LEADING PRACTICES PROFILES SERIES

Law Department Leading Practices in Contract Management
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This Leading Practices Profile, a supplement to ACC’s 2006 Leading Practices Profile, Contract Management for Small Law Departments, features the law department leading contract management practices of seven entities who provided background on databases and repository systems, and contract review, approval and archiving policies. The Profile also features key practices for successful program implementation and best contract administration practices. This update expands the scope of the 2006 Profile by including entities with medium and large law departments.

The information in this Leading Practices Profile (“LPP”) should not be construed as legal advice or legal opinion on specific facts, and should not be considered representative of the views of ACC, unless so stated. Further, this LPP is not intended as a definitive statement on the subject; rather, it is intended to serve as a tool for readers, providing practical, benchmarking information to the in-house practitioner.

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OVERVIEW

This Leading Practices Profile provides a useful analysis of how four companies are managing their contracts and leveraging technology to improve enterprise efficiency. Representatives provided information on the contract management initiatives they have recently implemented or plan on executing in the near future. Company representatives also shared their opinions on the processes and software features they believe to be most beneficial in their contract administration.

Participant companies have businesses in a wide-range of industries and include a world-wide software, services and device company, a global technology infrastructure corporation, a full-service Midwest bank and an international telecommunications company. In-house law departments of the participant companies range in size from 3 to over 400 attorneys.

Section I of this Profile provides a brief introduction of the pressures and considerations affecting an organization. Section II summarizes themes and leading practices shared by the participant companies as they have made assessments of their own contract management programs and made pivotal decisions to transition to new software platforms. Section III provides details from the interviews with the attorneys and descriptions of how each of the four companies administers and manages their contracts.

This Profile features the following four spotlighted entities:

- Microsoft Corporation
- Hewlett Packard Enterprise
- Northwest Bank
- BT Group
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I. Introduction

For law departments with limited resources, it can be a daunting task to establish a means to maintain an effective contract management system. In-house legal counsel in larger companies frequently face the same issues, albeit on a different scale. As counsel from Microsoft noted, even a software giant can find itself with vendor-purchased software applications that are no longer supported. This demonstrates the need for all legal counsel to be agile when looking to outside vendors to determine the best replacement option for a system they rely on daily.

Successful companies have legal departments that appreciate that their contract process must coordinate with others within the company, especially sales and vendors, in order to make the contracts that are negotiated have a meaningful impact on the business being conducted. More and more, contract management is seen as a multi-faceted discipline that is improved the more input is elicited from those carry out its terms. By integrating the contracting process with other divisions, contract terms can reflect the needs of the business in real time. Lawyers can be seen as enabling the company’s business where their process can quickly turn around contracts, meet deadlines, and negotiate more favorable contract terms whether their company is the buyer or seller of goods and services.

While each lawyer recognizes that not all contracts can be prefabricated and templated, most realize that a good set of contracts or, at the very least, a library of contract clauses that have stood the test of time, are invaluable. The important thing is to be aware of the limitations of your software and templates, such as where they fail to closely consider the regulatory limits on your industry. The consensus is that there is no one-size-fits-all solution. However, by tackling even a small part of the process, a department builds momentum that can help them take the next step.
II. Themes, Trends and Leading Practices

Each of the participating legal counsel shared information on how they manage contracting and recording of agreements. While each company has different day-to-day operational and service issues, all have invested energy and effort into assessing contract management process needs and developing programs that make sense for their organization. Listed below are some practice highlights and common themes from the various programs that show the range of contract management initiatives and summarize certain aspects of these practices. Additional information on these practices and other related detail is found in the individual program summaries in Section II of this Profile.

A. Themes and Trends

1. Globalization Initiatives

Companies large enough to have in-house legal departments are likely striving to achieve, if not already maintain, global markets for their products. It likely goes without saying that stretching out to foreign markets is about more than buying advertising in another country and shipping goods beyond your borders. Widening a company's markets and, likewise, the demand for its products means that it must now comply with an entirely new set of regulations and marketing restrictions, which must be reflected in the company’s contracts. These problems, in turn, may be snarled with issues stemming from not only differences in currency but language differences and business culture and custom. Local counsel in foreign markets may or may not be used to dealing with U.S. attorneys. And while it may be true to believe that lawyers are all trained to "think like lawyers," lawyers in one country do not necessarily think like lawyers in another country. Further, differences in business ethics between countries can shade how a lawyer views its obligations to its client.

