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Design to delivery: a guide to outsourcing

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Business process outsourcings are high-risk, high-reward projects.

The outsourcings of yesterday that prioritised cost-cutting above all else have been replaced by a new wave of business process outsourcings (***BPOs***) focused on procuring technological improvements and expertise, achieving scale, obtaining a competitive edge (and yes, cost savings too).

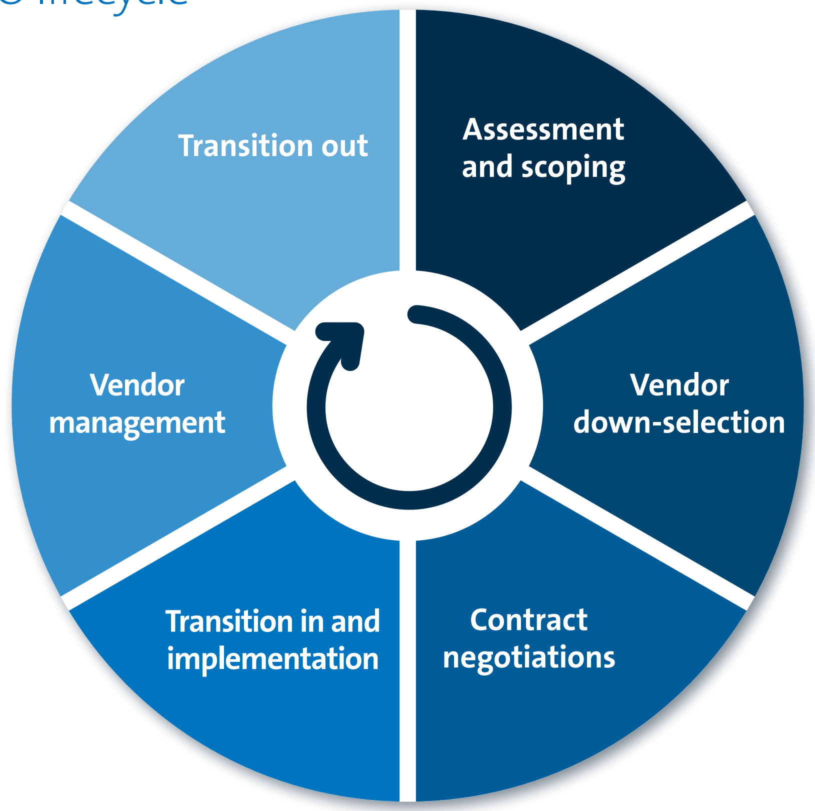
The complexity of these projects is only further intensified by the current backdrop of rapid technological advancement, breakneck regulatory change and increasing supply chain risks.

Successful outsourcings require careful consideration through all stages of the BPO lifecycle—from initial planning through to the exit phase.

This guide explores

Whether your organisation is currently planning a BPO or considering it as a future option, this guide outlines everything you need to know through the various stages of your next BPO.

The BPO lifecycle



BPOs today: what's changed?

The BPOs of today are not the same as the first, second or even third generation outsourcings that came before them. They have undergone a significant transformation, shifting from simple cost-saving measures to becoming key drivers of business growth in the digital age.

Outsourcing agreements should address current macrotrends:

Advent of AI

Outsourced service providers are increasingly leveraging advanced AI capabilities to enable automation, enhance accuracy and customer service, and improve operational efficiency. Facilitating responsible AI use and managing AI risk in these arrangements is critical.

Supply chain security

Cyber risk continues to grow, and in response, regulators are increasingly seeking to have oversight of, and to regulate, supply chain risk management, particularly in an outsourcing context.

Data driven decision-making

Employing advanced data analytics and establishing a data-oriented business strategy is vital for staying competitive. Technology and expertise to enable data driven decision-making through your outsourcing, and associated data handling practices, must be carefully considered.

Growing ESG pressure

Organisations are under growing pressure to improve the sustainability of their operations, demonstrate continuous improvement in their response to modern slavery, and meet increasingly onerous reporting and transparency requirements, including in connection with any outsourcing arrangements.

Strategic partnerships

Rather than a traditional service provider / customer relationship, outsourcings are increasingly being used as a way to form strategic partnerships, leverage external expertise and foster innovation, and must be structured accordingly.

