

MODULE 8

Legal Project Management

8 Legal Project Management of Large Commercial Projects

The **objectives** of this section of the Module are:

- To provide guidelines for the legal management of large and complex commercial projects
- To examine the special considerations for large commercial projects
- To demonstrate the benefits of project managing large projects
- To identify common issues faced by project managers of large projects in a government context
- To introduce the five stages of a better practice approach in large project management
- To self-reflect on whether you have adopted any of the elements of the suggested better practice approach to project management of large projects
- To outline the process for determining the phases of a project
- To describe the important link between an agency's strategic objectives and project management
- To explain the project manager's role in establishing the most appropriate team for the project, having regard to the skills/resources available and needed
- To explore the benefits and constraints of different types of blended teams
- To explain the leading practice informed purchasing approach to selecting external legal providers for a large and complex project
- To highlight the benefits of appointing an independent project manager to large projects
- To describe the issues around setting the budget for a large project
- To examine some approaches and tools used for project management of external legal service providers for large projects.

The **key learning concepts** covered in this section of the Module are:

- That project management of large and complex projects delivers improved legal services and greater value for money for government
- That agency legal staff should be involved in commercial projects from the earliest stages
- There are five stages in the recommended better practice approach to legal project management
- Clearly defining the legal need and effective scoping of the work by defining principal legal and factual issues is a fundamental task that must be undertaken by a legal project manager
- Legal project managers must direct the approach and progress of the project so it is conducted in line with overall agency objectives
- The resources engaged must be appropriate to the size and attributes of the project
- Appropriate choice of external law firms should be based on specialisation, range and depth of resources
- Informed purchaser approaches must be introduced to external providers at the point of procurement
- Hourly rates without limits or caps and unreasonable disbursements are often the cause of cost overruns, and should be discouraged
- The importance of requiring fee arrangements that provide better cost certainty from external providers
- Consider using independent counsel in conjunction with the external firm(s)

- Independent project management of large legal projects provides good project governance and can deliver increased savings for the agency
- There are a wide range of tools available to the legal project manager
- The legal project manager must appropriately manage provider relationships, share information and measure, monitor and refine the project management approach.

8.1 Introduction to legal project management of large and complex projects

Legal project management of large and complex projects can be used as part of the informed purchasing methodology to reduce risk and limit costs. These projects have high potential for political, financial and/or reputational risk.

When large and complex commercial projects are effectively project managed, control of the project primarily rests with the client (government), rather than the law firm.

General counsel in NSW Government agencies rank legal project management of major projects as the informed purchaser method most likely to generate the greatest level of savings for government. They also identify it as the most difficult of the informed purchaser approaches to implement.

Legal project management of large and complex projects has delivered demonstrable savings for government: up to 20 to 25 per cent on large legal spends. On large projects, this can equate to savings in the order of \$1.5 million per annum. Project management methodologies assist in the achieving of project objectives while minimising risks associated with such projects.

8.2 Defining project management

A project differs from day-to-day legal work. Project management is a set of management disciplines that can be used to help deliver major projects within the time, cost and quality constraints. Project management is heavily focused on, first, defining the project's objectives and, second, scoping the legal work required to deliver the objectives. It then focuses on monitoring the project to identify as early as possible any risks or issues that might impact the timing, costs or quality as set out in the scope.

8.3 Defining large and complex commercial projects

Defining what is a large and complex commercial project is an inexact science. Often, it is a matter for common sense. Early on in a legal project, it may not be obvious whether the project is large and complex, or whether it may become large and complex as the project progresses.

Below are some guidelines that may help to determine if a commercial project is likely to be large and complex:



As a general proposition, the quantum of the **value of the project** is the most obvious measure of a large commercial project. The value of the project can indicate the level of the risk associated with undertaking the project, which in turn can indicate the complexity of the project.

Examples of commercial projects likely to be categorised as large and complex include:

- Projects where there are multiple parties to a transaction
- Projects where there are multiple agencies involved (local, state, Commonwealth)
- Projects where there are multiple areas of legal advice required
- Projects where there is complex tax structuring advice or financing involved
- Projects where multiple jurisdictions are involved (national and international).

8.4 Special considerations for large commercial projects

Large commercial projects require special consideration. The different issues and considerations of large commercial projects are highlighted below.

8.4.1 Primarily commercial projects, not legal

By definition, these are primarily commercial projects, with a legal component (rather than legal projects, with a commercial component). The impact of this is that they are often directed by a commercial manager within the agency, not a legal manager. Generally, the non-legal project manager of a commercial project will not fully understand the legal issues of the project. This means that often the legal team is brought into the project at too late a stage in the project to properly manage the external legal spend and in circumstances where it would have been preferable for the legal resource to have been involved early on.

