



## **Vendor Consolidation and Maximizing the Value of Outside Legal Service Providers**

*A Medical Research Consultants White Paper*

### **Budgetary pressures and a changing litigation landscape**

The legal industry is experiencing significant shift in how work is valued and distributed. While businesses struggle through the worst economic downturn since the Great Depression, corporate counsel are responding by taking a more active role in managing their outside firms, and increasingly direct purchasing decisions around legal service providers and legal process outsourcing.

Articles proclaim the “death of the billable hour” and some grimly predict “the end of lawyers”. Firms have made deep cuts, reducing staff at all levels, cutting back or eliminating summer associate programs, and even delaying start-dates or rescinding offers to first-year associates. Corporate law departments are rebelling against the hefty hourly rates charged by the biggest firms, and turning to mid-level and boutique firms for portions of their work, while insisting on flat fee, results-based or other alternative billing methods that will allow better predictions of the total costs to resolve a matter. And, above all of the individual trends, is the overriding push in the legal industry to better align legal fees to the value provided to the client.

In this environment, one model that has gained popularity is that of outside counsel/vendor consolidation. When combined with alternative fee models, cost containment, and proved efficiencies, vendor consolidation can be part of a multi-faceted program to ensure high quality delivery and incentivize results. This process, which has been undertaken by Fortune 100 companies such as Pfizer and DuPont, involves the rigorous assessment and winnowing down of a corporate law departments’ outside firms and vendors to an exclusive group meeting strategic and budgetary goals. Firms and vendors are selected on the basis of their unique skill sets and ability to align with the requirements of the company. The benefits of this consolidation can be significant: clients can better manage work and budgets, and selected firms and vendors can offer more flexibility in rates based on the potential of being awarded a certain quantity of work. With fewer entities to coordinate, all parties benefit from greater efficiencies and streamlined communications and processes.

Even when not directly mandated by corporate counsel, law firms can benefit from applying the consolidation model to their relationships with legal service providers. In the same way that they must present upfront budgets to their clients, they want service providers from whom they can expect the same.

The classic argument in favor of service providers such as records collection and review companies is that they allow firms to more effectively allocate resources and stay on track budget-wise: firm attorneys and paralegals focus on the elements of the case requiring their expertise, while sourcing tasks outside of their core skill sets to companies who specialize in those activities and can offer the benefits generated by “economies of scale”.

So, if you are put into the position of making a recommendation to your client or practice group regarding either the use of a legal service provider, or perhaps are considering a consolidation process, here are some thoughts to guide you on that journey.

## **Making the case for outside vendor utilization for in-house counsel/law firms**

The easiest case to make in favor of utilizing outside legal service providers is an improved bottom line. As the industry continues to experience downward pressure on costs, any opportunity for savings that doesn't undermine quality is worth a serious look. And quality is a vital factor: according to a recent ABA opinion on outsourcing, a legal team is considered liable for any problems that may be attributable to an outside vendor, the so-called “the dog ate my project” excuse. All the more reason to have specific quality and data security guidelines when selecting an outside vendor, and for those decisions to be based on factors not limited to the lowest price. Some of those recommendations will be reviewed in later sections.

Occasionally, an outside law firm may be resistant to source tasks outside of the firm that may decrease attorney or paralegal billable time. However, a strong case can be made that corporate counsel are most likely to reward their repeat business to those firms who make the most efficient use of resources. That might include sourcing specialized tasks such as record retrieval and medical record review to a service provider best equipped to handle those functions.

Another point in favor of outside service providers is the access to specialized expertise without having to employ full-time staff, accommodate increased overhead, etc. As an example, record retrieval service providers specialize in the ins and outs of federal, state and local discovery rules, and commonly maintain both proprietary and subscription databases that speed-up the provider research and confirmation process. That knowledge contributes to a faster turnaround from issuing a record request to receiving the record, and avoids delays resulting from incorrect provider information, deficient record request procedures, etc. A skilled record retrieval provider should also be able to identify and negotiate custodian fees that are outside of statutes, with a positive impact to the client's discovery budget.

