

**LEGAL
DEPARTMENT'S
GUIDE TO LEGAL
PROCUREMENT**



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Introduction

In-house legal teams have always been buyers of legal services and as such, have an intimate working knowledge of engaging law firms and managing legal matters. However, the landscape is changing, and legal teams must adapt.

It is widely recognised that the role of general counsel is broader and more challenging than ever. As an organisational leader, they must now look for ways to improve performance, deliver better legal services and identify cost efficiencies.¹ With approximately 62¢ of every \$1 spent on legal costs going to external legal costs, managing the process of identifying, engaging and managing legal services is critical.²

General counsel must now look for ways to improve performance, deliver better legal services and find cost efficiencies.

This underlying need explains the emergence and growing influence of legal procurement. In large organisations procurement have traditionally been tasked with the buying of products and services. Over the last few years, this skillset has evolved to become an aspect of strategic competitive advantage in that those that do it well have a lower cost base and improved quality. Consequently, procurement professionals regularly participate at board level, and CPOs and GCs are increasingly working together to examine the legal category and its spending.



General counsel must now look for ways to improve performance, deliver better legal services and find cost efficiencies.

What is legal procurement?

With the overriding mandate of doing more with less, controlling external legal spend is a top priority. To achieve this, in-house legal teams are turning to legal operations management, including legal procurement, as well as legal technologies to improve efficiency and productivity.³

The focus of legal procurement is to make the buying and management of legal services more transparent and aims to help the legal department make the objective, data-based decisions that deliver value to their organisation.

Procurement is much more than the purchase of goods or services from external providers. It requires strategic planning in order for organisations to obtain these things at the best possible price, which meet their needs in quality, quantity, location, and time. It is a vital part of any company's overall business strategy.

Applying the principles of procurement to the buying and management of legal services means understanding existing processes and developing more efficient and transparent ways of doing things. Instituting KPIs and using data and analytics to drive continuous improvement and demonstrate value underpins this approach.

"Cost-cutting is not the most strategic way to view procurement," says Charles Green, legal management consultant.⁴ For legal departments it is helpful to view legal procurement as a strategic enabler

for balancing costs, quality and efficiency.

The legal services category is highly complex and saving money while improving quality and service levels is not an easy task but a challenge that has and can be taken on. Furthermore, it doesn't require hostility or a purely transactional approach - maintaining a good relationship with law firms and service providers is still an important and necessary factor. However, this relationship should not be an unconditional love but a business relationship.

There are some clear benefits that flow from a formal legal procurement approach:

- 1 Control and reduce external spend while providing excellent legal advice
- 2 Build structure and process around the buying of legal services
- 3 Collect and use data to drive decision making
- 4 Leverage competitive tension
- 5 Connecting organisational requirements with market offering.

We'll examine the benefits and other aspects of legal procurement in more depth later, but let's begin by considering the legal procurement lifecycle.

Legal procurement lifecycle

In-house legal teams are highly experienced at undertaking legal work and briefing out legal matters. However, what legal procurement does is examine the process for the buying and provision of services; in other words, how external legal work is engaged and managed. With greater insight, data and controls, the legal team can save time, save money and reduce much of the frustration involved with managing law firms.

The legal procurement lifecycle developed by Lawcadia helps form a framework around existing processes and workflows and consists of seven defined iterative, as opposed to linear, areas (see Figure 1).

When it comes to how legal teams are managing procurement activities and using technology to capture data, some processes are more sophisticated than others.

For example, many legal teams are still using manual data entry and time-intensive invoice checking while others have adopted e-billing software.

Capturing data at the end of the process, as in traditional e-billing, is helpful, but is not enough as it occurs only at the end of a matter. The real benefits and value come in improving every stage before this and capturing data throughout the entire legal procurement life-cycle.



Figure 1

A new way of looking at legal panels

The traditional approach to selecting law firms is based on established relationships and law firm reputation. The issue with this approach is that it is subjective and does not stand up to corporate governance requirements for transparency. Moreover, this approach also does not necessarily result in the best work being done and minimises controls around price.

Leading expert in legal procurement and Executive Director of Buying Legal Council Dr Silvia Hodges Silverstein says that the introduction of legal procurement practices means that legal teams must “Say good-bye to the ‘good old boys network’ of hiring lawyers.”⁵

For most, this is a welcome change.

Large organisations across the globe are becoming increasingly sophisticated in the way that they establish legal panels and identify a preferred set of suppliers for legal work. This task is incredibly challenging and complex and involving legal procurement professionals and or consultants to advise on this area is becoming commonplace for the following reasons:

- In-house legal teams are not always the experts at the scale of process, data and expertise to facilitate this strategic initiative
- In-house legal teams still need to meet the day-to-day legal needs of their organisation

The 2017 Buying Legal Council survey expands on this:

“Many of the activities procurement takes on are outside the typical skill set and training of a lawyer, such as complex data analysis. Procurement’s involvement also relieves in-house counsel from a range of ‘unpleasant’ tasks, such as negotiating rates, conducting billing audits, and issuing RFPs.”⁶

When it comes to evaluating, restructuring or establishing legal panels, there are emerging trends that are significantly changing the way that panels are formed and how organisations are using them, including convergence, off-/on-/near-shoring, unbundling, diversity, RFPs, continuous improvement and reverse auctions. Each of these are explored in the following sections.