8.4.2 Non-legal staff instructing external firms

A follow-on from the commercial nature of commercial projects is that non-legal agency staff may find themselves instructing external firms. Without training, it is unlikely that these non-legal staff will be aware of the informed purchaser considerations highlighted throughout this Module. In this situation, external providers are likely to retain control over the legal aspects of the project.

8.4.3 Legal team needs to be proactive

The in-house legal team needs to be proactive about large commercial projects. It is common for the in-house legal team to be called into a project at its later stages, only to find that their involvement should have been sought much earlier to avoid costly oversights or over-servicing. The in-house team needs to use its knowledge of the agency's business to make itself aware of complex commercial projects and proactively seek input into the project from the early stages.

Also, the in-house legal team should work with the line managers to make sure that they understand that the legal team needs to be involved from the early stages of a major project. Once the commercial team has drafted the first principles of the commercial project (i.e. what they want to do) this should be reviewed by the in-house legal team before any further action is taken.

As an in-house lawyer working on large commercial projects, be proactive and seek out the commercial project manager, and offer legal input early on in the project planning.

8.4.4 Seek out experience

- Project managers of large commercial projects (both legal and non-legal project managers) require experience in the management of large projects. This experience is gained through shadowing an experienced project manager, or being mentored by an experienced project manager. An experienced project manager will be able to work with the in-house team to build internal experience for future projects.

8.4.5 Example of issues which may arise in large commercial projects

The scenario below is an example of issues that can arise in relation to a large and complex commercial project:

Scenario 1

A Federal Government telecommunications agency has been given a national telecommunications project to implement. Richard Nixon, general counsel of the agency, is not sure what legal services will be required for the project. He approaches a top tier firm on the agency's legal services panel to request that they provide a scope of services for the work and a standard costs disclosure. The firm agrees, and provides a 2-page scope of services. In the costs disclosure, the hourly rates of partners, senior associates, junior associates, paralegals and secretaries are listed, along with disbursements. The estimate is presented as a range for different phases; the highest end of the range is \$564,000 over 16 months, the estimated period of the work, plus disbursements. The cost estimate is approved and work commences. After six months, close to \$1.8 million has been spent with the firm on the project.

At this point, Richard realises that a lot of the work done by the firm was unnecessary. He appreciates that he did not know what needed to be done and how to properly instruct the firm. He is anxious to know how to better project manage the matter and how to prevent unnecessary legal spend.

8.4.6 What does this scenario tell us?

The scenario demonstrates several common problems in the procurement of external legal services on large and complex legal projects. The purchaser in this scenario is not clear on the scope and legal work required to be undertaken. Richard does not know how to steer the external provider towards a fee structure that benefits the agency. The result of this is that the external firm's scope of works is determined by the firm, costs are not controlled, and the general counsel is anxious about how to control costs in the future.

Project management is the recommended way to manage large and complex projects within the informed purchaser framework. The objective of the informed purchaser is to manage large and complex legal projects to obtain quality legal services and value for money for the government's legal spend.



Exercise 10

Choosing a complex or major project that you are working on or have previously been involved in and answer the following questions about management of that project:

Does the project contribute to the achievement of your department's objectives?	Yes	No	Unsure
Have you clearly identified the agency's desired outcomes for the project?	Yes	No	Unsure
Have you clearly articulated the agency's desired outcomes and the role the project plays in achieving the agency's objectives to the internal and external legal team?	Yes	No	Unsure
Was the scope clearly defined in writing, and agreed?	Yes	No	Unsure
Does the scope provide for periodic meetings with the panel firm handling the project?	Yes	No	Unsure
Do you have a clear legal budget for the legal costs for the project, or at least the current phase?	Yes	No	Unsure
Do you have any way of confirming that the panel firm is operating within the scope and its fee estimate?	Yes	No	Unsure
Are the division of role and responsibilities on the project between the panel firm and the in-house team clearly identified and communicated?	Yes	No	Unsure
Do project protocols exist for filing correspondence, reporting lines and instructing the panel law firm?	Yes	No	Unsure
Is there provision in the project plan for any strategic review of the project?	Yes	No	Unsure

(Online answers provided at http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed_purchaser_answers.doc)

8.5 Better practice in large and complex commercial project management

Project management of large and complex legal projects involves five key stages:

- Define legal services needs and scope the legal work required to be undertaken
- Establish the team (in-house and external) and set task allocation
- Select external legal service providers (including counsel and project management)
- Work with the external team to set a budget and a timetable
- Ongoing project management including manage external provider relationships.

These stages are described in further detail below.

8.6 Define legal services needs and scope the work required to be undertaken

In this first stage, the legal project manager must establish the role that the project plays in the overall agency's strategic objectives. It is also necessary to clearly define the legal needs and scope the work. It is important to clearly understand the outcome that is being sought by government. This work will generally be undertaken in conjunction with the Commercial Manager(s) and others involved in this project.

