

HOW TO ADOPT A MORE FORMAL APPROACH TO SERVICE PROVIDER DEALINGS

Evaluating e-discovery service providers rarely receives the attention it requires.

By Eric Gonzales

As e-discovery costs continue to spiral out of control, the legal industry is constantly looking for ways to cut spending, reduce matter complexity and stay competitive. While there are various ways to do this, one strategy is to establish higher standards for selecting and managing service providers. Yet, service provider selection and management rarely receives the attention it requires.

What criteria should you use to evaluate service providers? Most importantly, they should be aligned with your fundamental legal department objectives, which may include desired legal outcomes, as well as reduced legal spend and business impact (e.g. early risk reduction and minimal impact on operations and profitability).

Here are a few specific considerations for adopting a more formal approach to dealing with service providers.



No single pricing model works for every organization or matter. That said, there is little doubt in today's e-discovery environment that the per-unit rate model is a thing of the past. Just as clients require law firms to provide alternative fee arrangements (AFAs) that emphasize cost transparency, predictability and

reduced financial risk, they are now demanding service providers to provide AFAs customized for individual organizations or legal matters. For most service providers, that means either a fixed fee structure or fees based on total project cost (TPC), from collection to production. If service providers insist on using archaic unit-based pricing, and/or only provide TPC estimates, it's likely they don't have a clue what the actual TPC will be. Providers need to be fully committed to lowering your costs and sharing financial risk by putting their own fees at risk if successful outcomes are not achieved.

All the methodologies and technologies deployed in e-discovery should work toward producing relevant documents and eliminating non-relevant data. With up to 90 percent of e-discovery costs spent on document review, and with an industry average of only 10-15 percent or less of documents reviewed ultimately getting produced, that challenge for service providers is clear.

Eliminating non-responsive data before doc review is where providers can best demonstrate their value. These activities can be tracked and measured, and providers should be proudly sharing their average data cull rates and ratio of responsive/non-responsive documents. Many legal technology platforms feature dashboards that track real-time performance and matter-by-matter reporting on metrics like cull rates, data set responsiveness and document review throughput achieved. Insist on it.

Look for providers that are willing to work with you and your outside counsel early on to understand the nature of the data and the legal issues driving the litigation. They should be able

to leverage advanced analytics tools providing the intelligence that case teams need to make important document-level decisions.

Obviously, security is also a major concern across every industry. Cost considerations may push organizations toward service providers offering the lowest rates, but is a service provider who willingly cuts corners to win your business really the one you want handling your data? Organizations that don't insist on service provider security audits—which can include certifications and surprise inspections—are assuming unacceptable financial, legal and business risks.

Finally, don't underestimate the importance of cultural and client satisfaction factors when evaluating service providers and selecting what is ultimately a "business partner." Softer criteria such as on-time delivery, responsiveness, flexibility, proactivity, best practices on process improvement and long-term commitments all contribute towards a successful, more manageable provider relationship. If it feels like you are working with a factory rather than a partner, it's time to look elsewhere.


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