

# Demystifying Outsourcing for Corporate Counsel

By Timothy B. Corcoran

**C**orporate law departments face an unprecedented level of pressure to reduce costs, to do more with less, to deliver a quality legal product to internal corporate clients. In days past, as the saying goes, the Chief Legal Officer would offer executive management a choice: "We can do the work well, we can do it quickly or we can do it cheaply. Pick two." Today's CEO wants it all, and who can blame him or her? Every business function faces a relentless drive to eliminate defects, improve production capacity and accelerate time to market. Law departments have been somewhat sheltered from these pressures, in part due to the unpredictable nature of legal issues, much to the chagrin of executive management. Adding to the tension is the trickle down effect of an unprecedented growth rate in law firm revenues over the past ten years, which, according to a recent study by the Corporate Executive Board, increased 75% while other supplier costs increased by an average of 25%.

But is it only about cost? Will executive management be satisfied if the CLO extracts substantial discounts from its primary law firm suppliers, or migrates some work to lower-cost regional law firms? According to some business leaders, this will simply no longer suffice. Imagine the boardroom presentation by the Chief Marketing Officer in which she provides a two-year revenue outlook for multiple global product lines, reflecting varying levels of demand and market share. This is followed by the head of manufacturing whose production forecast incorporates the probability of interruptions in raw material supplies, from droughts in South America, to pirates off the coast of Africa, to labor unrest in Asia. The treasurer in turn presents a plan designed to hedge against the risk of currency fluctuations. Then the Chief Financial Officer presents an 8 to 10 year cash flow projection for a pending acquisition. Raise your hand if you would like

to be the General Counsel in this setting who admits that, since few variables managed by the legal function can be predicted with any certainty, and due to increasing supplier costs, the legal department will be submitting a 20% budget increase over last year.

Small wonder then that the drive for improved metrics and efficiency has arrived in the law department with some fanfare, and not a moment too soon. One recent innovation available to the Chief Legal Officer is outsourcing, or assigning work to specialist providers in the U.S. and abroad who offer non-traditional legal services. But is this really so new? Hasn't it been the case all along that the company, which manufactures widgets or develops software or provides business services, has outsourced its legal needs to specialist providers, first within the legal department and then to outside law firms? The corporate legal function serves both an operational and strategic role, but there are few business owners who dream of a sizable and well-run legal department as a strategic asset in the same way that they dream of, say, a world-class sales force. So let's acknowledge that we've already been engaged in outsourcing, and let's take a harder look at what new options are available.

First, it's helpful to define terms. *Outsourcing* refers merely to the delegation of work to another organization where it can presumably be carried out more efficiently. *Offshoring* typically takes place when the other organization is in another country. *Insourcing* involves delegating work to another specialized group within the same organization. The delegation of work to outside counsel is an example of outsourcing, as is the use of contract lawyers to handle overflow volume in document review. Hiring legal research experts in India is an example of offshoring, as is moving a customer service call center to Ireland or a graphics design team to the Philippines. And insourcing, of course, is exactly how most

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companies perceive the legal department — an internal organization with specialized skills.

Most companies, and indeed most law firms, have engaged in business process outsourcing (BPO) for some time. Whether it's operating the corporate cafeteria or the mailroom, or hiring a third-party to ship goods, organizations have learned that subject matter experts can generally take over these tasks with minimal fuss and at a lower cost.

Many law departments have found that hiring contract attorneys provides an excellent opportunity to test their appetite for outsourcing, before establishing any offshore relationships.

Market research firm Gartner estimated the 2007 BPO market to be \$173 billion. The potential for cost savings in the legal function is also enormous, in relative terms. In a recent move that raised eyebrows in the global legal market, Australian-English mining conglomerate Rio Tinto announced that it expects to save \$25 million annually, or 20% of its legal budget, after hiring a legal process outsourcing (LPO) firm to perform routine legal tasks.

Critics declare that legal matters are much more strategic in nature than administrative functions and can't be easily delegated. After all, do you really want the company to rely on the lowest-cost provider when it comes to a "bet the company" transaction or litigation? But therein lies the issue at the heart of the matter. Chief Legal Officers have long known that even the most important legal issue facing the company is comprised of multiple smaller components, many of which involve routine, commoditized tasks. Law firms are expensive suppliers in part because they tend to treat all aspects of an important transaction as high value and high cost. With some exceptions, most lawyers

believe their particular area of expertise is a premium offering, housed within a firm that provides other premium services. It's other lawyers in other firms who provide commodity services. The truth, as usual, lies somewhere in the middle.

