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Procurement professionals are having an increasing influence on the law firm selection process of major clients and potential clients. Why is this? Is the trend likely to continue? How can law firms respond to the challenges involved? Mike Buchanan of LPS Legal, and Andrew Bass of BassClusker Consulting, answer these questions and more.

Procurement professionals

You're going to be seeing more and more of them

**Grant me the serenity
to accept the things I cannot change;
courage to change the things I can;
and wisdom to know the difference.**

--Reinhold Niebuhr

The way the legal business is changing, Niebuhr's famous plea has never been more apposite. Traditionally, the individuals engaged in the process of buying legal services for major organisations have been senior executives, sometimes with a legal background themselves, but rarely with any procurement expertise. In recent years procurement professionals (PPs) have started to become involved, and their influence on the law firm selection process is increasing.

The great military strategist and fighter pilot John R. Boyd pointed out that in a conflict (basically any win-lose game) the news you really need is the bad news – because that's what you've got to respond to. So we will risk the possibility of being the messengers who get shot, because after we've sketched out the problem we will move on to offer a number of ways to address it. The issues can be addressed by law firms willing to make necessary changes.

In case you're not familiar with the impact of PPs in other sectors, we can make the following reliable predictions about the likely effects on the legal sector:

- lower fee rates (15%+, see below)
- more objectivity in the law firm selection process
- more formal and robust agreements
- more measurement of performance, often with respect to key deliverables
- more success-based remuneration

The increasing involvement of PPs in clients' and potential clients' law firm selection process should therefore be the subject of considerable concern to law firms. PPs are spearheading the drive of major organisations to improve the value for money derived from their vendor base. And the plaintive cry "buying our sort of service isn't like buying widgets, you

know!" will cut little ice. PPs used to hear this regularly from vendors in other sectors – those vendors don't even bother to try it anymore.

Why are PPs increasingly being involved? There are many reasons, notably:

- the cost reduction potential for major organisations is very real with regard to their spend on professional services in general, and legal services in particular. PPs have a lot of leverage, because given the choice between losing one of your "top 10" clients or accepting a 15% reduction in fee rates, what would most firms do?
- the process of selecting law firms appears opaque to commercially-minded people, too "old boy network", too subjective.
- client executives may resent the level of remuneration enjoyed by lawyers and enjoy the opportunity to "take them down a peg or two".

PPs early involvement in the buying of legal services has brought significant cost savings to their organisations. As organisations are having to respond to demands for increased value for money from *their* customers, they have little option but to seek it from their vendors, which implies the introduction of professional procurement practises, whether by employing PPs, or through judicious use of procurement consultants or interims.

Most successful PP's, by virtue of their mindsets and training, derive great pleasure from commoditising goods and services, usually through exploiting marketplace competitive tension. The more a law firm pleads that its offering is distinctive – even unique – the more pleasure a PP will derive from proving it isn't.

So, how might law firms meet the challenge of PP's growing involvement? There are a number of options, which fall into three broad categories:

- 1) Seek to circumvent PPs and resist commoditisation by creating valued relationships with executives who can overrule, ignore or ideally choose not to involve them at all.
- 2) Alternatively, robustly embrace commoditisation and do it more effectively than your competition, so by their own logic the PP has to select you as the best option.
- 3) Gain a thorough understand of PP mindsets and use this understanding to improve your negotiating tactics.

Options one or two are the more fundamentally proactive, strategic choices in that they both aim (in different ways) to take the initiative and shape the competitive landscape. Option one may seem preferable to most in the profession, but option two is a businesslike possibility that looks very viable, especially for transactional work where there could be

potential for 're-engineering' delivery to be lower cost without eroding service quality. There may be no escape from Option 3, but we'd caution that if it's all you do, you'll be ceding the initiative to the PPs.

Let's look at a number of tactics in more detail.

OPTION 1: PREVENTION IS BETTER THAN A CURE

- *Appeal to the concerns and egos of senior client executives*

If PPs are not already involved, but there is a prospect that they will be, instil in clients' minds that their involvement would be damaging. At the simplest this could be a matter of remarking "Oh PPs are OK for buying widgets, but not for legal services....!", to rather more concerted attempts to influence their mindset.

Learn about client executives' priorities, visions, ambitions and concerns, and wherever possible couch your offering in terms of the contribution it makes to them. If you can get an emotional engagement with your value as an advisor, you are less likely to end up facing PPs.

Remember too that internal politics can have a big role in the decision process. The individuals with whom you've been negotiating rates to date may well have a personal interest in keeping PPs at bay, e.g. they could be open to criticism if a PP negotiates a significant reduction in fee rates.

- *Appeal to the subjective criteria of senior executives, not just the objective ones that the PPs will focus on.*

Good PPs will see your offering as a commodity until and unless you can persuade them otherwise. If you do try to influence them, be very tangible. PPs tend to dismiss intangible benefits out of hand –the more polite ones simply won't tell you they are doing it!

Actually this rejection of intangible benefits may show a lack of appreciation of your true value to senior executives and the organisation as a whole. For example, at present there is great concern about the implications of the 'Enron three' extradition case. There is huge value in the feelings of trust and reassurance that 'our legal advisors will protect us', and that value is a solid basis for high fees. This is a case of being 'reassuringly expensive'. No-one would ever boast that they had engaged a PP to track down the cheapest heart surgeon, for example. In these situations the PP's good deal may be no such thing. It may actively be against the interests of the organisation, and that is what you should be working to communicate to their bosses.

