

Seven Critical Steps for a New Deal

By Richard G. Stock, M.A., FCIS, CMC, Partner with Catalyst Consulting

This is the ninth in a series of articles about how corporate and government law departments can improve their performance and add measurable value to the organizations.

As the incoming CEO of an established company, what would you do with a division or department which had very little data, aside from total fees, number of items purchased for the last two years, their variety and complexity, and the relative effectiveness of each item or service purchased? What would you do with a business unit which was unable to forecast its requirements for external professional services for the next three years? And what would you do if the company failed to leverage its purchasing power by not relying on advanced strategic sourcing practices?

These are not big concerns when looking at sectors such as banking, insurance, telecom, big pharma and global manufacturing companies because they continue to refine their practices for retaining external counsel. Still, the aftertaste of cost reduction programs regarding legal fees for law departments is not pleasant. Legal procurement professionals often encounter passive resistance even when invited to team up with their legal department to introduce a new business model for retaining legal counsel. With the possible exception of the US, the economies of most countries are unstable. Even the Chinese economy is slowing its rate of growth. Some would observe that annual rate and price increases averaging 5 % or 6 % are not sustainable for legal services in many markets. One financial institution reported increases averaging 14 % per year over the last 5 years – a rate that is 3 to 4 times higher than increases for other goods and services or of wages in the organization.

While law firms will not be enthusiastic about changes to the *status quo* of business arrangements with their primary clients, most will be receptive to initiatives that deepen relationships and increase market share. The most

progressive firms seek out clients that are prepared to invest the time and money to innovate and to carve out new ways to package, source, deliver and price legal services.

For legal department leadership charged with reducing legal spend, the answer cannot be found in asking for bigger discounts or mounting a procurement process that targets a race to the bottom of the barrel for better hourly rates. A new business model for relationships with external counsel requires a complete rethink of traditional arrangements. Companies and their legal leadership are at a net disadvantage unless they get quite a few things right.

First, two years worth of detailed data about the number and complexity of matters should be obtained from each law firm. The data should include the number of hours for each experience level in the firm. Few companies have this information available from their matter management systems or accounting data bases even though improving law firm practice patterns represents 50 % or the savings available once discounts are exhausted.

Second, the company should forecast its requirements for legal services twinned with measures to improve productivity in legal services delivery and administration. The forecast should be quantified and converted into a scope of work that forms part of a request for proposals for legal services.

Third, the company should consider the next generation of “convergence” in the number of primary, specialist and regional law firms it retains. There are arrangements where firms are retained for legal work and to manage workflows, quality and pricing of a network of

secondary firms for entire regions on behalf of the company. Increasing market share and making longer-term commitments for work to still fewer firms allows primary firms to migrate to new pricing models and to innovate with service delivery.

Fourth, the company must acquire expertise so that it can evaluate the cost-effectiveness of alternative fee arrangements (AFAs). This is particularly important when applying alternative fee arrangements to non-recurrent and complex legal work as well as to large portfolios of work. A solid understanding of law firm economics is a pre-requisite to negotiating fair, alternative pricing with law firms. Both legal and procurement professionals should be at the top of their game in this respect and avoid variations of hourly-based fees.

Fifth, getting the non-hourly price and conditions right for individual matters is a companion piece to a new business model with external counsel. Inside counsel must understand optimal staffing patterns as well as the related planning assumptions and their probabilities when budgeting individual matters in the context of a multi-year AFA program.

Sixth, the company should evaluate the performance of its primary counsel every six months. Criteria and process should be set out in the terms of engagement, even if the firm is

sole-sourced, and even if fees are not tied to performance. The usual key performance indicators include results, service, innovation, and cost-management.

Finally, there should be a formal commitment by the General Counsel to a detailed, written project plan to implement each of the six elements above. Preparation and an execution strategy that is properly resourced will improve the prospect of success every time. Seven critical steps for a new deal – no margin for error.

About the Author

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