In terms of medical record analysis, while many firms employ paralegals, associates, law clerks, physician consultants and even physician experts for medical record review and analysis, their skills and expertise may not always be the best or most cost-effective solution. When considering medical record analysis services, companies should focus on those with proven knowledge of both medical and legal

processes. Legal nurse consultants possess the ability to analyze comprehensive medical documents, and establish relationships and dependencies between care, health conditions, status and allegations of injury. Contrary to the myth that “a nurse is a nurse,” an accomplished LNC offers the highest chance of success in identifying alternative causation and mitigating factors.

A quality outside service provider offers access to wide varieties of medical specialization and institutional knowledge gained from years of clinical experience and multiple litigations. As with records collection, utilizing an outside service provider for medical record analysis allows companies to avoid in-house time and labor costs associated with full-time staff, and frees up paralegals and attorneys to focus on activities within their areas of core expertise. Companies should consider that instead of paying high-dollar experts or members of the legal team to review records, resources may be better allocated by assigning medical record review to legal nurse consultants and setting aside a smaller strategic budget for targeted expert consults.

Finally, outside service providers can accommodate wide fluctuations in work load and intense collection and review efforts to meet deadlines.

## **Challenges of managing outside vendors**

All of this is not to guarantee that engaging a service provider will magically lead to an efficient, cost-contained litigation utopia. Unfortunately, many firms and legal departments have been forced to withdraw work from service providers due to the very quality and budget issues they were seeking to resolve by engaging them in the first place. In other circumstances, they may have had to “grin and bear” an under-performing vendor due to pending deadlines and the inconvenience of shifting work in the midst of a litigation.

Full benefits can be difficult to realize without coordination of effort. Corporate counsel may be challenged when different outside firms or regional offices select their own vendors without clear guiding rationale. All legal teams can have difficulty making apple to apple comparisons on price across multiple vendors. In addition, each vendor has their own default process, technology and work product standards – a nightmare for legal departments trying to enforce uniform cost and data management.

## **Benefits of consolidating vendors**

Vendor consolidation is one method that can mitigate the risks and maximize the benefits of using outside legal service providers. Uniform work processes/acceptable billing standards may be developed at the outset of an agreement (adherence to protocols should be a condition of an ongoing business relationship), and associated quality control is simpler to monitor and respond to when there is an ongoing one-to-one partnering relationship between legal team and service provider. Technology

interfaces may be effectively tailored to the overall standards of the client: it is a win-win situation for both legal team and service provider when data capture and information sharing occur in a medium that meets the client's monitoring, reporting, and billing requirements.

The financial gains are also considerable: budget and project progress analysis is more effective when tasks are performed and captured in a uniform manner. Companies can maximize the benefit from economies of scale by centralizing activities and negotiating the best rates based on volume. Specifically, service providers are more amenable to alternative billing/reduced fee arrangements when they are assured of a minimum volume of work or an exclusive referral relationship. As service providers become accustomed to a client's preferred processes and service level expectations, efficiencies should be expected to increase and be reflected in relative reductions to project budgets over time.

## **Essential qualities for a go-to/preferred vendor**

So, now that we have demonstrated the advantages of utilizing a service provider and engaging in a vendor consolidation process, what should be the essential qualities of the chosen service provider?

View your vendor selection as a search for a collaborative partner. Look for a service provider that can offer consultative expertise and demonstrated quality control. What qualifications does the service provider require of employees in key positions? Does the service provider have a proactive approach to monitoring and resolving quality issues? Firms are held accountable for the performance of their outside vendors, and relying on a low cost "order taker" to take a mindful approach to case-critical activities is a recipe for disaster.

Service providers should employ a standard project management protocol, with documented roles and service level expectations. The pricing structure should be well defined, with individual price points containing specific detail of the activities captured. Value-added benefits should be apparent.

Service providers should be able to accommodate fluctuating volumes, and particularly able to cope with tight turnaround and high intensity requests.

Technology employed by the service provider must be secure, user friendly, and interface conveniently and accurately with their client's current solution. Good candidates must demonstrate solid data security practices. Policies, technology and processes should meet HIPAA guidelines as well as confidentiality/conflict of interest requirements. In addition, service providers should be able to show financial solvency as a marker of sound business practices, as assurance that data will remain secure and available for the duration of the relationship, and that the service provider will remain focused on the timely, accurate completion of the project.