- *Make sure you've got solid non-procurement relationships you can tap into*

Cultivate and make use of both formal and informal connections in the client's organisation – this is a neglected area in many firms, and can be a great source of competitive edge. Informal contacts can provide invaluable insights into what factors (other than cost) will influence the decision making process. Establish the PPs real influence in the decision-making process – it may well be somewhat less than they purport!

We should acknowledge that there's a risk in this tactic if your efforts come to the attention of the PPs. But if they are hell-bent on knocking you down 15% with no concessions anyway, it may well be a risk you'll be prepared to take.

OPTION 2: EMBRACE COMMODITISATION

- *Embrace commoditisation and lead on cost*

A completely different approach – well proven in other sectors - is to consciously adopt cost leadership as a strategy.

We observed earlier that this approach may not be to most lawyers' liking. In a Legal Week article last year entitled *Precious Commodities* (17 November 2005) Tony Williams argued that trying to ignore or resist the trend towards commoditisation denies the increasing pressures now faced by general counsel to achieve more with less, to gain improved 'value', and of course, to apply procurement best practice.

A firm that embraces the trend would have to gear-up appropriately, and this would involve: greater systematisation and use of IT for repetitive tasks/standard situations, alternative pricing models (fixed prices, menus, value-based rather than time-based fees etc), together with people and operations management practices more commonly found in corporations as opposed to traditional partnerships.

Some of these changes require big cultural shifts and a lot of will from the top, but as Williams argues, to ignore the trend could be very dangerous unless your firm is able to continue to trade on a magic circle or similar reputation, or has exceptional depth of expertise in a specialist area.

Of course, if you adopt cost leadership as an approach, the PP's process becomes much less of a hindrance, maybe even a help, since you now have a fixed set of goalposts: if you offer best value, you should win the work.

The next tactic might uncover potential to improve your own margins if cost leadership appeals.

- *Become more professional in your own procurement*

Reduce internal costs to cushion the impact of clients' downward pressure on fees. PPs are rarely to be found employed by law firms, and even where they are, tend to have real responsibility for only a small proportion of external spend. Around 20% of major UK law firms' revenues are spent on around 40 goods and services that are highly attractive for professional procurement attention, and substantial savings may be expected. Example spend areas include IT, archiving, telecoms, stationery & print...

OPTION 3: HOW TO DEAL WITH PPs IF YOU HAVE TO

- *Develop appropriate negotiating competences*

Many observers have noted the discomfort of legal professionals with respect to commercial negotiations. And most commercially available negotiation training is too generic, and is not well suited to the needs of professional service firms.

However, the good news is that specialist support is available to greatly improve firms' and individuals' competences. Consider using a PP (whether an employee or consultant) to support lawyers in responding to processes such as RFP's, ITT's etc., both to guide them through the processes, and to devise negotiating tactics.

- *If the organisation is an existing client...*

The involvement of a PP is probably not good news for a law firm! Even if you keep hold of the client, it will probably be with reduced fee rates, and a more onerous agreement in general. In line with our suggestions earlier, work your contacts in the organisation. Do all you can to persuade the decision making team in the organisation (which will invariably consist of a number of people) of the potential risks of switching law firms. The PP probably won't be very receptive to the message, but the others will be. If nothing else, you should be able to command a fee premium over competitors in recognition that there is a cost of switching law firms, however intangible that might be.

- *If the organisation is a potential client...*

This is one situation where the involvement of a PP could be great news. PPs by their nature are unafraid of switching vendors – they switch vendors on a regular basis, and assuming they've acted competently, rarely have cause to regret it – so this could be an opportunity not to be missed. However, PP's extent of influence over the decision making process may be limited. Focus at length on tangible areas in which your firm is superior to incumbent vendors, and which are potentially of value

to the organisation. Find ways to help them reduce the cost and the pain of the switch.

- *Make the PP's job easier*

It is likely that the PP will adopt one or more formal processes (e.g. RFP, Request for Proposal) in order to inject a degree of objectiveness into the decision making process. If you haven't been able to avoid them, this is one of those cases where you need "the serenity to accept the things you cannot change". It is important that you respond to the process(es) in letter and spirit. PPs are adept at spotting responses that poorly answer the questions asked, and are infuriated when vendors clearly haven't made an effort to make the response easy to follow. You will get credit if you structure the response along the lines of the PP's document, i.e. print the PP's question in one colour, and follow immediately with your response, in a different colour.

Summary

PP's are here to stay, and law firms will encounter their influence more and more over coming years. There are choices in your overall strategy. We'd argue that as much as possible you either

- 1) adopt the approach of trying to circumvent them (which needs a lot of work on relationship building and influencing with senior executives), or
- 2) accept their logic, lower your own costs, and be better than anyone else at offering them improved value for money.

The choice depends on your strategic preferences, reputation, expertise, resources, and culture (and your ability to change that culture). The worst thing to do would be to not decide, and just hope the problem will go away. It won't.

Mike Buchanan is the Managing Director of LPS Legal, www.lpslegal.co.uk. Andrew Bass PhD is a principal of BassClusker Consulting, www.bassclusker.co.uk. They may be contacted on mike@lpslegal.co.uk and Andrew@bassclusker.com respectively.