”

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Convergence

Convergence refers to the strategic approach taken by many organisations to reduce the number of legal services providers. Whilst each legal department will have different needs and requirements, research indicates that larger organisations will have anywhere from 15 to 1,500 law firms with a median of 200.⁶

Over the past 10 years large organisations, both corporate and government, have used a convergence strategy to rein in their legal costs, culminating in a dramatic reduction of preferred law firms.

“Convergence [can be] controversial because, among other things, it disrupts longstanding (and often comfortable) relationships between in-house lawyers and established law firms” observes Bill Henderson, Professor of Law at Indiana University and founder of online publication Legal Evolution.⁷

For many, the goal of running a convergence strategy is to reduce unnecessary legal spend and simplify the management of external law firms. By leveraging competitive tension and purchasing power, many organisations believe they can achieve lower fees and enjoy additional negotiated benefits such as secondments.

Relationship and knowledge management can also be a benefit, as working with fewer law firms allows those firms to develop closer working relationships and a more strategic understanding of the organisation.

A recent BDO Global survey also reflects this, highlighting that clients want lawyers to be more like business partners – to bring ideas to the table that can help them, and present more creative ways to add value.⁸

A word of caution

A successful convergence strategy is not simply about reducing the number of firms to one or two big firms who can handle all local and global work. A successful convergence strategy needs a number of controls, including:

- **Quality control** - Law firms need to achieve a certain profit level and while they have offered you a highly discounted price to be on your legal panel, there should be no temptation to reduce the quality of work by pushing work down to lower cost associates or paralegals
- **Bias control** - When consolidating law firms there is a bias towards retaining large international firms and moving away from regional or national firms. The issue with this is that larger firms are not always the most efficient, responsive or price conscious
- **Complacency control** - Once a firm is on a legal panel there is often less competitive tension. As a result, firms can become complacent and less responsive. Additionally, once work has been won, firms are often less incentivised to run matters efficiently and control scope, resulting in matters running significantly over budget

While these issues are important, panel structures and systems can be put in place to manage them, specifically the ongoing use of competitive tenders for sizeable matters and performance evaluation. These will be discussed in detail at a later stage.

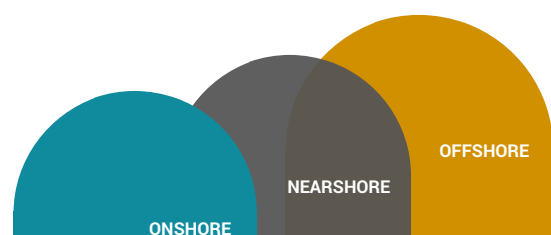
Offshoring, nearshoring & onshoring

The past 10 years has seen a rise in the trend in offshoring work to Legal Process Operations firms with a foot-print in low-cost regions or cities around the world, including India, South Africa and the Philippines.

In recent years, as exchange rates have moved, there has been a shift towards onshoring, so that work that was once outsourced to off-shore markets is now outsourced to local LPOs.⁹

Similarly, nearshoring refers to outsourcing work to regions close to your own; for example, a UK-based company outsourcing to a Dublin-based LPO would be classified as nearshoring.

The benefits of these approaches is that large quantities of less complex legal work can be delivered efficiently and accurately by companies that specialise in this kind of work. Organisations can significantly reduce their legal spend by using LPOs, providing a compelling argument for including these types of firms in a legal panel.



Unbundling of services

When considering current and future legal requirements, in-house legal teams can use the unbundling of legal services as a lever for increased control and reduced spend. Unbundling refers to disaggregating work and allocating “responsibilities for different aspects of a single matter to different law firms, in-house lawyers and non-traditional vendors.”¹⁰

In an interview with The Australian, Telstra Group General Counsel Carmel Mulhern says that in the past the company would brief a whole matter to a top-tier law firm that would then split the work up between its specialist teams, partners, associates and junior lawyers.

“What is happening now is that we tend to unbundle the work so that it might be the riskiest or most difficult area that we give to the firm, or that bit that requires the most amount of people,” says Mulhern.

“The things that used to traditionally go to the junior lawyers we would do in-house.”¹¹

Medibank group general counsel Mei Ramsey, agrees. “There’s been a change in the in-house counsel mindset, that you don’t always need the big name on the letter when you’re seeking advice”.

A more sophisticated approach to buying legal services reduces external legal spend, she adds “But it does require a lot more thinking as well.”