Some specific considerations are listed below:

- What is the objective of the transaction?
- How does this project further the agency's strategic objectives?
- How should the project/transaction be structured? Who should be involved in this process? At what stage should they become involved?
- What legal (and other) documentation is required to effect this structure?
- How is the work to be broken down into 'mini projects'? E.g. for the procurement of technology, these might be initial data room review, heads of agreement, preparing draft contract documentation, negotiations, completion
- What level of interaction is required with other agency representatives? Eg technical finance, operations, project management areas
- What resourcing is the agency capable of committing?
- How can the agency's expectations be managed?
- On what basis should the legal or professional services firm be retained?

Often many of these answers are readily available in the overall project plan developed by the Commercial Project Manager.

8.7 Scoping the work – a phased approach

In order to scope the legal work required to be undertaken, the project needs to be divided into phases, linked to milestones and/or outcomes. This enables the level of resources and tasks to be identified. Consideration needs to be given as to whether one firm will be retained for the whole of the project, or whether the retainer will only be for discrete phases, with the continuing retainer reviewed at the completion of each phases.



When we refer to scope of work, we are referring to the scope of legal work, as opposed to the overall scope of work for the project.

Scoping of legal work in each phase will require discussion with the Commercial Project Manager and others involved with the project, and possibly the external lawyer. Scoping involves not just determining what needs to be done, but agreeing what will not be done. It also involves identification of risks, which could cause the legal work to overrun, costs to inflate or deadlines to be missed.

In a large commercial project, the work may be typically scoped in phases as follows (the phases may vary from what is presented below, depending on the type of commercial project).

8.7.1 Phase 1: determining the appropriate structure

Typical large commercial projects include large procurements, public-private partnerships (PPPs), outsourcing of systems/services and acquisitions or disposals. During this phase, the appropriate structure for the project or transaction is determined depending on a range of strategic policy, legal, financial and technical factors. For example, for procurement of a major system, it might be determined that the appropriate structure is to fully outsource the work (e.g. a 'turnkey' approach). Alternatively, it may be determined that the best approach is to outsource some components and to retain or create others "in-house". For major commercial projects, this work is usually performed by a cross-functional team with the appropriate skills set. The legal aspects may be performed by a mix of in-house and external legal resources. The best project outcome is achieved if the in-house legal team is involved early on in this phase.

8.7.2 Phase 2: Request for Tender (RFT)

This phase may not be required for some projects. If it is a major procurement, the drafting of the tender and other documentation is required. This must be done in accordance with government procurement policies and guidelines. This work may be conducted internally or externally. This phase must have in-house oversight and will often include oversight by an independent probity adviser. This phase may last a few weeks or several months depending on the size of the project. For larger projects, the formal RFT documentation may include the draft contractual documentation or minimum contractual terms, which the party conducting the tender is prepared to enter into.

8.7.3 Phase 3: preliminary agreement (MoU/Heads of Agreement)

In most large projects there will be some form of high level agreement between the parties which sets out in general terms the basis upon which the parties will enter into the proposed project or transaction. Typically this will be a legally binding commitment, but not necessarily so. It may be subject to various conditions such as conducting satisfactory due diligence.

8.7.4 Phase 4: due diligence

Under this phase, the parties review relevant documentation (usually in response to a due diligence questionnaire or similar question and answer process) to assess the legal risks and benefits of entering into the project. Depending on the size of the project or the volume of documentation, this may be undertaken in-house or by a niche, mid tier or top tier firm. This phase will usually involve a report from the legal resource to the client on the likely risks involved in the project and recommendations for mitigation action.

While the traditional data room was paper based, often comprising thousands of documents, in large commercial projects it has become increasingly common for electronic data rooms to be created with high levels of security, which enables documentation to be viewed remotely by individual users with secure access. It also enables greater analysis as to which documents have been viewed by the relevant parties.

8.7.5 Phase 5: draft documentation

While the draft contractual documentation may be prepared as part of the RFT process, this is not always the case. It may be that the main agreements relating to the project (whether it be a procurement, outsourcing, acquisition or disposal) will be drafted by one party either before or

after the due diligence phase. For major projects this will usually be done by an external law firm, and will often involve a number of agreements (for example, a procurement may involve a major contract with one lead party who then subcontracts various pieces of work to third parties, or a series of individual agreements for each aspect of the project).

8.7.6 Phase 6: contract negotiation

During this phase the parties, after taking into consideration the results of the due diligence, negotiate an acceptable outcome of the project. This may involve multiple communications between the parties' legal representatives and communications with the clients to achieve an agreed outcome. For cross-jurisdictional large commercial projects, a firm with resources in the various jurisdictions may be appropriate for this phase. Conversely, for a single jurisdiction large project, a specialist firm may be more appropriate. It is important for the agency to direct their legal representative(s) so they remain commercial in their dealings, always bearing in mind the agency's strategic objectives. This phase may benefit from a dedicated project manager to assist the legal resources stay focused on delivering the agency's desired commercial outcome.

