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vendor selection process.

Regulators are responsible for ensuring the prudency of a utility's investments. PHI has worked to clearly link each AMI functionality and performance requirement with quantifiable and strategic benefits. The costs necessary to deliver these benefits are being aggressively negotiated to ensure the most cost-effective solution.

Jeff Evans is an executive consultant with Enspiria Solutions. Dale Gant is manager of meter services at Pepco Holdings, Inc.

KEY STEPS TO SELECT AN APPROPRIATE AMI TECHNOLOGY

- **Identify regulatory implications** including AMI functionality specified by regulators, cost recovery of AMI investments and regulatory incentives, such as performance-based rates. Develop AMI regulatory strategy focused on communicating the value of AMI for its customers. This regulatory strategy is not a one-time effort; rather it's a concerted effort at each step in the AMI technology selection process.
- **Identify critical, must-have requirements.** What functionality, performance and technical requirements must an AMI technology deliver for your utility?
- **Interview vendors with the potential to address these requirements.** Vendors should be able to prove to you through demonstration, experience and a roadmap that they can meet your critical requirements.
- **Short list vendors to whom RFPs will be released.** Invite only those vendors who score highly during the interviews to respond to the RFPs.
- **Execute an objective and rigorous evaluation process.** Determine your expectations for each RFP requirement and objectively evaluate vendor responses against these expectations.
- **Assess the risk associated with implementing potential AMI technologies.** What viability, technology, implementation, and delivery risks exist and how can they be mitigated?
- **Assess the total cost of ownership for viable AMI technology solutions.** Determine the total lifecycle costs—both internal and external—required to realize the AMI technology solutions that you deem viable.
- **Validate references and actual deployments.** Talk with the utilities that have already implemented AMI technology solutions. Validate performance and technical claims and assess project management and implementation skills.

VISION | STRATEGY | REALITY

Technology contracts: Know thy vendor!

+ AN ONLINE OUTTAKE

By Rodney Dow

A CARDINAL RULE OF ANY CONTRACT FOR SERVICES OR PRODUCTS IS to "know your vendor."

Granted, the requisite knowledge will vary with the risk profile of the service or product, however, information technology and business process outsourcing contracts invariably require close vendor scrutiny. Examples for energy utilities include contracts involving automated meter reading (AMR) and advanced metering infrastructure (AMI), meter data management (MDM) systems and customer information systems (CIS), to name a few. For such contracts the risk profile is affected by whether the deal is an outsourcing or a system acquisition. But either way, knowledge of the vendor is fundamental to a successful relationship for the utility. Moreover, knowledge acquisition does not end when the contract is signed, and contractual protection is needed to ensure that reality does not diverge from what the utility has come to know.

Areas of concern should include the vendor's reputation, experience, expertise and commitment to the products and services sought. In addition, the vendor's financial strength and resources are key to its continued success and its ability to stand behind its promises. Also important is the vendor's dependency on others to perform under its contracts. The more the vendor relies on others, the greater the risk of nonperformance.

Long-term outsourcing of mission-critical functions magnifies these concerns. The future is inherently uncertain—circumstances can and

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inevitably do change. The extended duration of many information technology and outsourcing agreements increases the risks associated with that inevitable change.

System acquisition agreements present a lower risk profile because the utility typically operates and controls the system. Nonetheless, continued vendor maintenance and support can be critical to effective long-term use of an acquired technology.

THE CELLNET EXAMPLE

Take the example of Cellnet Technologies (or now Landis + Gyr), a first-tier provider of AMR/AMI infrastructure and services to energy utilities. Throughout most of the 1990s. Cellnet was a NASDAQ-listed, publicly traded technology company. In late 1999, it filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code, reaching zenith on the risk meter. In 2000, Schlumberger Limited, the global oilfields service company, rescued Cellnet from bankruptcy and renamed it. Later that year, Schlumberger also acquired Sema, a French IT services and consulting firm, through a merger with the successor to Cellnet, creating SchlumbergerSema. In 2003, however, Schlumberger sold Schlumberger-Sema to Atos Origin, SA, successor to KPMG's technology consulting business in Europe. Shortly thereafter, "Cellnet" was acquired by a private equity firm in what was labeled by some as a management buyout. Then, in early 2007, Cellnet was acquired by the Bayard Group, a private company based in Australia, which also controls Hunt Technologies and Landis + Gyr.

