bmelby@morganlewis.com.

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