



Outsourcing in Tough Economic Times

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The Next Generation Law Firm™

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Quick Intro to FSB

- “Clean Room” approach to what a law firm should be
- 54 Partners (no associates)
 - Each Partner has 7+ years of experience and BigLaw training
 - 20 graduates of Top 25 law schools; 12 graduates of Top 10 law schools
- Elimination of needless overhead
- Result: Same quality, much lower price

Top Customer Questions

- How can we protect against our service provider having financial difficulty?
- How do we get out of the contract?
- Are service providers willing to accept more risk/liability in the current market?
- Should we consider re-negotiating our existing outsourcing relationship(s)?
- Is now a good time to consider taking work offshore?

Top Customer Questions

- What general sourcing strategies are receiving attention in the marketplace?
- How do you tailor documentation approach to service provider and type of deal?
- How do you structure outside counsel support and associated budget for negotiation?

Continuity Planning

How can we protect against our service provider having financial difficulty?

- Business continuity is the ability of a company to continue business operations notwithstanding changes to the company or its trading partners, and whether such changes are caused by unforeseen circumstances or otherwise
 - Direct Impacts
 - Indirect Impacts (i.e., caused by third party relationships)

Continuity Planning

- Exit Strategies
 - Triggering events for termination
 - Termination in whole or in part
 - Immediate or wind down over time
 - Key Question: What happens?
 - Unwind the contractual relationship
 - Backup plan (should be part of broader business continuity plan)
- Continuity Planning
 - Contemplate all credible worst case scenarios
 - Analyze by function level
 - Address pre-event planning (e.g., knowledge transfer, IP)

Termination

How do we get out of the contract?

- Service Level Termination
 - Establish performance objectives
 - Define metrics (and associated standards)
 - Prepare Service Level Agreement (SLA)
 - Determine how you will ascertain/prove compliance
 - Craft remedies for non-compliance (including termination)
- Types of Termination
- Effect of Termination

Termination

- Termination Charges
 - Unrecovered investments
 - Financed costs
 - Shut down costs
 - Termination for convenience charge
- Also consider:
 - Service provider mitigation obligation
 - Technology (e.g., equipment, software and services)
 - Service provider personnel
 - Redeployment should be the “aim”

Risk/Liability Allocation

Are service providers willing to accept more risk/liability in the current market?

- Contract Provisions
 - Representations and warranties
 - Covenants
 - Limitations of liability
 - Exclusions of damages
 - Indemnification
 - Other remedies
 - THE ENTIRE CONTRACT

Risk/Liability Allocation

- General Approach
 - Consider the events likely to cause a covered problem
 - Look at responsibility objectively
 - Evaluate responsibility by type and nature of services
 - Determine extent of responsibility
 - Consider the extent of damage likely to be sustained
 - Evaluate the type(s) of damage likely
 - Quantify the damages by type
 - Match responsibility with damage
 - Determine ability to effectively mitigate
 - Assess available leverage

Re-Negotiation

Should we consider re-negotiating our existing outsourcing relationship(s)?

- Capitalize on current market opportunity
- Create value for both parties
- Early renewal or extension
- Negotiate concessions
- Be creative
- Strategic planning

Offshore Strategies

Is now a good time to consider taking work offshore?

- Timing
- Enterprise level strategic planning
- Diligence and site visits

General Sourcing Strategies

What general sourcing strategies are receiving attention in the marketplace?

- Insourcing
- Multisourcing

Insourcing

KEY is to treat process the same as “outsourcing internally.

- Operational readiness
 - Organizational readiness
 - Service consistency
 - Strategic
 - Financial
- Application of structured methodology

Multisourcing

- What is it?
 - Stable of “best of breed” suppliers
 - Negotiate “comparable” deals with each
 - Solicit bids from “pre-qualified” suppliers
- Benefits
 - Business continuity – one vendor as back-up for another
 - Ability to scale to address future business needs
 - Healthy competition
 - Deployment of “best practices”

Deal Documentation

How do you tailor documentation approach to service provider and type of deal?

- Focus attention and diligence on which issues to address in the contract
- Focus more attention and diligence on which issues not to address in the contract
- Consider the nature of the service offering, and don't try to plug a square peg into a round hole
- Be wary of the master agreement “trap”

Legal Budget

How do you structure outside counsel support and associated budget for negotiation?

Legal Budget

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Legal Budget

How do you structure outside counsel support and associated budget for negotiation?

- Treat it as you would an outsourcing deal
 - Consider firm and attorney qualifications
 - Type of deal
 - Vendor
 - Strategy
 - Compare budgets (and examine details)
 - The insource versus outsource question
- Create negotiating efficiencies

Legal Budget

- Create Negotiation Efficiencies
 - Anticipate the end product of negotiations
 - Know your negotiating bottom line
 - Know the other party's bottom line
 - Develop negotiation plan
 - Obtain “early” senior management buy-in
 - Complete “internal” negotiations before commencing “external” negotiations
 - Identify viable solutions early

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