Thanks to general counsel making more strategic decisions, the days of briefing an entire legal matter out to a full-service law firm are fast coming to an end. As one GC describes it, it’s “triage, constantly assessing situations and deciding whom I should ask to handle them, internally or externally”.¹²

Examples of decisions may include:

- 1 Retain all work in-house and develop permanent talent and team structures
- 2 Retain all work in-house and insource flexible talent to meet short-term business needs

3 Outsource specialist advice to law firms and retain the remainder in-house

4 Outsource parts of work to separate suppliers, e.g. due diligence to an off-shore or on-shore LPO and brief other stages to an external law firm

5 Or, a combination of the above

Involving a legal procurement professional can significantly assist in this area as they can be tasked with understanding what is available in the market and matching it to the needs of the legal department and the organisation. Technology can also be invaluable in helping legal teams manage workflow and project management needs.

“There’s been a change in the in-house counsel mindset, that you don’t always need the big name on the letter when you’re seeking advice.

Diversity

As more and more organisations embrace the need for diversity, it is becoming increasingly common for legal teams and their procurement colleagues to require their preferred law firms to disclose their diversity status and the strategies they have in place to improve the overall diversity of their firm as well as within their leadership structure.

Legal departments are also using this information to inform their buying decisions as part of an overall strategy.

A legal researcher recently highlighted:

“... law firms have more reasons to focus on gender parity than ever before. The number of diversity-driven GCs [has] risen steadily; and so has their expectations for diversity within their outside counsel teams.”¹³

Legal teams can ask law firms to outline the diversity of their teams, which may include information on gender and minority diversity as well as leadership diversity. Notable examples include initiatives instituted by Microsoft, Verizon and Wal-Mart, which can incentivise law firms to make a commitment to diversity and inclusion in the legal profession.^{14,15}

Let's consider a recent example from the Toronto District School Board, the 4th largest in North America with 40,000 employees. In November 2016 they issued RFPs to law firms to establish panels in 8 areas of law. Law firm proposals had to include a demonstrated commitment to diversity and provide examples of their commitment.

Acting General Counsel Leola Pon says: “Some firms were able to demonstrate that, but unfortunately, some firms had a simple statement... I actually encouraged a lot of firms to take another look at how they approach their submission.”

“We have shared this idea with leaders of other departments and have recommended to the procurement department that they include this as a mandatory selection criteria for all RFPs,” continues Pon.¹⁶

If your organisation isn't ready to mandate a formal diversity requirement in the panel RFP criteria, an informal approach is still possible. Consider Telstra's Group General Counsel, Carmel Mulhern. She wrote to all law firms on Telstra's panel and asked them about their diversity and flexibility policies, and also wanted to know if her organisation was doing anything that impacted diversity and flexibility.¹¹

RFPs

Request for Proposal (RFP) is the most common way to start the process for the establishment of formal legal panels. According to a BTI Consulting Group report, client RFPs hit a 15-year high in 2015 with 56% of corporate counsel issuing RFPs for law firms.¹⁷

Some companies now go even further by hosting pre-RFP workshops or putting out requests for information prior to issuing an RFP. During this process they ask law firms to describe their capabilities and areas of expertise, what value-added services they'll make available and provide further details about their approach to legal project management and alternate-fee arrangements.¹⁸

A lot of work goes into issuing, compiling and processing RFPs and firms' submissions; a process that's often followed by extensive negotiations. For this and other reasons, establishing a legal panel is not a simple “set and forget” process. Organisations can lose substantial amounts of money if they are unable to enforce compliance with terms of engagement. Law firms also work with many clients and may not take the time to check requirements before sending the bill.

Legal procurement professionals and technology software can assist in the RFP process through digitizing the process, enabling the efficient comparison of proposals, negotiations, compliance and evaluation. Many aspects of this will be covered further in this guide.

“Organisations can lose substantial amounts of money if they are unable to enforce compliance with terms of engagement.”

Continuous improvement

To ensure the right panel firms are being briefed by in-house counsel and that law firms are adhering to agreed billing guidelines and processes, managing for change – both internal and external – is mandatory. It must also be a continuous process of iteration.

For example, Shell Oil Corporation has saved more than \$20 million globally each year since adopting and continually tweaking its RFP and panel establishment program says Vincent J. Cordo, Jr., Shell's global sourcing officer. ¹⁸

Reverse auctions

Reverse auctions are another way of finalising panels and terms of engagement.

Shell have recently used a reverse auction process to determine which firms to include on its panel, with the aim of developing better relationships with those chosen. ¹⁸

Canadian-based Consultant Nancy Watson explains the reverse auction: ¹⁹

- 1 A company issues an RFP
- 2 Law firms respond
- 3 A short list of firms (or panel firms) is invited to participate in the reverse auction
- 4 Law firms are invited to submit estimates for the project

- 5 All competing firms can see the pricing of the competitors but not the name of the competition
- 6 The competing firms can lower their bids while a timer counts down
- 7 The company assesses the bids and announces the winner of the work.

As the Buying Legal Council observes, opinions vary widely as to whether reverse auctions are appropriate in legal services. However, research indicates that the most experienced legal procurement professionals are experiencing success by using this tool.

We have also received anecdotal feedback that when law firms regularly participate in these processes they actually like the transparency that it brings - they know exactly where they stand.