While adapting manufacturing and marketing agreements to a new set of regulations is generally the core of a legal department's responsibility, there may be emerging a push-back to the influx of new foreign business. Despite emerging trade agreements that regularly seem to dominate the news, the fact remains that new tariffs and import restrictions continue to be put into effect. The recent Brexit vote may be a sign to some hopeful multinational companies that while in theory globalization is good, outsiders will not necessarily be welcomed with open arms everywhere.

2. Budgetary Pressures

Even the most profitable of companies is aware of the fact that markets can change in the blink of an eye and know that the ones that survive are the ones that can operate flexibly with a mixture of in-house and law office counsel. Since legal departments are sometimes not seen as a positive contributor in a large company, or worse, viewed as a necessary evil, they are not immune from feeling the pressures of an often-shrinking bottom line. According to a recent article by Bloomberg BNA, some law departments are turning to the RFP process to contract for legal work. While this is initially creating some tensions between in-house counsel and their current law firms, the larger law firms appear to be settling.
Having to deal with tight budgets is an issue that is showing up in survey after survey of in-house counsel. Many are being asked to return more work to their internal staff, while numbers of internal staff are either not being increased to meet the new work load, or worse, the staff numbers are being cut.

3. Technology Concerns

Companies are very aware of the impact technology can have on their ability to cut costs. Many in-house legal departments have hoped to turn to technology for help resolving the personnel crunch. Often, however, the "solutions" turn out not to be the silver bullet they need. New software vendors continue to spring up in the landscape and determining which providers' products are the best fit for a company's contract management needs can be difficult. Many companies have learned the hard way that software systems are frequently designed to reach the largest segment of the market. Finding software answers that focus on the needs of any particular business or its particular set of regulations can be next to impossible. In addition, technology is not static. Apart from simply needing to run updates and back-ups of data, technology customers can fall victim to their vendors' continuous push to develop software to do more things and function across multiple platforms. This can create chaos when a software vendor decides to discontinue support of a specific software application that a legal department has come to rely on over the years in favor of something of more global appeal.

Security against data breaches and data "kidnapping" where hackers use ransomware to hold a business's data hostage is also a constant struggle. Legal departments now not only have to worry about viruses that destroy hardware, but they must worry about the effects of cyber-attacks where sensitive clients' data is at risk. While events under a business's roof are bad enough, the average business today must also concern itself with issues facing its vendors and other third-parties. Vendors may often outsource work to third parties leading to additional risks that may not be readily apparent. Cloud-computing that seems so attractive to customers anxious to cut down on the number of updates and back-ups and increase accessibility on the go, is not without its problems. Subscribers to such Internet-based software are only as secure as the company's servers they are accessing. Companies can also contract with a vendors they trust only to find out a short time into the term that the vendor has been sold, substantially changing the landscape and the security risk.

4. File and Database Management Initiatives

All of the companies interviewed have established contract files or hard copies of contracts on hand, either in the law department or, in one case, maintained at the site authorizing the contract. For databases, the following themes emerged:

- **Type of Database electronic, spreadsheet based:** All participants have some sort of electronic database in place, primarily spreadsheet based. Sometimes this database is only available to the legal department on a separate restricted-access computer drive, and for others, the database exists on either a company intranet or extranet with more or less restricted access.

- **Software:** Every company has its own way of addressing the electronic database. Some companies purchase or license software capable of hosting a contracts management database. Others have created a simple spreadsheet to host the database or relied on in-
house technical support staff to create a useful vehicle for the data.

- **Integrated Solution:** Contract management for one of the participants was integrated into the company-wide Enterprise Resource Planning (“ERP”) system. Here the law department’s role in actual contract management is limited to providing legal advice and entering data to record the performance of the activity. A contract administration department manages the process through the on-line system to ensure efficient and effective contract review and completion.

5. **Contract Database Maintenance**

The companies tasked the department administrative assistant with maintenance of the contract database. This task tended to be a significant or substantive part of the assistant’s job description; however, the task is not of high priority nor a primary focus for the individual in that role. Not one of the companies reported any issues with keeping the database current or experiencing any backlog in entry.

- **Paralegal support:** One company uses paralegals to enter the information into the company extranet, and the department secretary to scan the agreements into the legal drive.

- **Client maintenance:** Another company places the responsibility with the so-called “managing authority” for a particular contract; this individual is required to enter contracts as a record in the contracts database.

- **Integrated system:** For the company with the integrated systems approach, the contracts administration department has taken over the entry pursuant to the process laid out in the contracting manual.

