

INFORMED PURCHASER WORKBOOK ANSWERS

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Exercise One

Question 1 Answer

Hillary undertook a very limited review of legal service needs, simply identifying the amount of the legal spend, the volume of matters and the service level. This is stage one. She also utilised a request for tender, part of stage three, in establishing a new panel.

Question 2 Answer.

Hillary could have undertaken a more comprehensive review of the departments legal needs (stage one) to identify future demand, whether there was likely to be a change in the nature or volume of legal services required by the agency. She could have undertaken this by reviewing historical information, but ideally would also have interviewed users of legal services and reviewed the department's strategic plans to ascertain whether there is an unmet need all the future needs to change.

She then would review the in-house legal resources to consider whether some of the work presently outsourced or identified to be undertaken in future should be being undertaken by the in-house legal team (stage two). This would give a clear picture about the different types of work the Department required assistance with and would help to identify the appropriate skills, experience and structure of firms that could be approached in an RFT process. There may be areas of work suitable to be undertaken by a niche or boutique firm, or work which should be priced on a fixed fee or other alternative pricing arrangement. The needs analysis

also assists in determining the service requirements which would be set out in any RFT documentation.

As part of the RFT, Hillary would determine the appropriate performance management regime including performance KPI's.

Exercise Two

Active management of the acquisition of legal services

In contrast with the example in Exercise One, the department has reviewed its previous approach to purchasing legal services and changed its practices to maximise the likelihood of a good outcome in the RFT process.

Knowledge of the agencies business, with specific attention drawn to the environment, constraints, applicable policies and similar factors

This is demonstrated by the departments review of its past legal cases its examination of its previous legal spend and the knowledge gained through interviewing key staff and partners of existing panel firms.

Knowledge of the relative strengths and weaknesses of potential legal service providers in the market

Whilst some information on this point would be gained from interviews with existing panel firms. Further benefits may have been obtained from the use of an external consultant with specific knowledge of the legal market.

Skill in coordinating legal service arrangements/skill in delivering value for money and legal services/ Knowledge of procurement policies, guidelines, processes and templates/ understanding of the agency, government and experience with government legal services

This is demonstrated by the manner in which the RFT is conducted.

Exercise Four

Matter type 1

Unit pricing – the scope of the work is defined and the volume of work enables the firm to introduce efficiency and innovation into the process.

Matter type 2

Fixed pricing or retainer – the retainer would be suitable if the volume of work is relatively certain. Alternatively a fixed price or unit price could be agreed for the whole of the matter or four different stages in the debt recovery proceedings.

Matter type 3

Hourly rate or hourly rates with tiered discount. Given the quantum of the claim and counter claim, this is the matter in which the Department is likely to require the highest quality legal work. It is also a matter where it is likely to be difficult to determine the fees at the outset. Blended hourly rate is unsuitable as the agency is likely to wish a senior partner to be having

day-to-day conduct of the matter, rather than there being a predominance of more junior lawyers being involved. It is a matter which is ideally suited to legal project management.

Exercise Five

In order to provide an incentive to deal with claims in a timely and cost-effective manner, a pricing arrangement could be agreed where a high price is paid upfront with either the rate or a fixed fee decreasing the longer it takes to finalise the matter. One possible arrangement is a stage fee arrangement or a higher fee is paid in the initial stages of a matter with the lower fees being paid at the later stages of the matter.

An innovative fee arrangement would be to align the fee paid for the accuracy of initial advice regarding liability and quantum. Another alternative would be to align fees paid to timeliness.

Specific performance requirements could include timeframes for initial review of the claim, for response to a claim and for provision of advice on liability and quantum to the agency. Ideally any engagement agreement would clearly specify acceptable settlement parameters including defining a reserving policy, and extent of authority of the lawyer in relation to negotiation of matters.

Exercise Six

Maricar should immediately contact the relationship partner at the panel firm to discuss the items of concern in the bill. She should invite the firm to respond to concerns with proposals about addressing the particular items in the bill and a proposal about how the matter will be conducted more effectively going forward. She should put clear timeframes as to her expectations regarding the timing of such response.

Maricar should also prepare engagement and billing guidelines clarifying her expectations regarding staffing of the work, levels of authorisation required before work is undertaken, a project management plan including consultation with her regarding research topics. The project management plan should include fee estimates for the different stages going forward.

