



Silvia Hodges Silverstein is a legal and management professional. She focuses on data-aided decision-making and client purchasing decisions, in particular the influence of procurement on the purchasing of legal services. Silvia earned a bachelor's degree in economics from the University of Bayreuth. She studied at the University of Bayreuth and Warwick Business School for her Master's degree in business, and at Nottingham Law School for her PhD. She currently serves as a Director of Research Services of TyMetrix Legal Analytics, a division of WoltersKluwer, as well as an Adjunct Professor at Fordham Law School and a Lecturer in Law at Columbia Law School in New York.

Silvia was interviewed by Leo Staub.

Role of procurement when purchasing legal services

Silvia, do the lawyers in in-house legal departments and law firms love working together with you?

Well, I certainly hope so! However, I understand your question. As a matter of fact, the start is never easy. Just imagine yourself as the General Counsel whose CEO steps in the office and tells you that from now on you will work together with the procurement people of the company when hiring external counsel. Up to now this decision was in the sole discretion of you and your colleagues of the in-house legal department. Now you are forced to share hiring responsibility with non-lawyers! But then, for law firms it is even worse: They were used to focusing on building up long lasting relationships with General Counsels, and delivering high quality work for a reasonable price. If a new mandate was at stake, they knew they could rely on reputation and trust earned by successfully working with that client for years. Therefore, chances to become mandated again were excellent. But now all of a sudden you are confronted

with procurement people who talk to you about the “purchase” of legal services in a way unseen so far.

Hiring external counsels requires legal expertise. How else should the company come to a sound judgment with regard to the qualities of a lawyer who is needed for a specific legal purpose?

I do not object. Legal expertise on the buyer’s side is of course a must. But then procurement specialists know so much about the purchasing process it would be a waste to not involve them. The process of carefully evaluating the company’s needs, of shaping the decision criteria, of inviting a qualified group of vendors to bid, of comparing their offers, of negotiating the terms and conditions, and of making the final purchasing decision are very similar no matter what it is you want to buy. So, it is the skills of the procurement people combined with the expertise of the in-house lawyers that ensure best results.

Is there sound scholarly evidence that this collaboration of procurement and in-house legal departments generates benefits for the company?

Applying procurement procedures to the process of hiring external counsel is beneficial in many ways: Procurement forces you to exactly describe what you need, it helps finding the right criteria to measure up bids against each other, and it supports you in disaggregating legal services in an intelligent way so you find the right provider for certain parts of the services needed. You most likely end up not only with a better price but with a better “fit” of the services rendered to your requirements.

Could you describe the typical procurement process when applied to hiring external counsel?

Legal departments and procurement work together in many ways, but I have seen successful collaboration where the managing attorney describes the services needed and hands over a short list of capable law firms to procurement. Procurement then contacts the shortlisted law

firms, presenting them with brief information about the case, clarifying whether there would be concerns with regard to conflicts of interest for the firms. After that, procurement sends the firms a so-called request for proposal (RFP). The RFP demands all relevant information (specific experience, teams, knowledge of client's business, price, and so forth). In the meantime, the matter's managing attorney provides procurement with a carefully assorted list of weighted criteria for the comparison of the bids. Unless matter assumptions are changed, law firms are then invited to a virtual bidding room where firms compete with each other on price. Ranking criteria will be applied to the bids and a list is produced that shows which law firm fulfills the criteria best. This is not always the least expensive offer, by the way. Finally it is the managing attorney and –depending on the company- the General Counsel or another senior lawyer decide which law firm will be hired for the matter. So, the lawyers always take the first (short list) and the last decision, procurement supports them and acts as vendor managers.

We just got used to “panels“ which large corporations set up to select law firms. Do they still make sense when a procurement process is in place in order to hire external counsel?

You see all kinds of systems used by companies today. Some companies continue to use their panels as the main source for the short list at the beginning of the procurement process. Some rely exclusively on procurement and form short lists in accordance with the requirements of specific mandates. However, panels can of course cater to the relationship between corporate clients and their external counsel in a much broader sense than case-to-case procurement. So, in my view, there is no need to surrender the idea of panels just because you want to professionalize your vendor management. The two tools can complement each other perfectly.

10/2013

Universität St.Gallen
Executive School of Management,
Technology and Law (ES-HSG)
Law & Management
Holzstrasse 15
CH-9010 St.Gallen
Tel +41 71 224 75 04
info.lam@unisg.ch