8.7.7 Phase 7: closing/execution

Once the parties have negotiated an agreed outcome, the legal documentation must be finalised. For smaller projects this phase may be simply an extension of the contract negotiation phase. For large multi-million dollar projects, it will be a discrete phase involving the finalisation of the documentation ready for execution by the parties. This will include ensuring that the appropriate authorisations have been obtained to enable the parties to execute the relevant agreements.

8.7.8 Phase 8: contract management

During this phase, the agency must direct the project to proceed as envisaged under the contract. For large projects this work would be performed by a specific contract management team who would be expected to pro-actively manage the implementation of the contract. If one party does not comply with their obligations under the contract, lawyers may be required to advise on the contract. In the event of a contractual dispute, the legal service provider must have the resources available to resolve the dispute.

A sample costs template spreadsheet, setting out the resources required by phases, is included at Figure 3 in this Module 8.9.

8.7.9 The legal project and the agency's strategic objectives

During the course of the project, it is important for agency legal staff to keep in mind the desired outcome(s) of a large or complex project and how these outcomes contribute towards achieving the agency's strategic objectives.

An agency's objectives can usually be found in its governing legislation, its strategic documents, and/or its annual report.

8.8 Establish the team (in-house and external) and set task allocation

The next stage in better practice for major and complex legal project management is to establish the team using the informed purchaser framework. The resources needed both internally and externally to approach the project in the optimal manner must be identified. In turn, the availability of those resources must be determined. In establishing the team, the project manager must have regard to:

- The resources the agency is willing or able to commit to the project
- The skills and resources available in-house and the extent to which an agency wants to develop in-house expertise in managing major projects
- The mix of skills and resources available externally (external firms, counsel, project management) and the level at which those resources are required
- The phases of the project, and the combination of resources available and required at each phase.

At this stage it may be necessary to factor in whether the appointment of a project manager is appropriate.

This information will then determine what external legal service providers are needed.

Some specific considerations in establishing the team are listed below:

- What resources are required to assess the volume of due diligence material to be reviewed, and can any of this work be conducted in-house?
- Who will have overall responsibility for managing these resources?
- What is the timeframe required for the project to be completed, and is there sufficient in-house capability to meet this timeframe? If not, what is the level of external resources required to do so?
- What are the specific legal skill sets required for each phase of the project, and are any of these available in-house? If not, which external firms, or combination of external legal service providers, have the requisite expertise?

A significant component of cost overruns in major projects is having over-skilled resources at high rates performing or overseeing routine or simple legal tasks or, conversely, less skilled resources performing complex tasks which are better undertaken by a more skilled, experienced lawyer. The legal project manager needs to have oversight and control over who is doing what work.

Similarly, savings can be achieved by dividing sections of the work between in-house and external firms. By identifying early the most effective resources to handle discrete tasks, the legal project manager is able to assemble the most cost-effective team to achieve a quality outcome.

For example:

- Is there an aspect that requires standard documentation (eg leasing) that could be developed cost-effectively by a mid tier or boutique firm?
- Is the 'one stop shop' of a top tier firm necessarily the most appropriate choice?
- If more than one firm is engaged, is the agency prepared and resourced to project manage the coordination of the legal work?

This combination of types of legal resources is called the ‘blended team’ approach.

8.8.1 Working with blended teams

The table below sets out some of the benefits and constraints of blended teams: different mixes of in-house lawyers, external firms and counsel. The table reflects general assumptions, and there will always be exceptions in particular circumstances.



Table 10: The Benefits and Constraints of Different Styles of Blended Teams

Benefit / Constraint	In-house only	External firm only	In-house + external firm
Lower cost	✓		✓
Higher cost		✓	
Greater resources		✓	✓
Fewer resources	✓		
More control	✓		
Less control		✓	✓
Less demands on in-house legal manager		✓	✓
More demands on in-house legal manager	✓		
Best match of skills to scope			✓
Less effective match of skills to scope	✓	✓	

The above table may seem self-evident, but it is important to consider what the skill mix should be at the early stages of a large project. Depending on the project’s sensitivity, an agency may wish to have greater control over the conduct of the project. This can only happen by being involved in the day-to-day progress of the project.

8.8.2 The effective use of in-house resources

Often, in-house legal staff do not have the time or specialist expertise to conduct a major and complex project in its entirety. However, the in-house team will usually be able to contribute some expertise and should not be overlooked. The in-house team will also usually be more cost-effective for the agency.

Crucially, the in-house legal team will have an in depth understanding of the particular legal framework within which the agency operates. For example, the agency’s obligations regarding information it has obtained pursuant to its functions and powers. The in-house team will also

appreciate the particular challenges that are faced by government legal teams, which may not be accounted for in advice or timeframes provided by external legal providers.

In addition, the agency may have prioritised the development of an in-house capability to manage major projects. In this case, members of the in-house team could 'shadow' or receive mentoring from staff from external firms or project managers.

