

Four Questions in Legal Sourcing

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

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

The trade organization for legal procurement, Buying Legal Council (see www.buyinglegal.com), recently released the results of its 2018 survey. The themes covered by the study were



- the impact of and the value realized by procurement professionals;
- partnering with law departments to deliver results;
- evidence of metrics, commitments to improvement, and of continuing education increasingly defining the market for legal services.

Some 153 legal procurement specialists completed the survey earlier year. Many of those involved on a full-time basis with sourcing legal services come from financial institutions, the insurance industry, pharmaceutical companies and global manufacturing. There are others still who specialize in the procurement of professional services such as IT, human resources or management consulting and who support the legal function. As a management consultant involved with RFPs for legal services on behalf of 75 companies since 1998, usually at the request of the

Chief Legal Officer, I have seen the contribution that procurement professionals bring to the table.

One chapter of the survey report addresses key benchmarks, particularly those which concern savings. The question posed was “How much, as a percent of total spending with legal service providers, do you believe your efforts have helped save the organization in the last year?” The responses averaged 14.6 %. When asked about target savings for 2018, the answer was 16.9 %. This is encouraging.

Yet, at least four questions remain for both procurement professionals and their law department clients. The first is “How does one measure savings”? There is good legal spend (transactions) and necessary legal spend (litigation). Are savings determined by the size of the discount, the number of hours worked, total legal expenses or some combination of each? Do we expect a company’s total legal spend in 2018 to be 16.9 % lower than its total legal spend in 2017 – effectively a comparison of absolute expenditures? The next survey should set out a single methodology for participants to use when calculating savings.

The second question relates to the use of alternative fee arrangements (AFAs) and pre-matter scoping, also known as legal project management and budgeting. The Buying Legal Council survey found that the three most effective techniques to deliver value in legal services procurement were “pre-matter scoping” of work, the negotiation of AFAs, and the creation of panels or lists of preferred firms. I would agree in every respect. However, it is not really possible to use AFAs, except on the most routine matters, without also relying on

detailed matter budgeting by the law department and their law firms as a pre-requisite. Procurement and legal professionals should be scoping entire portfolios of legal work with variables that include legal specialization, the number and types of matters together with their complexity levels, and the overall hours anticipated per year for each jurisdiction of interest to the company.

This scope of work should then make its way into RFPs, whether these be invitational or competitive. It then becomes possible to align the financial incentives for the law firm with those of the law department and to do so at a predictable price for all types of work. Failure to do so relegates AFAs and matter scoping to routine work. Serious savings invariably stall for a company after 10 years of RFPs when anchored in some variation of hourly-based fees. The next survey should ask about the extent to which the entire portfolio of legal work is scoped and then sourced on a non-hourly basis.

Our third question arises from the report finding that the top three goals for procurement professionals in 2018 were ranked as

- better capture and analysis of spending data
- reduced legal spending
- improved management of legal work

These are worthy goals. It makes perfect sense that better data capture and analytics be ranked first. Many companies that have had commercial systems in place for years to receive, analyse and process legal invoices are still missing half of the data. For the most part, they rely on matter management systems that are very precise at spotting unauthorized

tasks, hours, rates or fee-earners on bills. They are not used to sort matters by complexity within a specialization. And they are not used to examine and compare law firm staffing profiles and practice patterns against each other and against a standard. Yet, they could be adapted to do so. The next survey should inquire about these capabilities and the extent to which this type of analysis takes place as a way to determine appropriate (non-hourly) fee arrangements.

The survey report is eloquent about the evolution of collaboration between legal procurement and legal operations. This makes sense from the point of view of data capture, data analysis and the management of legal sourcing processes. In my experience, the selection of firms for critical and sensitive transactions, significant litigation and regulatory work tends to be relationship and professionally-based. It is rarely the object of a procurement process. Either these firms are always on the preferred list or they are selected regardless of the roster. The next survey would do well to

inquire about the extent to which this type of work is incorporated into the formal sourcing process and whether it is priced on other than an hourly basis. Many hard-won savings in legal procurement are eclipsed by exceptional, expensive “bet-the-company” work.

About the Author

Richard G. Stock, M.A., FCIS, CMC is a partner with Catalyst Consulting and is based in Canada. The firm has advised corporate and government law departments in 20 countries since 1996. Clients include: Shell, Heineken USA, The Judge Advocate General, Pearson Education, Toyota, SNC Lavalin, Bombardier, National Bank of Canada, TD Bank, Estée Lauder, Intact Financial Services, Ontario Power Generation, DocuSign, Charter Communications, United Steel Workers Benefit Funds, Air Canada, John Deere, Alberta Health Services, Disney, Fairmont, Wal-Mart, USAA, TransLink, Williams, IATA, the Department of Justice, Interac, the Government of Nunavut, and Turkish Airlines.

Richard can be contacted at (416) 363-6427 or richard@stockconsulting.com.

The image contains three promotional banners for legal AI events. The top banner is for the 'WORLD Legal AI summit' held from 7-8 June in Barcelona, Spain, with the website www.luxatiaiinternational.com. The middle banner is for 'THE LEGAL AI FORUM' held from 18th-19th September 2018 in London, described as 'JOIN THE LEADING EVENT FOR ARTIFICIAL INTELLIGENCE IMPLEMENTATION IN THE LEGAL SECTOR' with a 'FIND OUT MORE' link. The bottom banner is for 'BIPIG' (Build Intelligence Infrastructure for Legal Organizations), featuring a logo with a keyboard and a line graph.