The legal profession is not typically viewed as progressive in its business practices. However, the overwhelming growth of LPO has raised a number of questions about the practicality and ethics of relying on outsiders to provide legal services. Isn't it a disservice to the client, possibly even unethical, to rely on low-cost providers for important legal matters? Not so fast, according to the American Bar Association. In *Formal Ethics Opinion 08-451*, the ABA declared "there is nothing unethical about a lawyer outsourcing legal and non-legal services, provided the outsourcing lawyer renders legal services to the client with the 'legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.'"

So how does a Chief Legal Officer ensure a quality work product from an outside provider?

1. **Test drive the work product** of a LPO provider on a single project before engaging it for the long-term. Quality providers will invest in significant ongoing training for their workforce and should welcome the opportunity to demonstrate their quality.
2. **Develop objective measures of quality.** This can be achieved by working with the LPO to develop a detailed model of operating procedures for the required work. Once these procedures are in place, it's easy to establish a quality template that tracks deviations from the desired outcome.
3. **Institute standard project management techniques** like those used

every day in most organizations to manage technology initiatives and manufacturing operations.

4. **Manage LPO relationships with diligence.** Don't lose focus after the initial engagement discussions. Be aware that your LPO staffing team may change over time and insist on the same level of training for team members rotated in later to maintain consistent quality.

5. **Consider cultural implications.** If you offshore, it's important that your LPO liaison have solid English-speaking skills as well as an understanding of the local culture. And conversely, you must communicate your own company's culture and objectives.

In the end, outsourcing can generate far more than labor arbitrage. Ray Bayley, co-founder of Chicago-based Novus Law, in an interview at Adam Smith, Esq., an online publication, discarded that as the primary objective of LPO. "We're not in the business of 'lifting & shifting' — taking what's done here and moving it to a cheaper jurisdiction in order to do it the same way. That's a brute force approach that adds nothing to the quality, reliability, and repeatability of the work." Instead, for example, a routine service like document review can be studied and modeled and the multiple variables influencing the cost can be identified and quantified, thus reducing the cost *and adding efficiency and value.*

What's to prevent a legal department from embracing this sort of "Lean Six Sigma" approach to analyzing and improving its own legal services? Nothing at all. In fact, legal departments that adopt these techniques will be better positioned to identify, evaluate and select appropriate outsourcing providers. Among the hidden benefits to outsourcing is the familiarity the client generally gains regarding business process im-

provement techniques. Once ingrained into an organization's operational mindset, it's difficult to revert to a blissfully unaware state where efficiency and quality are abstract concepts.

It would be remiss to conclude without addressing the emotional response outsourcing and offshoring can sometimes generate. Whether from organized labor or politicians or trade groups, it's not uncommon to hear opposition to outsourcing, particularly when it's perceived as sending jobs overseas. The *Economist* recently declared offshoring to be a win-win phenomenon, at least on a macroeconomic scale. But the backlash has led to a reversal in some industries, such as the return of technology call centers that lowered costs but also lowered

customer satisfaction rates. Many LPO providers offer services across the U.S. and in English-speaking countries to help mitigate these very concerns.

Human nature tends to question that with which we are unfamiliar. And to many, it's an uncomfortable realization that some sophisticated legal processes can be analyzed, broken down into constituent parts, delegated to disparate providers and returned with higher quality, lower costs and greater predictability than we've been accustomed to. But with change comes opportunity. Imagine tomorrow's boardroom presentation by the Chief Legal Officer, who can now submit, with some certainty, the costs and implications of ongoing

legal matters. Even better, imagine having the capacity to focus on matters of more critical, long-range interest to the company, demonstrating that a well-run legal department is a significant strategic advantage. ♦

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**Timothy Corcoran** is a Senior Consultant with Altman Weil, Inc., working out of the firm's offices in Newtown Square, Pennsylvania. He can be reached at (610) 886-2000 or [tbcorcoran@altmanweil.com](mailto:tbcorcoran@altmanweil.com).