In his foreword to the Legal Procurement Handbook, former DuPont General Counsel Tom Sager said:

'Procurement' may still be a four-letter word in the legal industry, but the legal landscape is clearly changing.

And with it the recognition that it is incumbent upon the general counsel and her outside counsel to apply greater sourcing discipline to our profession to create competitive advantage for her respective corporate clients. ²⁰

At the heart of getting the best value for external legal spend is how well the legal department can leverage competitive tension, not just to achieve a better price, but to maintain quality and avoid complacency. We have already discussed how RFPs and reverse auctions can be used to establish a consolidated legal panel of firms that understand the organisation and have the right expertise and reputation to deliver. Taking it further, there are many benefits to maintaining a level of competitive tension throughout the legal procurement lifecycle, and therefore tendering out matters is critical.

Tendering matters

It is not enough to have a formal panel structure if associated management practices are not consistent and value oriented. One of the key management practices in legal procurement is the use of competitive tendering for all non-routine legal matters.

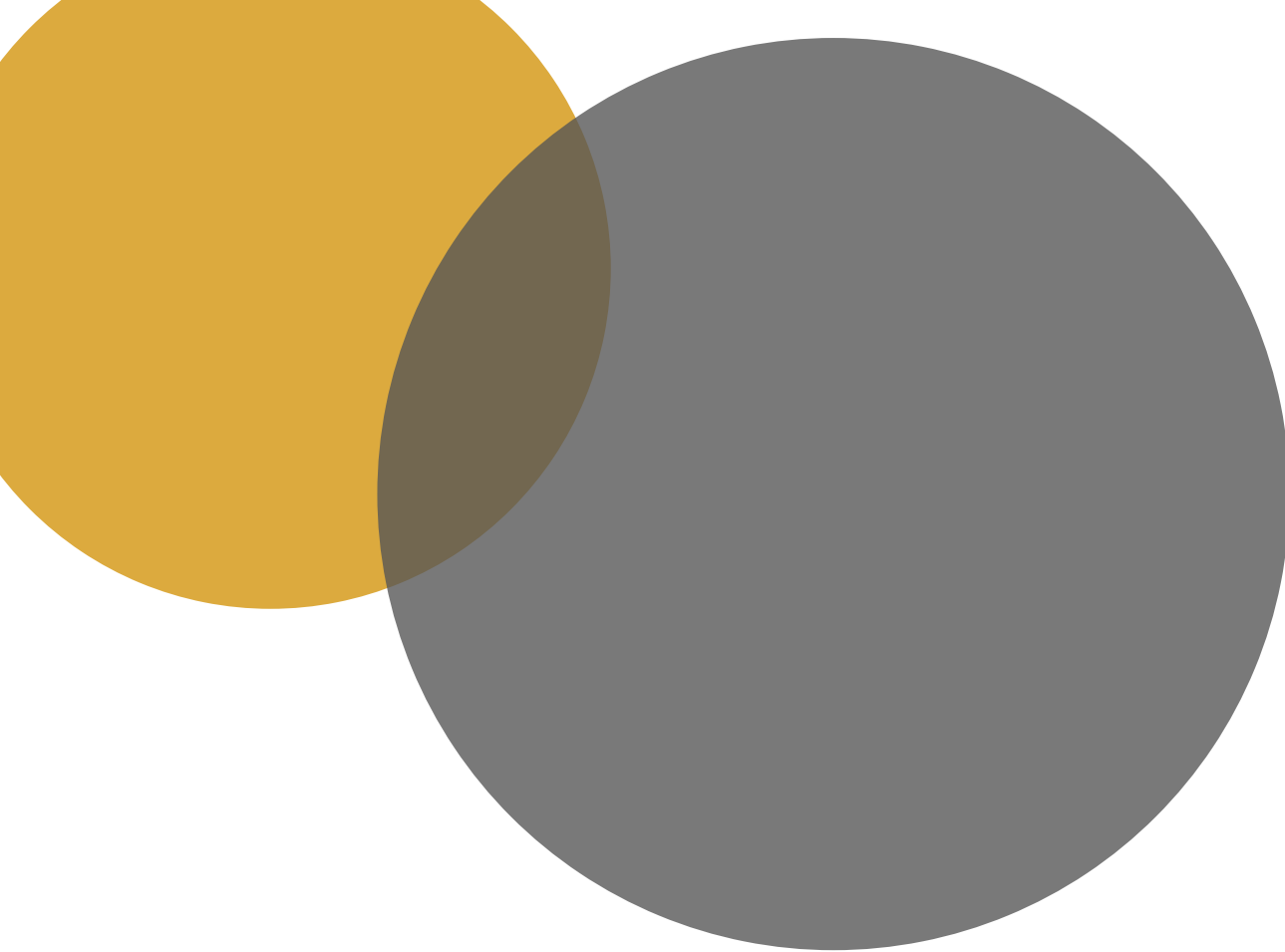
The tendering process should not be complex, lengthy or burdensome on panel law firms, but should provide a consistent process for in-house counsel to communicate a considered and detailed scope of work. It should also allow law firms to provide details about their prior experience in the area, how they would approach the matter (including resourcing and project management), clear conflicts and include price estimates and alternative fee arrangements if requested.

