Value Practice:
Employment Litigation and Counseling Portfolio Services on a Flat Fee Basis- Value Practices Implemented by Toyota Motor Sales, USA, Inc.'s Law Department

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Interviewed while Group Vice President and General Counsel
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Background

Toyota Motor Sales, USA, Inc.'s law department migrated late last year from a traditional 'fee-for-services' model for handling the company's employment work to a 'flat fee' for handling the department's employment litigation and counseling portfolio. Using an RFP process, the law department now has a two-year engagement agreement with a single firm to handle the company's litigation and counseling portfolio.

Following is a summary of the approach used to design a legal portfolio service arrangement.

High-level Components of Portfolio Service Arrangement

To identify the portfolio service provider, the law department put the company's employment litigation caseload and counseling out for bid. The process was handled entirely within the law department and was spearheaded by the company's Chief Employment lawyer.

On timing: the process took around three months from issuing the RFP to firm selection. On lessons learned to date: Reynolds notes that the process is complex and requires a lot of attention for whoever is managing these services in-house.

Key components include:

- ***Portfolio of services***- includes employment litigation caseload and counseling (with certain defined exceptions)
- ***Two-year engagement***- with opportunity to terminate at one-year mark and ability to discuss if flat-fee approach does not prove profitable for the firm
- ***Flat fee for portfolio of work***- paid quarterly
- ***Internal relationship partner-*** Chief Employment lawyer manages the relationship and makes ultimate strategic judgments on cases
- ***Law department determines law firm team-***alignment and staffing is important; engagement includes input on who is on the firm's legal team handling the portfolio

- ***Law department sends work to the firm-*** business clients send work to the in-house legal team; some matters are handled in-house and the arrangement covers the work that the in-house team does not handle
- ***Shadow bills***- sent monthly to help track efficiencies and success

Steps to Take to Value Portfolio and Set Service Arrangement

Asked about key steps to take to identify the portfolio of services and implement a portfolio-based service arrangement, Reynolds shares the following:

1. **Harvest internal data**- review flow of work for at least a two-year period; understand previous bills and 'buckets' for services and fees; important to be candid and thorough in exchanging historical cost and trend data.
2. **Define portfolio-** assess the law department's entire employment screen and determine which elements would be best served by a flat fee approach; carve-outs may include matters such as benefits issues or other matters for which flow is difficult to predict due to the highly specialized nature of the work; additional carve-outs might be any class actions or other litigation matters that may be ongoing or especially intense.
3. **Identify and invite firms to participate in RFP process-** Reynolds shares that firms were invited to participate in the RFP process; to define those firms, the law department started with firms that provide services for the law department and with which the department has been suitably impressed; additional screening criteria included having the 'right profile' to deal with the matters in the portfolio (including having a footprint that matches the geographic spread of the work).
4. **Design and issue the RFP-** the RFP was designed in-house and sent to firms invited to respond with some advance discussion; process included lots of dialogue and discussion as responses were prepared; time may take around three months from issuing the RFP to firm selection.
5. **Discuss responses with law firms-** Reynolds emphasizes the real value of having discussions with firms about service aspects that are important to the law department; discussions help probe the substance behind written RFP responses and clarify and confirm capabilities, including bench strength and more.
6. **Put it in writing-**whatever the arrangement, define the scope of what is within and outside the arrangement in writing; preserve the ability to discuss changes if the arrangement is not working
7. **Be willing to land where the inquiry takes you**- the goal is to select one firm to handle the portfolio of services; accordingly, Reynolds explains that GCs need to be willing to select the firm that prevails and disappoint those that don't—a silver lining for firms that participate but are not selected: there may be opportunities where the

prevailing firm is conflicted out or has no coverage, and the law department may decide to look first to those firms who participated in the process.

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