Designing your procurement strategy

A clearly defined procurement strategy is essential for an efficient and competitive BPO process as it guides effective decision-making and resource allocation. A strong strategy facilitates favourable negotiations, helps manage costs and mitigate risks, ultimately ensuring that the process delivers high-quality services that enhance the organisation's competitiveness.

A BPO strategy will ordinarily:

1 outline your organisation's **key objectives** in undertaking the BPO;

2 define **key roles** for the project team;

3 determine the **indicative timetable** for the project, and identify the key decisions and approvals to be made/obtained at various points of the process;

4 include an indicative **commercial model** for the outsourcing (including the proposed term and anticipated pricing structure);

5 outline your proposed approach for **engagement** with service providers:

- How many (and which) service providers will be invited to participate?
- How many service providers will be down-selected, and at what phase of the BPO process?
- What strategy will be used to ensure a competitive but efficient procurement process, including following down-selection? Consider your approach for different levels of engagement with 'lead horses' vs others;

> Down-select too many vendors and you are spread too thin; too few, and you lose competitive tension.

6 identify your **evaluation criteria** for down-selection, and whether certain matters will be given different weighting in the down-selection process; and

> Evaluation criteria and weightings should be tailored to address specific areas of concern for your organisation or the project. Make sure key stakeholders weigh in on the evaluation criteria to be used.

7 identify any **organisational changes** that will be required as a result of your outsourcing, and include a plan for how and when these are to be implemented.

> To fully realise the value of the new commercial model, organisations may need to shift their own internal ways of working—this can sometimes be an underestimated part of the BPO strategy.

Setting up your project team

Who should be on your project team?

A well-chosen project team brings diverse skills and expertise, fosters accountability and ownership, and drives commitment to desired outcomes.

It is typical to limit the number of people in the 'tent' at the outset of a confidential and sensitive BPO.

As the project progresses, members can be added to create a cross-functional team with diverse skillsets, backgrounds and experience aligned to the key focus areas of your procurement.

Ask your project team

1 What objective are we trying to achieve and why is outsourcing the best solution?

2 What are the key risks and potential impacts associated with this outsourcing?

3 What safeguards do we and/or the vendor have in place to address these risks (eg contractual, technical and operational)?

4 Aside from price, what are the key requirements/'non-negotiables' that the selected service provider must satisfy?

Whiteboarding questions to scope your BPO

Properly scoping your BPO to clearly define objectives, expectations and processes is crucial. It ensures all parties understand the goals, prevents scope creep and supports better resource management, cost control and risk mitigation, leading to maximum value.

Service model

- What is the perimeter of your outsourcing?

  Tip! Consider which functions are being outsourced, and whether they are being outsourced fully or partially.

- What are the proposed term and renewal periods? Is the arrangement exclusive or non-exclusive?

  Tip! Consider the implications of these factors on pricing.

- What is the proposed pricing model?

  Tip! Pricing models may include fixed price, time and materials, cost-plus, incentive driven, profit-sharing and hybrid.

- What are the key objectives of, and requirements for, the outsourcing? Eg is the driver cost savings, improvement in service delivery or a different model for services?

  Tip! Where possible, scope and document requirements before the request for proposal is released, to avoid the need for rescoping and repricing.

Data and privacy

- What are the current practices for collection, use and retention of data?

  Tip! It is important to have a clear understanding of current data practices to ensure any necessary uplifts/changes are accounted for as part of your BPO.

- What personal information or other data will need to be shared, both to facilitate the initial outsourcing and on an ongoing basis?

  Tip! A plan should be designed around notices/consents, to enable data sharing, if required.

- What ongoing data sharing arrangements should be implemented? Eg for what purposes can shared data be used? Can data be combined to derive insights? How will the associated risks be managed?

  Tip! Data sharing principles—including processes for managing new data use cases (where relevant)—should be documented.

Whiteboarding questions to scope your BPO

Governance and performance

- Is there a preferred governance structure?

  Tip! A robust but commercially workable governance regime should be implemented, so performance issues are raised and addressed quickly. Consider such things as representatives and their authority, the cadence of meetings and scope of reporting.