Maricar could have avoided this billing surprise by agreeing to a clear scope of work prior to the commencement of work on the matter and communicating her expectations regarding matter management. It was also imperative that she obtain a fee estimate prior to the firm commencing work, and confirm in writing her expectations that the fee was not to be exceeded without the prior agreement and without a clear change to the proposed scope of work. Best practice would have mandated that Maricar seek a number of quotes before engaging an external firm to manage the litigation.

Exercise Seven

1. What will be rated?

The program should assess both objective (quantified) and subjective (opinions) components.

The key objective element would be:

Cost per matter - Both the mean (arithmetic average) and the median (mid-point) should be measured. The median eliminates the impact of outliers in the assessment. If one firm's

median is consistently higher than other firms this would indicate they are not as cost-effective at dealing with these matters.

The subjective elements could include:

- overall satisfaction
- speed of response
- ease to work with
- quality of legal advice
- achievement of good outcomes
- effective management of offenders and third-party stakeholders.

2. Where will the rating come from?

The cost per matter information should be obtained from the matter management / financial system.

The remaining information should be sourced from a survey of case management officers. Given the small number of case management officers the survey should be compulsory.

3. How will the assessment be made?

The cost per matter information could be extracted into an excel spreadsheet to allow analysis. The spreadsheet should include a row per completed matter, a matter number, the firm, the cost of the matter (the firm's fees), the outcome, the case management officer and any information identifying the complexity or approach taken by the offender. The better the quality of this information, the easier it will be to identify matters that appear to have been handled inefficiently.

The case management officers should be sent a survey asking them to rate each firm they have used in the proceeding period on each of the subjective elements.

4. How frequently will they be assessed?

Given the high volume nature of the area, and the concerns that currently exist, the assessment should (at least initially) be quarterly.

5. How will the results be used?

Results should be used to assess the relative strengths and weaknesses of each panel firm. An exploration of the results with the case management officers may yield further light on the results.

Once the results are understood they should be shared with all panel firms (masking the results of other firms). The focus of these sessions should be to develop an understanding of the current performance levels and a plan for improvement.

Exercise Eight

This scenario demonstrates the common problems that occur in high volume legal matter management: over-servicing, an absence of standardisation, double-handling, unclear communications protocols, and inappropriate rates and fee structures for the type of matter. This is explained below:

- the agency does not consider the suitability of the firm providing the advice - the firm is a large national firm that does not generally undertake routine suburban leasing work and does not have systems in place to promote efficiency
- the fee structure is inappropriate for the type of work - being a top tier firm, premium rates are being charged for a routine matter. As the agency does not consider the most appropriate fee structure, there is no incentive for the firm to keep costs down given that they charge by the hour. [A retainer, unit or fixed fees per matter, or high volume discounts on lower rates, would have been more appropriate.]
- the agency allows for over-servicing - it does not provide the firm with a scope of the work. Without a clear scope, the firm is able to over-service the matter, all the while charging by the hour, without a corresponding increase in utility
- the firm does not provide a cost estimate prior to commencing work, and as the matter progresses, the agency does not keep track of the cost escalation
- the agency allows for unnecessary double-handling - the absence of a clear communications protocol allows for more communications and involvement of staff (from both the firm and the agency) than is necessary, plus the firm delegates the matter internally down the chain and charges for each solicitor's time
- the agency is training the firm's junior staff - the agency legal officer effectively has to undertake a training role of a junior firm lawyer, and is charged for doing so.

Exercise Nine

It negotiates with two boutique litigation panel firms a fixed unit fee for each debt recovery matter. In each new case, the departmental legal officer dealing with these matters sends a standard form set of instructions to one of the two panel firms, aiming to offer each firm equal volumes of the debt recovery work. Each firm is able to exercise limited discretion within pre-agreed parameters, without the need for further instructions.

The panel firm receives the instructions and provides a standard acknowledgment and advice. If the matter appears to be outside the pre-agreed parameters, the panel firm advise the department at the earliest possible stage. In this case, the department provides further case-specific instructions.

The panel firms progress each matter through to completion and both issue monthly bills itemising how many and what type of debt recovery services had been provided to the department, as per the fee agreement with the firms. Every six months, the performance of the two firms is compared, based on pre-agreed qualitative and quantitative performance indicators.

After a year of the new system, agency staff are able to calculate that savings of 22 per cent on external legal fees for these high volume matters has been achieved.