The benefits of tendering all non-routine matters include:

- Creating a fair and transparent process
- Empowering in-house counsel to demonstrate why sourcing decisions are made
- Instituting a disciplined and consistent process and approach that the entire legal department can follow

For low cost or routine legal matters, it often makes sense for engagements to be made directly with the law firm. For these, the panel structure can be such that a volume-based arrangement can be agreed with specific law firms for types of work.

” One of the key management practices in legal procurement is the use of competitive tendering for all non-routine legal matters.



Pricing & AFAs

The legal industry is surprisingly unique in the way that pricing operates: competition is high, and the power of buyers is increasing, yet despite this, rates consistently increase each year, with some arguing this is unsustainable.²¹

The predominant pricing mechanism in the legal industry continues to be time-based. However, without effective controls and project management, costs can rapidly escalate. In response, the industry is beginning to shift towards alternative fee arrangements (AFAs).

According to a US-based survey, the AFA of choice is the fixed fee (60% of AFA's), followed by capped fees (20%) and other (20%).²²

Other AFAs that are less common but can be appropriate depending on the matter and the legal department objectives are blended rates, contingency fees, phased fees and success fees.²³

With support from procurement, in-house legal teams can request mandatory AFAs for individual matters and stages of work, even on large litigation matters.

The clear benefit of a fixed fee approach (as opposed to a price by the hour approach) is the belief (or hope) that they will be more predictable, transparent and include improved project management.

However, despite the benefits to the legal team, AFAs create an inevitable tension. As a US legal commentator observed:

“When lawyers bring up the subject of AFA, it is usually with the idea of possibly making more money than they could than by doing straight hourly billing. And when [clients] bring up the subject of AFA, it is usually with the idea of possibly saving money.”²⁴

Communication and collaboration with law firms is the resolution to this tension – finding the right balance to a short-term cost saving with a longer-term relationship benefit. For example, if the legal department wants to start investigating fixed fees for certain matters they need to be open to communicating with law firms about what both sides need to do differently to encourage success.

Better scoping and communication from the client-side, paired with improved project management on the law firm side can facilitate a step change in efficiency which creates value for both sides.

Accurate price estimation

Whether law firms choose to bill on a time based, fixed or capped basis, legal departments need to be able to budget and accurately forecast their legal spend. It is no longer acceptable for law firms to be engaged without an estimated fee based on an agreed and defined scope of work. The scope of work will of course change as the matter evolves, as will the estimated legal fee, but at a basic level, the discipline of engaging within a framework is imperative.

Some in the industry argue that few legal matters can be forecast accurately. However, those in legal procurement say it's not so. Law firms are experts in what they do and increasingly, have sufficient data to anticipate how similar matters will run. Even for the most complex of litigation matters, work can be broken down into stages and price estimates can be agreed for each stage based on an agreed scope of work.

As Telstra Group General Counsel Carmel Mulhern points out: "Project management has not tended to be a strong suit in lawyers and nor has it been rewarded because it means less billable hours."¹¹

Fortunately, this is changing as law firms respond to client demands for more accurate price estimation and resource planning by investing in Legal Project Management (LPM) training and tools.²⁵

Many law firms also have specialist Legal Project Management (LPM) professionals who can run large matters and assist the law firm partners with strategic scoping and pricing. However, they are not used for all matters, and clients are expected to pay for this or negotiate it into the matter fee.

In addition to LPM, most major law firms also have in-house pricing professionals who are highly experienced in negotiation tactics and scoping and costing legal work.²⁴

If your law firm is not providing accurate price estimates, advise them that you now expect this for every matter. Good corporate governance demands this.

Discounted rates

Discounted hourly rates are not recommended as a legal procurement practice.

With a few exceptions, almost no one pays published rate and therefore everyone thinks they are getting a discount. But only about half of clients actually pay below standard rate. And even they are not getting as deep a discount as they think.²⁶

So, if you are getting a negotiated discounted rate, you may not be getting the good deal you thought you were.

Furthermore, unless scope is tightly controlled and accurate price estimation is in place, a discounted hourly rate can be meaningless as it is extremely easy for law firms to make up for the reduced profit margin (intentionally or not).

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Managing scope

Monitoring changes to scope of work is essential for a well-run legal matter and is a responsibility that should be shared between in-house legal teams and the lawyers seeking to be engaged. At a minimum, a scope of work should include an outline of what is in scope and what is out of scope and should be provided at the initiation of each matter or project. Law firms can then contribute and collaborate on this when responding to a tender, outlining what else is foreseeably required for the matter.

A clear scope of work is mandatory because it is from the shared understanding of scope that law firms can provide an accurate price estimate in-house legal teams can then plan for and budget against. Without a clear and agreed scope, it is an impossible and irresponsible task for law firms to price – a.k.a. “how long is a piece of string”?