- What levers will be included to drive good performance?

  Tip! Consider mechanisms such as incentive pricing, performance-based penalties, rights of first quote, and other ways to expand/descope services to incentivise good performance.

- What are the real-world risks that should be focused on?

  Tip! There is no point negotiating 'gold-plated' liability recourse (and driving up the price of services) if it does not reflect the real-world risks of the outsourcing.

- What flexibility is built in to allow for a change in business needs and/or regulatory requirements?

  Tip! Consider how your contract will flex to manage evolving cyber risk, ESG requirements, AI and other emerging technology, as well as unforeseen changes.

Transition and integration

- Will employees be transferring to the service provider?

  Tip! A plan should be implemented to manage redundancy risk.

- What is the plan for handover (eg phased or big bang)?

  Tip! Consider requiring that the 'A-team' from the vendor's bid remain engaged in project delivery.

- How will service delivery be migrated from existing IT systems to service provider systems?

  Tip! In particular, ensure there is a plan for data migration.

- In what ways will the service provider's IT systems be integrated with retained systems?

  Tip! Transitional arrangements may need to be documented, to address integration, and associated risk and cost.

- What is the plan for the transition-out? What support is required? Do you have sufficient licences and all necessary rights to key assets post-termination? How long do you expect the transition-out to take?

  Tip! Encourage the business to include key exit provisions, including an exit plan if applicable, before signature. These clauses will become critical but are often overlooked in the haste of making a deal.

Whiteboarding questions to scope your BPO

Offshoring

- Are there **specific services** which are **permitted to be performed offshore**?

  Tip! Ensure services to be offshored are clearly identified, including any excluded services that cannot be offshored.

- Are there certain events that should trigger a right for you to require services to be performed **onshore**?

- Are there any **compliance issues** relating to offshored services?

  Tip! Consider privacy, modern slavery, sanctions and tax implications.

- What are the implications of onshore or offshore service delivery in your **pricing regime** (including both current pricing and CPI adjustments)?

- Where will **data be stored and/or accessed from**?

  Consider whether data transfer, storage and/or access should be limited to Australia or certain other pre-approved jurisdictions?

Offshoring can play a successful part in any BPO arrangement if you are looking to reduce costs, access specialised talent or scale operations quickly without compromising quality. If you are considering offshoring, it's important to ensure that data security and alignment of ways-of-working are considered to maintain seamless operations.

Service provider incentives

Incorporating the right service provider incentives in your BPO arrangement can drive performance, strengthen partnerships and help achieve goals more effectively. Depending on the complexity of your outsourcing requirements, you may want to consider a combination of incentives.

Examples of common services provider incentives include:

INCENTIVE	BENEFITS	CONSIDERATIONS
Service credits: these are credits that a customer can apply against invoices if the service provider fails to meet specified service levels.	▪ Incentivises service provider to exceed the service levels. ▪ Easy to monitor with the right processes in place.	▪ May be viewed as a minor inconvenience and so not as impactful. ▪ Requires clearly defined service levels, which are not relevant for all types of services. ▪ Can have an impact on pricing if a degree of 'non-performance' is priced in.
Escalation mechanism: parties may agree to a mechanism that results in poor performance being raised with the service provider's senior management.	▪ An alternative to financial incentives, focused on reputation and relationship.	▪ May be difficult to implement for minor failures.
Liquidated damages: a pre-agreed sum payable by a service provider for a failure to meet certain key milestones in the agreement.	▪ Certainty of payment remedy if a breach occurs. ▪ Can reduce time spent negotiating costs at a later date.	▪ Customer must rely on the service provider to pay the amount, which may become difficult where there is disagreement whether the relevant failure has occurred. ▪ Enforceability must be carefully considered. Amounts cannot be punitive.
Renegotiation: parties may agree that, upon the occurrence of certain events, they will renegotiate or adjust the price paid for particular services.	▪ Can act as a strong incentive, with a real, tangible impact on the service provider. ▪ Works best when tied to a clearly defined process for price adjustment.	▪ Requires a clear set of events to trigger renegotiation a governance process for such negotiation and guardrails to constrain the scope of what can be renegotiated.
Earn-backs: earn-backs can operate to offset service credits applied under an agreement due to a previous failure to meet service levels.	▪ Can promote good performance rather than punishing poor performance.	▪ Often incentivises the wrong behaviour unless tailored specifically. Rarely in the customer's favour to include.