Exercise 10

If you answered mostly **'yes'** to the above questions, you are well on the way to implementing leading practice in large and complex legal project management. You have adopted clear protocols for communicating with the panel firm and have clear project management and case management practices in place. You have effective systems for

document and evidence management. You regularly review the project, and there are processes for dealing with problems that arise.

If you answered mostly 'no' to the above questions, you are most likely not implementing a project management approach to large and complex legal projects. You and the panel firm are unlikely to have a clear and united understanding of the project objectives, and where it fits into your agency objectives. The panel firm you have appointed is likely to be running the project without adequate oversight and accountability mechanisms. While the project is most likely to be costing more than it should, it is likely that you are unaware of this.

If you answered mostly 'unsure' to the above questions, you are unlikely to be implementing a project management approach. Confusion over reporting lines and the project scope is probably an ongoing issue. As a result, the project has or will probably exceed the initial cost estimates, possibly by a significant overrun.

Exercise 11

You would ask the law firm to break the work in two stages or phases and provide a more detailed scope of work for each phase. You would require the law firm to price each phase and to provide you with a project plan with detailed tasks and timeframes for anticipated completion of work.

Upon receipt of the project scoping plan, you would confirm that the scope accords with your understanding of the work required in each phase and review the price for each phase. Any concerns about price would be addressed with a discussion about whether the work was being appropriately delegated, whether there were aspects of the work which were necessary, or alternatively could be undertaken in-house or perhaps outsourced to counsel. You would also ensure that the law firm have addressed the most likely risks to scope and costs.

You would agree a communication plan and types and frequency of reports which are to be provided by the law firm. You would also clearly explain your expectations regarding quality of service including the form of any deliverables.

Once the price was agreed for each phase, you would make clear that there was to be no variation on price unless there was an agreed variation on scope of work. You would discuss with any department personnel who are liaising directly with the law firm, the limitations on their authority to vary the scope of work without prior discussion with you.

Exercise 12

This spreadsheet would be utilised to monitor both costs and progress. You would require reports from the law firm giving a breakdown of fees by level of operator prefer fees in accordance with the spreadsheet previously provided to enable easy comparison. If the fees varied significantly from the spreadsheet this is a warning that the project may be going off-track. Reports would be sought on a weekly basis as this enables comparison against the spreadsheet. If after the first week of fees were much lower than those estimated, this could indicate that either the work is being undertaken particularly effectively or that there has been some roadblocks which is causing a delay to the project. Conversely, if the fees in the first week were significantly higher, this raises the question as to whether the work has greatly exceeded the estimate and therefore fees are likely to blow out.

Exercise 14

The likely causes of the cost blowout are threefold:

1. The original scope of services did not sufficiently anticipate the complexity of the matter and the level of work required. Further, the scope and fee estimate is so restricted by limitations, exclusions and risks as to not be a realistic consideration of how the matter would proceed.
2. The matter has been conducted without reference to the original analysis and scoping document, with little regard to whether the work was conducted in a manner which would contain the fees within the fee estimate. This has been exacerbated by the limited capacity of the general counsel to play an active role in managing the matter.
3. The original cost estimate may not have adequately accommodated the costs associated with counsel, expert witnesses and other disbursements.

The techniques and tools which could have been utilised by Roger to control the costs are: –

- a clear and comprehensive project plan including fee estimates for phases and tasks, and including a breakdown of personnel required to undertake tasks within estimate of time anticipated for each task.
- Regular reports (weekly or monthly depending on the level of work being undertaken at a particular point in time) – the reports would track progress and costs incurred against the project plan and the projected fees. If there was considerable variation in either progress or costs is against the plan, Ronald could have sought a breakdown of the work which had been undertaken and a revision of the project plan and scope.
- In the initial engagement, Ronald should have clarified that there would be no variation from the fee estimate unless their was and approve a variation to the scope of work with an associated agree variation to the estimate of fees for the particular phase.
- The most effective tool would have been to appoint an external project manager to assist in management of the litigation from the outset.

The most effective steps Ronald could take to control the costs and scope going forward would be to appoint a project manager (probably an external consultant given the limited resources available to him within the agency), to work with the law firm to prepare a revised scoping and costing of the litigation and to consider the opportunities to resolve the litigation, perhaps utilising alternate dispute resolution, or to ensure that a trial date is set as soon as possible. Another aspect of the role of the external project manager would be to require an independent review of the claims and cross claims to consider whether all claims should be pursued and whether any aspects of the cross claim should be conceded.