

By Robert DiDomenico

## Crashing the Legal Department

Working with their organization's general counsel, supply management professionals can provide strategic cost advantages on the legal side of the house.

**M**any seasoned supply management professionals will remember a time when they first engaged with the data center manager (DCM). It was like driving a backcountry road at night in the rain, with lots of potential hazards, limited ability to see around the curve and little knowledge of the route. As time passed, the relationship with the DCM became less adversarial

and more of a productive partnership of equals, with full cooperation and integration.

With the challenges presented by our current economic recession, supply management professionals are being driven to directly engage the office of the general counsel (GC). At any given time, a GC may be faced with seeking outside counsel support for specialized services, such as government contracting regulations or International Traffic in Arms Regulations (ITAR), labor and employment law, trade secrets, patents, SEC or EEOC regulations, as well as the potential and monumental issues surrounding "bet the company" litigation.

Today, supply management professionals have the opportunity to play the leading role in a movement that will create a new model for the relationship between corporate legal departments and the law firms that serve them. To make the most of this opportunity, supply management professionals will need to consider the past, be active in the present and then shape the future.

This column provides information about the concerns of

the GC's office regarding procurement's participation, the perceptions law firms have of supply management departments and how supply management executives can bridge the gap and bring value to the equation.

For most organizations, interaction between the legal department and the supply management department is a recent phenomenon. It is safe to say that the GC will assume that supply management professionals' interests and efforts will be directed toward getting firms to lower their hourly rates and make pricing concessions. However, as we know, price is only part of the equation, which must be communicated to the GC upfront. Traditionally, the GC selected law firms based on the reputation of the firm, the expertise and past success of a particular practice group, and, in some cases, non-law-related considerations. Cost has not been a major consideration.

### "Bet the Company" Versus Commodity Legal Services

Supply management professionals' understanding of the scope of legal services that



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the GC purchases, and from whom he or she purchases those services, is important. Demonstrating a basic understanding of the GC's world will open the door for immediate cost reductions. Not all legal services provided by outside counsel will be on the table for review — nor should they be.

When faced with “bet the company” matters such as defending against product liability lawsuits (“your product caused me to lose millions”) or trade secret protection (“they stole our formula and now we have no business”), the considerations around hourly rates is almost moot. However, when considering the rates and costs associated with reviewing standard office-space lease agreements or commodity matters, supply management professionals’ leadership, direction and skill in negotiating a more favorable economic arrangement is warranted, needed and welcomed.

### Supplier Consolidation

For most corporate legal departments, supplier consolidation assessment is a tremendous value provided by supply management. A frank and open discussion with the GC regarding which firms are more valuable to the organization than others will eventually lead to your adding value by reducing the number of outside firms. This will deliver immediate savings, by having fewer firms to deal with from an administrative standpoint, and

allow for increased purchasing power with the remaining firms.

Citing the benefits other departments have garnered using the supplier rationalization process may not have achieved immediate recognition from the GC; however, he or she will appreciate the goal of increased clout from fewer firms and the drive toward better partnerships with the firms that remain.

### Alternative Fee Arrangements

Firms will say they are open to discussing any and all alternative fee arrangements. The fact is that the majority of firms are not set up internally to offer anything but the hourly rate. If supply management professionals use the “bet the company” versus commodity example, they can begin to imagine how alternative billing scenarios could be used. For example, contract review for office space leases (a commodity) could be offered on a flat-fee basis, whereas “bet the company” work, traditionally done by the hour, could include some type of capped cost model (or perhaps a shared risk/reward scenario). Either

way, it is unlikely that the firm will offer these choices, so it is important for supply management professionals to examine the types of work their organization's GC is buying and ask for pricing options where warranted.

### The Firm

Let's start by saying that if to know you is to love you — well, outside legal firms don't know you. What firms do know of the supply management profession is very limited. Remember, outside firms deal with your company's GC and his or her team of attorneys, and until very recently never encountered a supply management person. For now, let's assume the outside attorneys believe the sole purpose for involving supply management is to lower costs for its GC and organization. Remember that 95 percent of the time, supply management professionals will be dealing with the attorneys from the outside firm — not their sales or marketing people. Very few firms have folks who have experience working with supply management departments/managers. Also, law firms in general do not have sophisticated procurement

departments, so the concept of the “delivered cost” of their service is not their expertise.

In dealing with law firms, supply management professionals will be in the very important position of thought-leader:

- You can and must take the lead in creating alternative fee arrangements.
- You can and must take the lead in asking your legal services provider partners what it costs to perform “XYZ” task.
- You can and must help them find those cost-related questions and answers.
- You must analyze how waste can be driven out of the system.
- Finally, you must extend to the firm the use of your established contracts and associated relationships with product and service suppliers for them to leverage for the benefit of your strategic partnership.

It is time to get rid of the billable hour. Its death will be the driving force that will cause lawyers and the firms for which they work to begin to resemble the businesses they serve. This change will not be easy, will not be painless and will not be driven by the firm. It will be driven by the corporate GC and the supply management professionals he or she will need to rely on to change the legal world as we know it. **ISM**