Data considerations

Managing datasets is one of the most complex aspects of an outsourcing. While a BPO offers opportunities to leverage valuable data assets, the challenges of extracting, sharing and protecting data must be carefully managed. Maintaining data integrity and privacy is essential to protect sensitive information, ensure regulatory compliance, reduce risks, build trust and uphold service quality.

Extraction and migration

Consider the work that will be required to separate, extract and cleanse or convert existing datasets so they can be handed over to an outsourced service provider—the scope of this work is often underestimated.

Data access

Think about what processes will be implemented to allow your organisation to access or obtain copies of data /databases promptly when needed during the life of the outsourcing.

Permitted use

Parties should map out what data will be used in the delivery of the outsourced services—both pre-existing and new—and agree upon and document principles for use of that data during and after the term. A regime to address how new data use cases will be evaluated and approved/refused should also be included.

Incident notification

Stringent notification obligations and a robust incident management process should be agreed, to ensure you are able to assess and respond to an incident. The parties' roles, responsibilities and requirements to cooperate in connection with an incident should be clearly documented (as well as who will bear associated costs). In particular, consider who should be responsible for managing regulatory engagement.

Data security

It's crucial that your outsourcing agreement includes obligations to protect the confidentiality, integrity and availability of the data the vendor will handle, as well as the systems they use. These obligations should match the sensitivity of the data and the services provided.

Ensure the vendor complies with all privacy and data security regulations, and that there is a mechanism for validating and requiring uplifts as needed. In light of growing regulator scrutiny, carefully consider data retention and deletion obligations.

Managing change

Managing change in a BPO is critical for ensuring smooth transitions, minimising disruptions and maintaining productivity. By supporting business continuity, effective change management strengthens long-term success and can help build a positive partnership. Including change management provisions and dispute resolution measures also ensures future changes and challenges are handled efficiently.

Workforce changes

Consideration should be given to workforce requirements before, during and post-BPO, including whether there will be any redundancies and if any employees will transfer to the service provider. Early engagement with employment law specialists can help mitigate risks associated with workforce changes.

If employees will transfer to the service provider, look at issues such as:

- Which employees will transfer and when? Should transfers occur in staged tranches?
- What are the relevant terms and conditions of employment (eg statutory, contractual and industrial instruments)?
- What will or will not trigger redundancy pay entitlements? Do any exceptions apply?
- Will there be a transfer of business under the *Fair Work Act 2009* (Cth)?
- What employment entitlements and benefits will be recognised by the service provider?
- What notice and consultation obligations apply?
- Do retention arrangements need to be considered?

Planning for future change

It is important for legal and commercial teams to workshop potential changes that could impact the outsourced arrangement during its lifecycle, and stress-test whether the legal and commercial terms provide sufficient flexibility to adapt to these changes (and incorporate a regime for managing and limiting associated cost). The types of changes likely to impact a BPO include the following:

Changes to services

Long-term outsourcings require flexibility so that the services remain fit for purpose and can adequately adapt to what your organisation needs. This includes changes to the nature of your business and your preferred ways of doing things, as well as changes to accommodate newly acquired or divested business units.

Changes to technology

As technology develops, there may be opportunities for increased efficiencies in performance and/or cost savings in the provision of the services. You may also wish to require approval rights over the use of new technology used by service providers, particularly as AI becomes more widely used.

Changes in law

Laws and regulations can be expected to change over the lifecycle of a long-term outsourcing. Consider how your arrangement should respond to expected or unexpected legal changes—what changes will need to be accommodated (and what happens if they can't be), and at whose cost?

Managing implementation and transition risks

At the implementation and transition stage, clear communication, detailed planning and effective coordination are essential. Regular monitoring and feedback are crucial for addressing issues early. This stage is vital for a smooth operation and long-term success, so careful management is necessary to meet business objectives.