Consistent with the informed purchaser approach, the legal project manager should consider what work can be done in-house. Considerations include the availability of staff to assist, their experience and expertise, and how the in-house resources will complement the external team.

8.9 Select external legal service providers (including counsel & project management)

Based on the assessment made in the previous stage, it is not necessary to select the external legal services provider(s). The selection of these resources should be made on informed purchaser principles.

Some questions that should be answered, in order to effectively determine which firm(s) to approach and what information to provide, are:

- What type, level and breadth of external resources are required from the external legal services provider (niche, mid tier or top tier)?
- What level of experience with this kind of project is necessary?
- Could a team of panel firms (niche, mid tier and top tier) be engaged to provide different services throughout the project?
- What type of firm is needed to conduct the external aspects of this project?
- Are there any parts of the project that would be most effectively conducted by briefing independent counsel?
- Would asking selected panel firms to submit proposals in response to a project scoping document be beneficial?
- Is an independent project manager needed?
- What fee arrangement is appropriate for the work to be undertaken?

It is at this stage that the in-house lawyer responsible for the project needs to prepare the project scoping document on which to brief external legal providers to enable them to respond with questions and prepare project/phase cost estimates.

All the principles of informed purchasing should apply when procuring these services. Specifically:

- It is at the point of procurement that innovative informed purchaser arrangements must be encouraged – it is much harder to implement these arrangements after the services have been costed and agreed
- Significant savings can be achieved by encouraging or mandating innovative fee arrangements/value-adds in provider's cost estimates
- Informed purchasers must be clear at the point of procurement what they expect from external legal service providers (counsel and firms) in terms of service and resourcing levels
- Different types of firms with different attributes and expertise are suited to different types of legal projects – understanding what kinds of firms an agency requires for its legal work is a key role of the informed purchaser

- Significant savings can be achieved by encouraging firms with competitive rates, providing they have appropriate resources and skills capacity.

8.9.1 Legal firms

A key consideration for the legal project manager is the type of external firm(s) to engage. The consideration here, in accordance with the informed purchaser model, is whether to engage niche, mid tier or top tier firms⁵.

For major commercial projects, there is often more flexibility in the type of firm engaged. Niche and regional firms sometimes offer specialist skills for major commercial transactions. Otherwise, mid or top tier firms may be chosen. There are a range of characteristics to niche, mid tier, top tier and regional firms that must be considered. These are outlined in the Table 2 Common Attributes of Different Types of Firms in Module 3.7.

Other considerations the agency needs to make in the selection of the firm is:

- Experience and expertise: does the firm have relevant experience in the type of project?
- Availability of specific resources at the firm
- Is the firm's insurance sufficient relative to the value of the project?
- Conflicts of interest
- Previous performance on similar projects.

It may be useful to invite selected panel firms to submit detailed proposals, including proposed methodologies, for handling large projects. The request for proposal process still requires the instructing lawyer to provide a detailed scoping document on which the selected firms can provide a response dealing with all aspects of the scoping document (e.g. resourcing, cost, risk, timeframes, milestones and other deliverables).

In the first instance, the legal project manager should use only the firms available on their agency legal panel. Under the cluster panel arrangements for NSW Government, any agency may, in certain circumstances, access any firm on any of the eight NSW cluster panels, broadening the range of firms available.

8.9.2 Relationship management protocol

Regardless of approach, it is very important at the point of instructing external legal service providers that your requirements and protocols for ongoing management of the project are communicated. This may include:

- Communications protocols
- Frequency and style of reporting requirements
- Fee arrangements
- Non-chargeable value-adding activities
- Billing requirements
- Other tools and processes that the legal project manager deems necessary.

When receiving a proposal from a law firm, it is important to carefully review any assumptions or caveats to the proposal. This should identify any contingencies. You need to consider whether these are reasonable in the circumstances or too open-ended.

⁵ This is often restricted by the types of firms represented on the legal panel.

The scoping document needs to outline these elements and other requirements of the firm in advance, so that there are no surprises – and no excuses – when the project manager comes to implementing these processes.

8.9.3 The legal project manager

The appointment of a legal project manager who is also an informed purchaser is the cornerstone of the informed purchasing approach to large and complex legal projects. This person may be someone from the in-house team or an external specialist legal project manager, acting for the agency.

One of the reasons supporting the appointment of an external legal project manager is that it frees the in-house staff to focus on the strategic direction the project is taking. Also, an independent project manager will not be hindered by the organisational decision-making process. Appointing a project manager who is delegated the authority to manage the commercial project within boundaries set by the agency is one of the most cost-effective measures to keep the commercial project on track and within budget.

It is necessary on a commercial project that the project manager has the capability to provide commercial input.