An ideal collaborative scoping process goes something like this:

- 1 A scope of work is agreed in collaboration with law firms and a price estimate provided
- 2 Law firm is engaged and work proceeds
- 3 Something changes. The in-house lawyer advises the law firm there is a change to the scope of work

- 4 The law firm adjust the price estimation based on the revised scope
- 5 The in-house lawyer approves the revised price estimation
- 6 As the matter progresses, the law firm anticipates that a change of scope is required. They advise the in-house lawyer and provide a revised price estimate
- 7 The scope change is approved or not approved and is discussed openly
- 8 The matter comes to an end, and the legal bill is exactly what has been agreed

Managing scope changes does not have to be a time-consuming task as there is excellent technology available enabling a seamless collaboration with engaged law firms. What this process provides is a clear, consistent framework for managing external spend in a way that promotes effective communication and transparent pricing. At the end of the matter there will be less frustration on both sides, bills will get paid quickly and both sides can focus on what they do best – great legal work.

“**Managing scope changes does not have to be a time-consuming task as there is excellent technology available that enables a seamless collaboration with engaged law firms.**”

Within the legal procurement lifecycle, data, analytics and reporting are arguably some of the most important aspects as this is the basis on which strategic decisions are made.

Historically it has been challenging for legal teams to access accurate data, with manual, time-consuming processes involved in data-entry, analysis and collation across business units and geographic locations. Fortunately technology has digitised and streamlined these processes so that accurate data is captured through the process.

E-billing was one of the first waves of legal technology to provide access to valuable spend data and it is widely used. For example, of 156 companies surveyed by CLOC (Corporate Legal Operations Consortium), 83% use an e-billing system.²⁷

While e-billing can be an important tool to capture and analyse invoices and spend data, it does have limitations.

First and foremost, e-billing data comes from invoices issued and received and as such the information is historic and retrospective. So, the analysis can be restrictive.

Ideally, data should be captured throughout the legal procurement lifecycle so that legal teams have complete visibility over their entire legal budget including what has been billed, work in progress and anticipated legal spend.

Technology solutions can provide data on competitive tenders, price estimates or AFAs that have been agreed, as well as variance by matter and scope changes throughout the matter. This type of information can then be viewed through multiple lenses, whether it be business unit, matter type, panel or law firm.

Types of data that is highly valued by legal departments includes:

- How are law firms are being engaged across the organisation including who internally is briefing, which firms, types of pricing, and the basis on which buying decisions are made
- Which law firms are consistently at or under/over budget
- The average price variance on competitive tenders

Data analytics and reporting is becoming increasingly sophisticated and intelligent and with AI capability now coming into the mix there are many technology options and exciting solutions for legal teams to explore.

Data security

While data security was once a buzz word, it is now a mandatory consideration when working with legal services providers.

Below are some standard requests for information in a template document used by 3M and published through ACC Legal Ops.

With respect to client data, does your firm:

- a Adhere to the ISO 27001 information security standard, NIST cybersecurity framework, or any other security framework?
- b Have comprehensive policies for information security and for privacy of personal information that are approved by your firm's management and communicated to all employees, contractors, clients, or other external stakeholders?
- c Please describe any investment your firm has made to ensure the security and privacy of client data.²⁸

In-house legal teams must take data security very seriously. The best technology companies and service providers should adhere to ISO 27001 information security standards and have in place an Information Security Management System (ISMS).

ISMS is a suite of activities concerning the management of information risks (called 'information security risks' in the standard). The ISMS is an overarching management framework through which the organisation identifies, analyses and addresses its information risks.²⁹



Feedback

In a 2017 survey of international legal departments, nearly a third of respondents reported they don't measure law firm performance in any way. Of the respondents that do measure performance, outcome-based evaluations are the most important (21.5%), followed by informal qualitative feedback (17.7%). More than half of respondents do not rely on formal attorney ratings and use other means to assess performance.²

In a publication provided by the Buying Legal Council on service delivery review, author Casey Flaherty says, "Law firms will modify behaviour if they know they are measured, asked incisive questions, or are subject to inspection. But they will have a hard time deciding what to change and how to change without explicit client feedback."³⁰

Another legal expert Dan Currell, agrees with the need for structured communication. "Law firms and in-house counsel alike perform better with feedback."

Legal procurement specialists, says Dr Silvia Hodges Silverstein, will seek to conduct post-matter satisfaction surveys. "They will compare the assessment of an in-house counsel with the self-assessment of outside counsel. And they will look for discrepancies – was there a difference in opinion for how well the matter was managed by outside counsel versus what the in-house lawyers thought on how well it was managed."³¹

” Law firms and in-house counsel alike perform better with feedback.