6. **“Ticklers” or Calendaring Tools for Follow-up**

Not all of the participants have mechanisms to ensure that contract matters post-execution are addressed on a timely basis. The culture of some companies dictates that this job of managing company compliance or renewing expiring contracts is not the responsibility of the law department, but part of the business unit’s management and responsibility. Because of the nature of their work, some participants do not find follow-up tools to be useful. Other law departments would like to improve their current practices so that follow-up or renewal items are not overlooked and current contracts are better maintained.

- **Regular review:** One law department depends on the administrative assistant or contract administrator to review the database spreadsheet regularly and advise when follow-up or tickler items need attention.

- **Project-specific:** Two of the companies profiled noted that their businesses’ contracts are all project-specific and, as such, the law departments do not use a tickler system.

- **On-line tickler:** One company uses a tickler system for chasing down the final signed agreement and following up on future obligations. This tickler is based in the “task” feature of Microsoft® OUTLOOK located on a joint legal department calendar. Attorneys enter the tickler information and the paralegals are responsible for addressing the task.
when it comes up on the calendar.

- **Sole business responsibility**: For three of the survey participants, the business managers are solely responsible for day-to-day contract issues and performance, with law department advice and input as issues arise. One company notes that the commercial business people are responsible for managing their agreements in the first instance; however, since the company workforce has been shrinking, or when staff has moved on, the legal department inherits the function of follow-up.

- **Future plans**: One company hopes that the new system will provide for additional contract information and notification to remind the attorneys to take certain actions.

7. **Managing Risk and Liability Issues in the Contracts**

Most of the participants do not utilize their respective contract management systems to address issues of risk and liability present in the active contracts.

- **Not the Law Department's Job**: Several companies conduct their business from a clear position that the business manager is solely responsible for managing the risk and liability issues present in the contracts from his or her respective functional areas.

- **Volatile Workforce**: If the law department does enter any critical dates or other triggering events into an electronic diary or contract management system, it is solely as a back-up, with the main responsibility falling directly on the client. With companies with constantly changing workforce or facing reductions-in-force, often depending on the business manager is not the most effective means of managing the risk and liability issues inherent in the contracts. In these situations, the legal department tends to bear a higher burden of safeguarding the company from undue risk and liability issues arising from lack of follow-up or compliance with contractual terms and ongoing obligations.

8. **Use of “Boilerplate” or Template Form Agreements**

All of the companies interviewed use form agreements. Most provide their clients with form or template agreements for various applications pertinent to their respective businesses, although some companies maintain the template agreements solely for legal department use and do not allow the forms to be distributed throughout the company.

- **Location**: Companies that allow access to form agreements either share them electronically on a public or limited access drive, forward template forms with e-mail, or circulate them online through a company intranet or extranet.

- **Purpose**: Form agreements are used to increase efficiency in contract creation and improved response time to client requests. Some participants indicated that the templates allow the company to put its form agreement in play first in any given contracting need.

- **Who Drafts?** Those with a contract administration department start the drafting of basic contracts on the legal-supplied forms. At least one participating company allows the clients to use templates available on the company intranet; another contemplates implementing. LexisNexis(tm) HotDocs software on the company extranet for their clients
to draft contracts. Paralegals in some of the companies draft confidentiality agreements using the template agreements. For others, the law department uses templates or boilerplate forms but does not share them directly with clients.

- **Advantages:** Participants had a variety of reasons why they find form agreements to be a useful tool. Efficiency and response time from the legal department has greatly improved. Confidentiality agreements are quickly executed. Although use of the forms encourages the client to think in a consistent way, focus on the legal issues when negotiating a contract, and provides a good place to start, success nevertheless depends on the user’s level of education or training.

- **Concerns with Form Agreement Use:** Concerns with form usage varied greatly as well. One participant notes that there is danger in relying too much on a cookie-cutter approach in contracting. Some clients might borrow from previous contracts without making sure that special needs are being addressed, and often fail to omit redundant or superfluous clauses. Another voiced that there is always a chance a client will take a contract form and, believing to have a legally approved form (and thus an “approved” contract), proceed to contract with the customer. Using form agreements also requires ongoing training to ensure employees know how to use the most current templates. Also, the legal department must periodically revise the template agreements, and this can be burdensome to track if there are too many forms available.

- **Is Final Legal Review Essential?** Most of the participants profiled find that even if the client use the approved form or terms, final legal review is necessary. Others contend that, if an employee uses a pre-approved template agreement from the intranet, or it is a fill-in-the-blank type form that is signed by other party without any changes, the contract does not require legal review.

9. **Contract Review and Approval Process**

Nearly every participant has a company policy established for contract review and approval. Some promulgate a formal written policy throughout the company. Other companies have more of an understanding regarding when the legal department gets involved in contract review. Most do not have a “paper trail” or written documentation attached to any particular contract’s review or approval process. At least one participant has the entire process on the company’s integrated ERP system and has consolidated all review and approval activities into the contracts administration department.