Whether in-house or external, the project manager must coordinate numerous tasks for a large commercial project, including:

- Working with internal stakeholders to determine the project's objectives and outcomes, and where these fit into the agency's overall strategic direction
- Scoping the project and conducting a thorough risk analysis of the different legal options for handling the project
- Instituting protocols and strategies for communications, project management and monitoring/review, for the smooth progress of the project
- Designing and selecting the appropriate team and determining the fee basis for the various external components of the team
- Coordinating communication and the sharing of information on the project across the team, including the in-house team and other stakeholders
- Project managing the inputs of the team into the project, managing the inputs to keep the project on track to meet its clear objectives
- Monitoring providers' financial performance, including monitoring costs and scrutinising invoices, and taking pre-emptive action to avoid cost overruns
- Measuring and monitoring providers' qualitative performance, and taking remedial action to improve performance and reallocating tasks where necessary
- Conducting appropriate reviews throughout the life of the project and at the project's conclusion, so that the desired outcomes are delivered and that lessons learned are incorporated into future projects.

8.9.4 Conflict of interest

When appointing any legal service provider, it is imperative to consider conflicts of interest.

Legal services providers and legal practitioners generally are required to avoid any conflict of interest. A conflict of interest, as defined in various professional rules (e.g. Revised Professional Conduct and Practice Rules 1995 for legal practitioners in NSW) can include acting against a

former client, acting for more than one party in a matter, and avoiding conflicts between a client's and a practitioner's own interest.

In addition to any applicable professional standards, most RFTs or requests for proposal will also include an express term requiring legal services providers to identify any potential conflicts of interest they may have. While legal services providers clearly have an obligation to actively avoid conflicts of interest, it is still important for a panel manager to actively assess if external legal providers retained on a matter are conflicted.

This is primarily because legal service provider may define potential conflicts of interest differently to an agency. An agency is often very sensitive to potential conflicts and the impact this can have on the agency's reputation – more so than legal service providers' commercial clients. In addition, there is the potential for tension between a legal services provider's desire to obtain work and their obligation to avoid conflicts of interest.

Sometimes, a legal services provider will identify a conflict of interest, but set out a strategy to manage that conflict of interest. This is most often proposed by the implementation of 'Chinese walls'; where those individuals or areas in the legal services provider that have the conflict do not communicate with those individuals or areas of the firm acting for the agency. Though Chinese walls can be a valid method for managing conflicts of interest, an agency must very carefully assess the suitability of retaining a legal services provider who has a conflict of interest. Chinese wall arrangements can be ineffective in practice.

Panel managers should set out clear protocols for the identification of potential conflicts of interest by legal services providers when they are tendering for particular matters. Where a conflict is identified by a legal services provider, at the first instance, the panel manager should not consider that provider for the matter. In situations where it is not possible to avoid retaining a legal services provider that has a conflict of interest, arrangements for managing the conflict of interest should be set out in detail and communicated to all parties and relevant stakeholders, and those arrangements should be regularly reviewed and audited.

8.10 Set a budget and a timetable

One of the central tasks of the legal project manager is to set the budget for each external provider and each phase of the work. This is an ongoing task, especially if the phased approach to scoping is adopted.

It is most important to consider setting fee caps for each phase of the project so costs are contained at phase level. Accepting hourly rates without a fee cap or limit, or indeed with only an indicative range, is not an approach that is likely to deliver value for money to government. When negotiating with external firms and counsel for major and complex legal projects, the full suite of innovative fee arrangements should be considered. Innovative fee arrangements are discussed in detail in Module 5.10.1.

The budget should be determined by the resources required for each stage. How this is achieved is illustrated in a commercial project example fees estimate below:



Figure 3: Sample Commercial Project Fees Estimate 1

PROJECT SCHOOLS - FEES ESTIMATE	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	SUB-TOTALS
Phase 1 - RFT and contract documentation																
Partner \$540 per hour	10,800.00	13,500.00	13,500.00	10,800.00												48,600.00
Senior Lawyer (\$480 per hour)	14,400.00	19,200.00	19,200.00	15,360.00												68,160.00
Junior Lawyer (\$300 per hour)	6,000.00	12,000.00	12,000.00	9,600.00												39,600.00
SUB-TOTAL	31,200.00	58,200.00	58,200.00	46,560.00												156,360.00
Phase 2 - Data room review																
Partner					10,800.00	13,500.00	13,500.00	10,800.00								48,600.00
Senior Lawyer						13,500.00	13,500.00	10,800.00								37,800.00
Junior Lawyer					14,400.00	14,400.00	14,400.00	14,400.00								68,160.00
SUB-TOTAL					31,200.00	58,200.00	58,200.00	46,560.00								194,160.00
Phase 3 - Evaluation Report																
Partner									13,500.00	10,800.00						24,300.00
Senior Lawyer									19,200.00	15,360.00						34,560.00
Junior Lawyer									12,000.00	9,600.00						21,600.00
SUB-TOTAL									44,700.00	35,760.00						80,460.00
Phase 4 - Preparation for negotiations																
Partner											10,000.00					10,000.00
Senior Lawyer											15,360.00					15,360.00
SUB-TOTAL											26,160.00					26,160.00
Phase 5 - Negotiations with Preferred Tenderer																
Partner												27,000.00	27,000.00			54,000.00
Senior Lawyer												24,000.00	24,000.00			48,000.00
SUB-TOTAL												51,000.00	51,000.00			102,000.00
Phase 6 - Closing out																
Partner														27,000.00	27,000.00	54,000.00
Senior Lawyer														24,000.00	24,000.00	48,000.00
Junior Lawyer														15,000.00	15,000.00	30,000.00
SUB-TOTAL														66,000.00	66,000.00	132,000.00
WEEKLY TOTAL	31,200.00	58,200.00	58,200.00	46,560.00	31,200.00	58,200.00	58,200.00	46,560.00	44,700.00	35,760.00	26,160.00	51,000.00	51,000.00	66,000.00	66,000.00	
TOTAL																\$ 691,140.00