If that's not dizzying enough, the changes in Cellnet's ownership, structure and name were compounded by an amoeba-like split up of the company in conjunction with the sale by Atos Origin to the private-equity firm. The business previously conducted by Cellnet (however named) was divided into four separate corporations under a unique Pennsylvania law that allows for such divisions, with each separate company not legally responsible for the obligations of the other affiliated companies. "Cellnet," then part of a Delaware corporation, had to reincorporate in Pennsylvania in order to take advantage of the unique Pennsylvania law, although the four separate corporations reemerged as Delaware corporations.

Most of these permutations of Cellnet were relatively seamless for Cellnet's performance under its contracts. Indeed, most observers would conclude that Cellnet's current ownership reflects an improvement in vendor stability and resources. However, without question, the risk profile for Cellnet's customers has been a roller coaster.

Even today, Cellnet's structure is obscure to the casual observer. In mid-2007, Cellnet announced that it and Hunt had united and began marketing services and systems as

"Cellnet + Hunt." By mid-2008, "Cellnet" all but disappeared from the marketing lexicon, when the collection of affiliated companies rebranded under the venerable (and more international) "Landis + Gyr." However, the corporate structure has not changed—Hunt Technologies and Landis + Gyr are legally separate entities (or actually a collection of multiple similarily named entities) and "Cellnet" continues as at least four distinct Delaware corporations. Because these are all separate corporations, each is not legally obligated to come to the aid of the others without an additional binding agreement to do so.

The change at Cellnet is just one example drawn from many similar situations. Nothing in Cellnet's history presents greater risks compared with competing vendors. Indeed, by most accounts, Cellnet enjoys a deserved reputation as a first-tier service and system provider to utilities. Nonetheless, risk profiles for their customers have clearly changed over time.

So how do utilities address risks concerning the vendor's reputation, expertise, commitment and financial resources,

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as well as maintain continued assurances through the term of its relationship?

AVAILABLE APPROACHES

Available approaches include effective precontract due diligence supplemented by contractual provisions designed both to elicit helpful information and to minimize surprises. In addition, contractual restrictions on future activities and changes can be key to ensuring stable risk profiles over extended time frames.

When it comes to due diligence, one area occasionally overlooked in contract negotiations is the true corporate identity of the vendor. For example, a utility may engage in extensive negotiations and due diligence with a particular vendor, only to find a contract proposed with a corporate subsidiary or affiliate. Instead of "IBM," for example, the contractual party is "IBM Solutions (Midwest)." However, these entities are legally separate and distinct, carrying ramifications for the utility's risk profile. The financial statements, resources and even prospects of these entities may be very different. Although moral obligations (and reliance on business self-interest) have merit, continued support from the corporate parent may evaporate in the face of changed circumstances without a legal obligation to provide that support. One important thing to remember about dealing with a subsidiary is that its interests may be subserved (and sacrificed) to the interests of the parent shareholder, often with impunity unless effective contractual protections are in place.

Obviously, the service recipient or licensee needs to know the resources of the specific vendor/contractor that signs on the dotted line. A financial statement of a publicly traded parent company tells you very little about the resources of a subsidiary that signs your contract. Approaches to this problem can vary, but include changing the contracting party and obtaining parental or affiliate guarantees of performance or sufficient financial resources.

While getting things right at the beginning is critical, it is in fact only the beginning. ⧗

Rodney Dow is a partner with Foley & Lardner LLP.

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