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Partnering With Procurement Can Bring New Ideas and Added Value to the Legal Team

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Historically, the legal department has had special privileges with regard to spending, allowing it to source and manage suppliers on their own without input or oversight from procurement. But it's clear that the protective aura surrounding the legal department has begun to dissipate. While legal was once notorious for resisting even the best-intentioned help from procurement, progressive and innovative GCs are increasingly becoming more open to a collaborative partnership between the two departments. They understand that the partnership can produce immediate cost savings and institute a structured cost management program for meaningful and lasting results. They are also aware that applying proven procurement principles can help legal demonstrate accountability and gain new credibility as a function that contributes to the organization's bottom line."

Two trends have emerged to motivate both legal and procurement to establish an effective partnership. First, enterprise CFOs have become relentless in seeking defensible costs from all executives throughout the enterprise, including GCs. It's no longer sufficient for legal to claim 3% to 5% cost avoidance by holding outside counsel rates flat; CFOs clearly expect more than that.

Second, many GCs and other senior legal leaders are positioning themselves



as strategic business partners who are engaged in the success of the company. It is not uncommon for GCs to take an active role in developing the business strategy, rationalizing technology investment, and enabling speed to market. These progressive GCs can't claim to be business partners and then not accept the fiscal responsibility that goes with it. If procurement can help legal become more accountable and better aligned with the overall business goals of the organization, then an active partnership is worth exploring.

But perhaps the most important element in the changing dynamic

has come from the procurement side. Experienced procurement professionals—many of whom have learned from past failures with legal—have finally begun to understand that legal is truly unique. They realize if they respect the differences, they can get a foot in the door and build trust over time. They know that legal's obligation to facilitate risk management is a key role and not simply an easy excuse for avoiding cost savings measures. Procurement can help legal see that mitigating risk and managing costs are not in conflict and that combining the two perspectives can produce a

better business result. Applying cost management disciplines when evaluating risk mitigation options can help business clients make more informed and balanced decisions.

As a GC or member of the legal leadership team, how should you approach cultivating a relationship with procurement? Here are some key considerations:

Understand that procurement is not the enemy. Procurement professionals have real expertise in creating efficiencies and lowering costs. GCs need to know they can benefit from the partnership to achieve these goals and demonstrate fiscal responsibility to the CFO. Begin by having a frank and transparent conversation with the procurement team, and include other legal department leaders in the discussions. Encourage one-on-one interviews between procurement and knowledgeable attorneys in a variety of fields. Focus on top areas of spend and be open to what can be done differently.

Educate procurement on how legal is different, but communicate an openness to different perspectives. This will require increased disclosure and transparency about the elements that must be considered when selecting outside counsel, the process to determine risks and assumptions, and key influences on projected budgets, including major litigation costs, like eDiscovery. You should also share any benchmarking and cost analyses in which you are already engaged—the more data you can provide procurement, the better. The message you want to convey is that you are well-informed and know what's best, particularly when it comes to areas like risk mitigation and strategic decision-making, but you are also open to alternative approaches. Solicit procurement's advice or feedback when making major spending decisions (e.g., new technology) or contracting with new vendors, and have procurement sit in on budget meetings as a matter of course.

Start small but think big. Make it clear to your procurement colleagues that it will take at least six months of

working inside legal to really understand what's going on, and a good year to report a meaningful impact on the bottom line. Legal is a long game, and the relationship needs to evolve in phases. Immediately tackling the biggest, most complex, and high-risk issues related to outside counsel is probably a bad idea. Instead, they should try offering assistance on outside counsel selection, or collaborating on pilot projects that won't initially threaten the legal department's day-to-day operations, culture or morale. But the ultimate goal must be to instill a new mindset and behaviors to have a meaningful business impact.

For example, you might want to focus procurement's effort to help you become a better-informed buyer with your existing panel of law firms by generating analytics on usage, current staffing and the impact of requested rate increases. You can also focus on service providers, working with procurement to develop a rationale for consolidation with negotiated fees that are delineated in structured agreements.

Once you can see the procurement process is working in the interests of your department and the overall business, then you can go on to tackle more difficult and more lucrative challenges like alternative fee structures, which—when approached carefully—can really showcase the innovation and value procurement brings to the table.

Be open to project- or performance-based alternative fee arrangements (AFAs) with outside counsel and vendors. With respect to service providers, work with procurement to develop a rationale for the provider base, then move on to establishing and reconciling ancillary fees, and consider putting a clear letter of engagement in place. Also look for activities performed by counsel that could be unbundled from legal services and outsourced to non-traditional law firms or LPOs.

When considering arrangements with outside counsel, you might want to turn your initial focus to mergers and acquisitions, where there are strong incentives to bring a deal to a

close in a timely manner. Procurement can help you structure a deal with outside counsel that provides bonuses for completing work and achieving objectives ahead of time and at the same time imposes rate reductions when outcomes and/or dates are not met.

Large enterprises such as Microsoft and GlaxoSmithKline have moved away from billable hours entirely. Other organizations may prefer to be more selective in their approach to AFAs. For example, managing a low-risk tort litigation portfolio may warrant a flat per-case cost with a bonus for early resolution within an agreed upon settlement range.

While not all arrangements have had the desired outcome, that shouldn't discourage further exploration. The guiding principle for both legal and procurement is that whatever incentives you propose should align closely with overall goals of the company and the interests of the law firm.

Although cost-cutting measures are the new reality for many GCs, they know that protecting the organization's interests is paramount. Though it may seem GCs are caught between a rock and a hard place, those who make an effort to partner with procurement—including educating them on the department's unique needs, and incorporating their best practices into legal operations—will find themselves a strong ally to help the legal department reach and maintain its cost-cutting goals.

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