calculation: 4 hours per day X 5 days X \$540 per hour = \$10,800.00



Exercise 11

Scenario

You have just been transferred to the in-house legal team at the Department of Primary Schools. The Department is procuring an IT system that would enable schools to upload their vital statistics into a central Department of Primary Schools database. The Request for Tender process has been completed and a successful tenderer selected. You have been provided with the following fees estimate, to produce a contract to acquire the system, by Tagem & Bagem Lawyers:

Estimate of fees in relation to procurement of an IT system by Government to enable a central database of all vital school statistics including drafting legal documentation, establishing an electronic data room; reviewing data room materials; drafting legal evaluation report; conducting negotiations with preferred tenderer; closing out, including care, skill and attention: \$750,000 (excluding GST).

What tools and approaches would you put in place to contain the scope and limit costs?

(Online answers provided at http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed_purchaser_answers.doc)

8.11 Ongoing project management including manage external provider relationships

Once the scope has been established, the team has been identified and the legal service providers have been appointed, it is the legal project manager's role to manage the project. The legal project manager can use informed purchaser and project management principles to do this.

It is important to be clear early that communication and efficient document management are cornerstones of the project management approach.

Questions that can assist to formulate the project management approach are:

- Who will be the project manager (in-house or external) for this project?
- What project management tools (e.g. project management software, Gantt charts) are needed to assist to efficiently manage the project?
- What tools are needed to identify potential roadblocks and areas of delay?
- What approvals for payments are required under the relevant contracts? Does a breach of one agreement mean that a party may separately be in breach of its financial covenants? If so, what impact might this have for the agency?
- What kind of pricing structure delivers the best value for money for this type of project?
- What relationship management, document management and communications protocols are needed for the efficient management of this project?
- What will be the role breakdown between in-house and external providers, and how will this be communicated?
- How often will the project be reviewed and what will be the process for this?
- How will disputes be dealt with?

Project management skills enable the informed purchaser to effectively manage projects on time and within budget.

8.11.1 Project management tools

Project management software, Gantt charts and contingency analyses can be very useful in identifying the major tasks and potential sources of delay on a project. They assist the project manager in managing the inputs to major tasks and sub tasks and identifying where the project is at any point in time.

There are commercial project management tools available such as MS Project and HP Project. Alternatively, tools can be created by the informed purchaser using simple spreadsheets.

8.11.2 Electronic data rooms

Electronic data rooms are now commonly used in commercial projects. They are very useful for maintaining security on sensitive documents, and allow access by multiple users at the same time. They may be provided by third party providers, and are often offered by legal firms as a part of their service.

8.11.3 Risk management tools

There are a number of risk management tools and standards that can assist with identifying key risks and contingencies. These tools can help with assessing cost estimates and scopes provide by panel firms, and are also of assistance when scoping the project. They should also be regularly revisited and updated throughout the progress of the project.

A sample risk management matrix is below:



Figure 4: Sample Risk Matrix 1

Extreme					
Major	5	1			
Moderate			2	3	
Minor				4	
Insignificant					
	Rare	Unlikely	Possible	Likely	Almost Certain
	High Impact Risk			Low Impact Risk	

1. Agency fails to achieve desired outcome (i.e. litigation/project unsuccessful)
2. Reputational risk to agency and government
3. Costs exceeding estimates significantly
4. Significant delay over estimates
5. Change in circumstance removes relevance of litigation or project to desired outcome.

Further information on managing provider relationships is presented in Module 6.3.

8.11.4 Share Information

To keep the project focused on its objectives, the project manager must use the communication protocols established for the project's stakeholders (internal and external) such as regular project team meetings, use of electronic data room, distribution of written reports, maintenance of shared project plans.

Further information on sharing information and regular team meetings is presented in Module 6.4.