Evaluation

Although many lawyers argue it is impossible to evaluate legal services, a number of factors suggest it should be embraced:

- 1 Law firms will be judged and evaluated informally whether they like it or not, that is human nature and it will happen
- 2 Formal evaluations allow law firms to enhance their knowledge and improve their performance, and this can only be useful when it is done on a matter-by-matter basis across the board, or at the very least on a consistent, standard basis
- 3 Evaluation is a key part of the legal procurement life-cycle and enables legal teams to continuously learn and use this knowledge for future engagements
- 4 Lawyers, like professional services and other service industries, can and should, be evaluated. Knowing they will be evaluated at the end of a matter incentivises the lead lawyer to provide a great service and accurate, transparent pricing for their client. Used this way, an evaluation tool can be a mechanism for holding the law firm accountable for their pricing and service delivery.

In reality, there is a significant disparity between what lawyers think they are delivering versus the client's experience. This has been highlighted by research that found 80% of lawyers think they deliver above-average service and value, but only 40% of their clients say that's what they get.³²

Shell is one company that has recently started a quarterly business review reporting process to examine the performance of the law firms general counsel use. The goal is to constantly streamline and improve the engagement process. Ultimately, Shell want to generate reports about what worked and what didn't, and share this with their firms for a more transparent process.¹⁸

Role of technology

With digital transformation, innovation and business process improvement now strategic imperatives for organisations and their legal teams, technology is the future of legal procurement.

Lawcadia is one such legal technology platform that helps legal departments digitally transform the processes involved in the buying and management of legal services and incorporates the entire legal procurement process.

Based on the principles of legal procurement, Lawcadia has developed a two-sided, cloud-based Platform designed to optimise the way in-house legal departments and their law firms work together.

Rather than addressing a single function, the Platform focuses on the core operational needs of both sides. As well as facilitating the secure exchange of key information, it helps legal departments with the procurement of professional legal services, legal project and spend management, relationship management, business process improvement and strategic planning.

Recognising the importance of data security, Lawcadia is also ISO 27001:2013 certified, achieving international standards across our infrastructure.

With Lawcadia, legal teams are tackling some of their biggest challenges: they can do more with less, leverage competitive tension, digitise existing processes, improve process efficiency, capture and analyse data and collaborate more effectively with their law firms.

As highlighted in this paper, traditionally, engagement decisions have been made with a strong reliance on pre-existing personal or professional relationships.

And although this human element will always play a part in such decisions, the Lawcadia Platform enables legal teams to incorporate measurable, relevant data into the equation.

To this end, Lawcadia captures and makes available data that has not previously been accessible, translating it into analytics and reporting to influence decision making. The information made available to legal departments through Lawcadia includes:

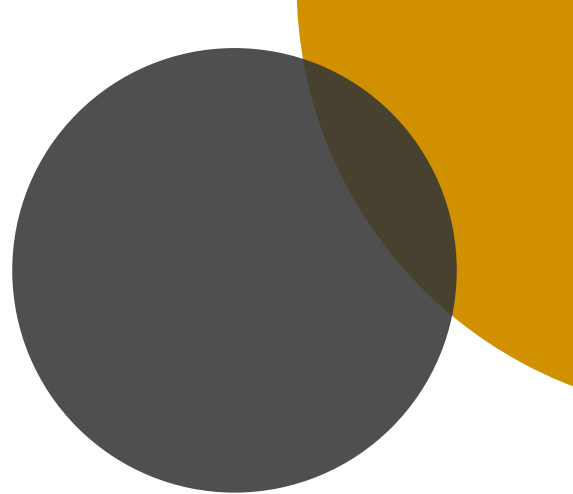
- Competitive tender information, including fee comparison
- Consistent scope and budget changes throughout the matter
- Identification of firms or partners consistently exceeding fee estimates
- Rationale to support the decision to engage a specific firm/s
- Who in the organisation is engaging whom and for which matter types
- The total committed legal budget, including work-in-progress and anticipated spend
- Objective and subjective evaluation to support supplier relationship management

Through the timely provision of data in a way that is easy to understand, legal departments can save money, save time and reduce frustration.

Head of Legal at CSR Limited, Sean Ventris, says he and his team are looking to transform the way they procure and manage their external legal services and are using Lawcadia's platform to assist with this.

"Having the mindset for continuous improvement and not being afraid to be early adopters of promising technology is what will deliver a step change in efficiency and enable our team to demonstrate value and be accountable for our legal spend".³³

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Working with procurement

Increasingly, legal procurement can include the direct involvement of procurement professionals in the legal team. Responsibilities for legal procurement professionals may include advising on panel RFPs and tender processes, fee negotiations, monitoring compliance and collecting and evaluating data on the delivery of services.³⁴

The increased sophistication of legal procurement has been highlighted by the Boston Consulting Group in its 2016 report on Legal Technology, which states that increasingly, “general counsels are accompanied by professional procurement specialists during pitches.”³⁵

These specialists assist with the negotiation of fees and agreements. More than a perfunctory role, the procurement function brings process, rigour and a greater level of negotiation to the table.