Transition in

- Identify what work is required to be done internally or by other vendors, and how this will be managed.
- Document a plan for the transition of any relevant personnel.
- Clearly articulate the consequences of delays, and ensure any extension of time regime is watertight.
- Identify who has final say over acceptance of any deliverables /achievement of milestones.
- Establish a clear delineation of responsibilities—an RACI matrix can be useful for this.
- Consider an appropriate payment allocation between the implementation, transition and run phases.
- Ensure liability caps are adequate for the different risk profiles of each phase.

Transition out

- Identify any contractual rights required following disengagement, and how these are to be obtained (eg consider if the service provider must novate key subcontractor agreements on termination).
- Think about what assets will be needed following the transition-out phase and how they will be obtained (eg buyback rights).
- Articulate the service level, term and cost of cooperation required by the service provider as part of disengagement, including obligations to cooperate with incoming service providers.
- Ensure there are clear commitments around data delivery and destruction on termination.
- Carefully consider the scope of any non-solicit provisions.

Questions for directors when assessing a BPO

- Does the outsourcing align with your organisation's **long-term strategy** (including commercial, technology and ESG strategies)?
- What impact will the outsourcing have on **service delivery,** both in the short and long term?
- How will **affected employees** be managed, including the handling of redundancies?
- What are the **cost implications** of the outsourcing (both capex and opex), and how susceptible is the arrangement to cost fluctuations?
- Does the arrangement allow **sufficient flexibility** to accommodate changes to your business needs?
- Are there any **foreseeable changes** to the market or regulatory landscape in which your organisation operates, and, if so, how have these been factored into your BPO arrangements?
- What **work/cost** must be undertaken/assumed to **benefit from the outsourcing** (eg data cleansing, IT capital investment, modified ways of working)?
- What measures have been taken to ensure **security and operational resilience**, and to mitigate cyber risks that might arise in connection with the arrangement?
- What other **proposed risk mitigants** does management intend to implement and monitor throughout the lifetime of the arrangement (taking into account your organisation's tolerance for risk)?
- How would any **cybersecurity incidents** be managed under the arrangement (both practically and from a liability perspective)?
- Does your organisation have control of the visibility of the service provider's **use of new technologies**, including AI?
- What **due diligence** has been undertaken on the selected service provider, as well as their fourth-party risk (ie relating to the service provider's suppliers)?

When to engage the board

To ensure alignment, accountability and strategic oversight through the BPO process, you should engage the board at several key points, including:

- **Assessment and scoping:** involve the board early to align on strategic objectives and potential benefits of outsourcing.
- **Vendor selection:** update the board during the vendor selection process to ensure alignment with organisational goals and risk tolerance.
- **Contract finalisation:** consult the board in the final stages of contract negotiations to provide oversight and approval over key terms and financial implications.
- **Transition in and implementation:** keep the board informed during transition planning to monitor progress and address concerns.

Vendor management

Vendor management in a BPO arrangement is essential for maintaining performance, mitigating risks and controlling costs. It ensures compliance with contracts, aligns the vendor's work with business goals, fosters innovation and builds strong, collaborative relationships for long-term success.

The role of governance forums

Governance regimes are a valuable and underutilised tool for managing and monitoring service provider performance. Establishing a forum that meets regularly, with the right individuals present, can ensure there is a clear path for promptly raising and dealing with issues (and so preventing your outsourced arrangement from going off track).

Given BPOs often involve significant fees and critical business operations, it's important to have open communication, strong relationships and the right people in the room from the start.

Vendor management checklist

- ☐ Create a playbook for the outsourcing agreement.
- ☐ Diarise key dates and milestones.
- ☐ Ensure the operational team members are across minimum performance requirements, and know the levers available to them.
- ☐ Establish a clear governance cadence and follow it, and identify clear internal escalation points.
- ☐ Create a file to record all communications relating to key acceptance tests/milestones, and record any waivers or extensions granted.
- ☐ Maintain a register of failed or passed acceptance tests/milestones.
- ☐ Set aside time and resources to conduct audits.
- ☐ Establish internal processes for the request and review of service provider reports.

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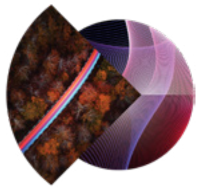

Digital horizons

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