

Reducing Legal Costs

Reducing costs is more important than ever in the current economic climate. Legal advice is expensive but usually unavoidable. However, because of the inherent nature of legal fees, reducing them can seem very difficult.

In fact, lack of discussion, understanding and agreement about the cost -- or potential cost -- of work occurs more often with the procurement of legal services than most other professional services, leading to more frequent disputes.

Where legal advice or support is required on a regular significant basis, the appointment of a **legal panel** is likely to be appropriate. Many large organisations appoint and use legal panels. Appointing a legal panel minimises the effort required to select an appropriate provider and should be done when an appointment is not urgent. Consolidating spend with a few suitable providers can also result in better prices and service.

Limiting the award of work to a particular panel encourages more efficient accumulation of knowledge by the client and the service provider prior to instruction. This reduces reaction times, learning curves and other risks. The more knowledge a provider can accumulate about a buyer, the less chargeable time is needed up front, which may result in reduced costs.

An agreed rate card with each panel member will also provide a baseline for understanding price structures and assist in predicting future costs. Legal firms open to delivering a service based on fixed or capped fee arrangements should be favoured at panel appointment stage. The possibility of pricing arrangements other than rate cards for specific matters should also be mentioned at the appointment stage.

After a panel has been appointed, the use of **'mini tenders'** limited to panel members and seeking capped deliverable-dependent outcomes for significant work will reduce costs further.

The choice of provider is the key tool in the buyer's toolbox, and the early removal of any **competitive tension** in that regard almost always works to the buyer's disadvantage. Irrespective of the urgency of the issue, the buyer must be aware that the work is the provider's commercial opportunity. The immediacy, scale or confidentiality of the potential issue and the urgency, perceived or otherwise, about making progress can dwarf all other considerations -- until invoices start arriving. What may originally have been intended as an informed discussion with a potential provider can turn into an ill-defined, open-ended and very expensive instruction.

The decision to seek advice is only the first step. **No commitment** should be given to a provider before making an effort to find the most suitable provider and the best deal available.

The selection of a suitable provider is paramount. If the provider selected cannot do what is required, the engagement will fail and any money spent will be wasted. Paying top prices to one of the biggest firms does not guarantee the optimum outcome and it's important to be aware of the distinction between a team's track record and a firm's track record.

In general, the provider should be selected and services procured on the basis of a competitive and objective process. If there is no panel, but time and procurement expertise is available, **tendering** is regarded as the best way of obtaining the most suitable provider and the best proposition from that provider where the spend is significant.

Poorly-expressed requirements and eventual disagreement between buyer and provider as to what was demanded in the first place can pose a major problem. The description or definition of the

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deliverables and how progress will be measured and charged for is absolutely fundamental to the success of any assignment.

Many problems that end up as cost issues can be anticipated and dealt with by aligning buyer and provider expectations in advance. This is best done by setting out all pertinent matters (including deliverables and price) in a **letter of engagement (LOE)** or, at the very least, by providing a written record of the instruction. Having to specify deliverables or possible outcomes and their fee consequences will also be a significant aid to the planning process on both sides.

Where a provider is appointed from a panel and rate cards have already been agreed, the primary risk is the amount of time spent on the matter. Payment on a time-spent basis should be avoided, even if there are favourable hourly rates. Payments based on time spent reduce efficiency by rewarding providers that spend more hours on a project, as distinct from progress towards objectives, and significantly increase the possibility of higher costs.

However, if the buyer must pay by the time spent, he should try to **negotiate tapered rates** up front. Tapered rates reduce as time taken and spend increases, so the more time that is spent, the lower the hourly rate. This can give the provider a modest incentive (depending on the reduction) to conclude matters quickly.

Also, a better hourly rate deal will usually be offered if requested in the context of a specific piece of work than in the context of a panel appointment. The key is for the buyer not to give the instruction until he knows he has the best deal available

The key principle is to fix the price as much as possible, as early as possible. The provider may be unable to agree a price up front, perhaps owing to the variable nature and duration of certain types of legal work, but there may also be a reluctance by the provider to make a commitment or to scare off the client.

However, the longer any assignment progresses without ultimate fee agreement, the greater the risk of higher fees and fee disputes. The more advanced the assignment, the more negotiating power moves away from the buyer.

All work done and charged for should bring matters closer to the provision of the deliverable, and engagements should be structured to align client and provider objectives. For significant assignments, all -- or as large a part as possible -- of any fee should be capped and agreed subject to delivery of agreed goals before instructions are given.

A **capped price** means that the price agreed is the maximum to be paid on the basis of pre-specified deliverables and assumptions. The fee risk in relation to price is the provider's, and any underutilisation of resources benefits the client. Thus, if the ultimate resources consumed by the project work out at less than the capped price, the amount payable is that lesser sum. However, any overrun is a matter for the provider.

A capped price is better, from a client perspective, than a **fixed-price** arrangement, where the price agreed at the outset must be paid, even if fewer resources are used than anticipated. With a fixed price, the buyer and the provider share the cost risk.