There will be many in your legal network who will be reluctant to involve the procurement function. When this happens, assure them that:

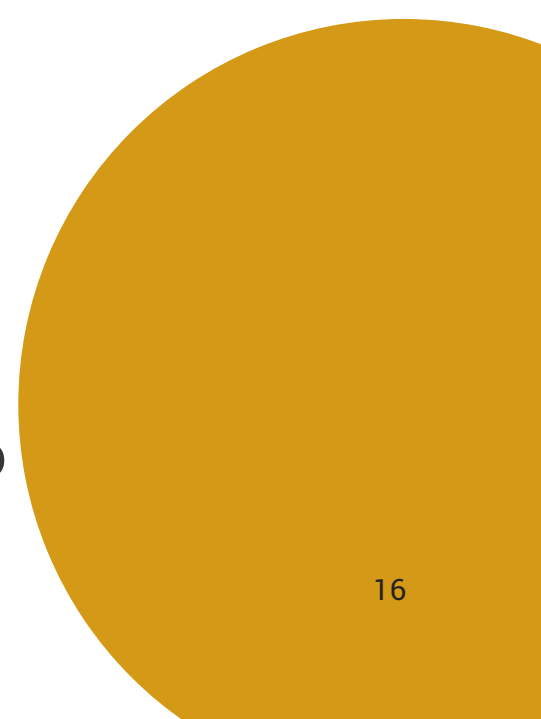
“Procurement is not out to destroy trusted relationships, wreak havoc, and put the organisation at risk to save a few pennies. Its ... mandate is to ensure that suppliers were selected for the right reasons and deliver what is needed for the right price in the right manner.”⁵

” [Procurement should] be an expert at matching marketplace capability to internal needs.

An experienced procurement team or consultant, can assist in-house legal teams with:

- Better measuring and demonstrating the value the legal function delivers to the organisation
- Ensuring external firms are providing the right value for fees charged, based on what is available in the market
- Unbundling legal services and matching them to the most appropriate provider, including better use of technology, standardisation or automation
- Identifying opportunities to structure innovative costs arrangements or risk-sharing
- Identifying opportunities to structure innovative costs arrangements or risk-sharing³⁵

Marty Harlow of GSK, legal procurement pioneer, provides some sage advice. “Be an expert at matching marketplace capability to internal needs. Secure sponsorship from the General Counsel and their leadership team.”³⁶



Help at the negotiation table

Talking price is usually something most in-house lawyers shy away from. Research has highlighted that in-house counsel will avoid difficult fee negotiations with law firms with whom they've had long-running relationships.³⁷

Not so professionals with a background in procurement. According to Dr Silvia Hodges Silverstein, Executive Director of the Buying Legal Council, "When you have procurement involved, the roles of the legal department and the procurement department are typically that of 'good cop' and 'bad cop'."³⁸

"Buying and negotiations, that's their forte and that's their focus".³¹

Involving legal procurement in the negotiation process helps in-house counsel retain a good working relationship with their external legal counterparts which is essential to positive outcomes for any legal matter.

” Buying and negotiations, that's [procurement's] forte and that's their focus.



**” The journey of a thousand miles begins with one step.
*Lao Tzu***

The legal procurement journey

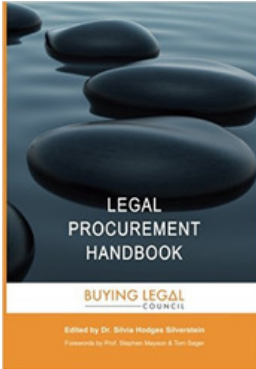
Like innovation and digital transformation, legal procurement is a journey, not a destination. If you consider it as a journey, then you can start to see the bigger picture and the important role of each aspect of the legal procurement lifecycle. Importantly, the process becomes iterative and focused on learning, evaluating and responding, always continuously improving.

If we could leave you with just a few key points to take away:

- 1 Legal procurement is an important function in a high performing legal team
- 2 A focus on legal procurement can deliver savings and improved process efficiencies
- 3 Technology can assist in digitising and streamlining legal procurement processes
- 4 Legal procurement professionals can be hugely valuable and providing expertise and an analytical and data-focused approach
- 5 This space is moving rapidly and your legal team cannot afford to be behind the market

Enjoy the legal procurement journey!

Resources & recommended reading



Whether you are new to legal procurement, need new ideas for taking sourcing legal services to the next level, or need to understand what procurement wants. The ***Legal Procurement Handbook*** is for you.

The ***Legal Procurement Handbook*** was published by the Buying Legal Council®, edited by Dr. Silvia Hodges Silverstein with forewords by Prof. Stephen Mayson & Tom Sager. It includes 27 articles by 27 legal procurement experts. Order online ***here***.



The ***Buying Legal Council*** is the international trade organisation for legal procurement. Their members are professionals tasked with sourcing legal services and managing relationships through advocacy, networking, education, research and information. Their Member Resources cover a wide range of peer-to-peer learning materials on Legal Procurement best practices. Members can currently access 54 Conference slides, 45 Conference call slides, 35 Cheat Sheets on Legal Procurement, 26 Recordings of legal procurement conference calls, 8 Vendor showcase recordings, 4 Primers, 2 Videos, and 2 Podcasts.

Visit buyinglegal.com for more information on becoming a member.



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