8.11.5 Measure, monitor and refine

The legal project manager should regularly measure, monitor and refine the legal approach to the project in accordance with informed purchaser leading practice principles. The project manager should:

- Monitor progress against the project plan
- Assess strategic approach to determine if it is still appropriate and whether the project is on track to achieve desired outcome in accordance with the project plan
- At or near the conclusion of each phase, scope the next phase/s as appropriate and agree appropriate fee arrangements with external legal resources
- At the conclusion of the project, assess performance by reference to project plan and scoping documents, identify what worked and did not work for future reference.

Further information on continuous improvement and measuring, monitoring and refining is presented in Module 6.11.



Exercise 12

Scenario

You have just been transferred to the in-house legal team at the Department of Primary Schools. The Department is procuring an IT system that would enable schools to upload their vital statistics into a central Department of Primary Schools database. The Request for Tender process has been completed and a successful tenderer selected. You have been provided with the following scope of work and fees estimate, to produce a contract to acquire the system, by Witherspoon and Cog Lawyers.

Detailed scope of work: Procurement of IT system by Government

Phase 1: \$156,000

Taking instructions on and drafting documentation including Request for Tender and pro-forma agreements, namely:

- Project Contract
- Systems Integration Agreement
- Software Licence Agreement
- Escrow Agreement

Phase 2: \$194,000

Establish electronic data room

Review data room documentation of each prospective tenderer including detailed reports on each section of the data room.

Phase 3: \$80,400

Draft legal evaluation report; conduct final review of overall evaluation report

Phase 4: \$26,100

Preparation for negotiations with preferred tenderer

Phase 5: \$102,000

Conducting negotiations with preferred tenderer

Phase 6: \$132,000

Closing out and execution of contracts.

Providing sign-off /responsibility letter to client

TOTAL: \$690,500

Assumptions (or caveats) to estimate: [to be reviewed carefully and may include, for example whether the estimate includes legal advice on the procurement process itself as opposed to merely drafting documentation]

The following spreadsheet was appended to the fees estimate:

Q. How would you utilise this spreadsheet in applying the measure/monitor/refine techniques referred to above, to manage the project? At what points in time would you utilise these techniques? What reports would you require from the law firm to enable comparison against the spreadsheet?

(Online answers provided at
http://www.lsc.lawlink.nsw.gov.au/lsc/documents/doc/informed_purchaser_answers.doc)

Figure 5: Sample Commercial Project Fees Estimate 2

PROJECT SCHOOLS - FEES ESTIMATE																
	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	SUB-TOTALS
Phase 1 - RFT and contract documentation																
Partner \$540 per hour	10,800.00	13,500.00	13,500.00	10,800.00												48,600.00
Senior Lawyer (\$480 per hour)	14,400.00	19,200.00	19,200.00	15,360.00												68,160.00
Junior Lawyer (\$300 per hour)	6,000.00	12,000.00	12,000.00	9,600.00												39,600.00
SUB-TOTAL	31,200.00	58,200.00	58,200.00	46,560.00												156,360.00
Phase 2 - Data room review																
Partner					10,800.00	13,500.00	13,500.00	10,800.00								48,600.00
Partner						13,500.00	13,500.00	10,800.00								37,800.00
Senior Lawyer					14,400.00	19,200.00	19,200.00	15,360.00								68,160.00
Junior Lawyer					6,000.00	12,000.00	12,000.00	9,600.00								39,600.00
SUB-TOTAL					31,200.00	58,200.00	58,200.00	46,560.00								194,160.00
Phase 3 - Evaluation Report																
Partner									13,500.00	10,800.00						24,300.00
Senior Lawyer									19,200.00	15,360.00						34,560.00
Junior Lawyer									12,000.00	9,600.00						21,600.00
SUB-TOTAL									44,700.00	35,760.00						80,460.00
Phase 4 - Preparation for negotiations																
Partner										10,000.00						10,000.00
Senior Lawyer										15,360.00						15,360.00
SUB-TOTAL										26,160.00						26,160.00
Phase 5 - Negotiations with Preferred Tenderer																
Partner												27,000.00	27,000.00			54,000.00
Senior Lawyer												24,000.00	24,000.00			48,000.00
SUB-TOTAL												51,000.00	51,000.00			102,000.00
Phase 6 - Closing out																
Partner														27,000.00	27,000.00	54,000.00
Senior Lawyer														24,000.00	24,000.00	48,000.00
Junior Lawyer														15,000.00	15,000.00	30,000.00
SUB-TOTAL														66,000.00	66,000.00	132,000.00
WEEKLY TOTAL	31,200.00	58,200.00	58,200.00	46,560.00	31,200.00	58,200.00	58,200.00	46,560.00	44,700.00	35,760.00	26,160.00	51,000.00	51,000.00	66,000.00	66,000.00	
TOTAL																\$ 691,140.00

calculation: 4 hours per day X 5 days X \$540 per hour = \$10,800.00