## **Vendor Consolidation through an RFP Process**

The most effective way to assess and select a service provider is through a Request for Proposal (RFP) process. An RFP requires respondents to communicate their solutions using a customized, uniform format, enabling buyers to make apples to apples comparisons of price and rigorous evaluations of a service provider's abilities, experience, and references. A well-designed RFP will also reveal a service provider's willingness and ability to conform to an organization's work flow, security, technology, billing, reporting and quality control standards. A list of essential RFP components is provided as an appendix to this white paper.

Legal teams will need to decide who to include in their "beauty contest". An open invitation, public RFP process can generate mountains of responses, so you may wish to keep the RFP private and invitation-only. In addition to Internet search, request referrals from trusted colleagues and industry associations when building the invitation list. Consider reaching out to service providers who are minority or woman-owned. Prior to issuing the final RFP, legal teams may wish to have a preliminary Request for Information round that allows for a quick weeding out of service providers who are unlikely to be a good fit.

As you collect and analyze responses, consider inviting finalists for in-person presentations, or requesting a site visit of the service providers' facilities. An in-person meeting can reveal much about the potential compatibility of two organizations, and follow-up discussions, pricing negotiations, etc. can proceed much more effectively when the decision makers are gathered together.

After the selection has been made, give the new collaboration the highest chance of success through open communications around current and upcoming assignments, areas where improvement or extra assistance is needed, and organizational changes which may affect the expectations or the operations of the service provider.

## Essential Components of an Effective RFP

### Determine Your Needs

- Based on the competencies and capacity of internal resources, determine specifically what functions will be outsourced vs. stay in-house
- Determine whether all work in the RFP must be performed by a single vendor, or whether multiple vendors will be considered.
- Determine the core metrics by which you will measure the success of a vendor partnership
- Define expectations around the frequency and method of communications and reporting
- Consider consulting with a trusted current vendor when designing the RFP to ensure that it reflects all aspects/potential contingencies associated with the desired work
- Determine preferred pricing model and detail all activities that must be captured under a given cost item
- Decide what, if any, pass-thru expenses are acceptable
- Determine document disposition, storage, and security expectations
- Determine what activities can reasonably be captured under a flat fee pricing structure

### Ask the Right Questions

- Determine vendor's core competencies and length/breadth of experience in each. Request specific examples of successful projects and references
- Determine vendor's volume capacity
- Determine whether vendor uses third-party or offshore vendors and what guarantees they can offer around confidentiality/security of information for downstream agreements
- Determine vendor's project management plan
- Determine vendor's executive and project management leadership and qualifications/experience
- Determine vendor's quality control processes and systems for resolving errors, improving efficiencies, etc. Determine what "guarantees" vendor is willing to provide.
- Determine vendor's technology capabilities and ability to interface effectively with client's existing systems
- Determine the transparency and detail of vendor's reporting
- Determine vendor's ability to provide upfront project budgets and whether they can meet client's expectations around ongoing budget reporting, notification of potential overruns, etc.
- Determine what international or other technology/quality/process standards vendor adheres to
- Determine vendors ability to comply with preferred billing method



- Determine vendors ability to manage multiple users/outside counsel/opposing counsel access to and reporting on project data

#### **Format and Distribution**

- Require respondents to adhere to a uniform format for responses (online form, email, FedEx), and inform them to what extent you will accept supplemental materials or information not specifically requested.
- All parties should execute mutual non-disclosure agreements covering RFP and responses.

#### **Post-Selection**

- Determine the proposed length of agreement, ongoing assessment criteria, and cancellation/renewal terms

#### **About MRC**

*Founded in 1983, **Medical Research Consultants (MRC)** offers a comprehensive support solution for legal, healthcare, and insurance professionals, including **medical records analysis, record retrieval and management, lien research and resolution, CMS mandatory insurer reporting, and call center services**. MRC has supported some of the largest mass torts on record, including toxic tort and products liability litigations, but also offers expertise in Pharmacovigilance, HCC Management, and individual personal injury cases. MRC is a certified woman-owned business, and is a preferred vendor for several major manufacturers and pharmaceutical companies.*