- **Written Policy:** Around half of the companies interviewed indicated that employees are provided a written policy or memorandum regarding contract review and procedure. Companies without a written policy follow a strictly observed process of seeking contract review from the legal department; this understanding is affirmed through frequent verbal reinforcement.

- **Threshold Tests:** Companies vary extensively on their policy regarding contracts that require legal review and approval. Many companies establish a tangible threshold such as “any contract concerning over $10,000 in value or with duration of over one year”, “any contract with value over $50,000 or any contract that cannot be terminated with 60 days’ written notice”, “any contract over a year in duration or having a value in excess of $25,000 must either be created using the company template or receive legal review.” Some companies simply state that no contractual document of any kind that commits the
company to do anything can be signed without legal department authority, as evidenced by the physical initials of the approving attorney. Another company applies a threshold based on whether the contract has any potential risk obligation, for example, an indemnity. For agreements lacking an indemnity, the business person decides whether to seek legal review.

10. Future Planning and Focus

Most participants seemed fairly satisfied with their contract management practices but also plan to make improvements to the current process. Three of the participants envision a significant upgrade to their practices, either with a new overall system, or by adding more functionality to the current database or adding new software programs to improve client service levels.

- **More Efficient Contract Review:** Several companies plan to focus on improving contract review efficiency, including turnaround time and meeting the client’s timeline requirements.

- **Improved Follow-up:** Other companies want to strengthen their practices on follow through and timely procurement of final agreement originals back from the client.

- **Client Education:** These departments want to educate the clients to either take a better look at business terms of the contract prior to requesting legal review, or to develop a better understanding what information the legal department expects prior to effective contract review.

- **Database Upgrade:** A few of the participants are focusing on increased database control, including the scanning or imaging of the executed contracts into a database.

- **Records Retention:** Another objective requires tying the database system with the record retention policy so when agreements expire, proper company retention guidelines are automatically followed.

- **Self-Serve Legal Department:** One company speaks of gaining a 21st century level of legal service delivery and achieving a “self-serve” legal department in terms of contract creation.

B. Leading Practices

The interviewees were asked to identify aspects of their programs that they considered to be leading or best practices. The responses from each company varied widely. Below is a list of some of the program elements that they viewed to be leading practices in their particular working environment and industry.

- Use of a “tickler” feature in file management.

- Employment of an off-site corporate archivist. This person is responsible for creating a spreadsheet, sorted by company department, of all materials sent to the archives.

- Taking an integrated approach with overall contract management. One of the companies
interviewed is striving to select an ERP system that is the best fit for the organization without a lot of customization.

- Comprehensive use of e-Counsel(tm) software. One participant find this software package to be fairly sophisticated in its filing, data recording, maintenance, record retention, and billing functionalities, resulting in improved law department turnaround time and responsiveness on contract review.

- Firm establishment of the legal department’s role. For two of the interviewees, the client manages the execution and meeting of the contract’s obligations; the legal department only reviews the contract. For another company, a required legal review of all contracts is accompanied by a high degree of lawyer control over the contracting process overall.

- Digitization of all executed agreements. One company has established a secure database containing all agreements and limits the access to company personnel on a file-by-file basis.

- Extensive use of templates.

- Compliance with a defined contract review procedure.

- Establishment of a matrix of sales terms and conditions. This matrix includes:
  - List of common clauses
  - Links that “jump” to the relevant standard agreement clause
  - Definition of acceptable range of deviation from standard terms
  - Up-to-date personnel chart indicating those empowered to approve a change in standard terms.
III. Participant Profiles

A. MICROSOFT

Lucy Bassli, Assistant General Counsel, Microsoft

1. Contract Management and Organization

The key requirement of Microsoft’s contract management system is findability. With more than 100,000 employees, the contract management system must be user-friendly, thus allowing for the ability to locate a specific contract with ease while still controlling who has access to specific content. Other necessary components to the contract management system include the ability to manage control and access to contracts, visibility into what state the contract is in and manage expiration. The main role of contract management is to overcome the many challenges faced by large companies entering into vast amounts of contracts. Bassli comments, “the greatest challenge is control – and the empowered culture of contracting. It is difficult to maintain standards, [making it important] to explain best practices, and constantly provide access to training materials and self-help content.”

The goal is to reach a level of standardization with all contracts. For contract management purposes, “Technology needs to support the process,” says Bassli. “Storing contracts meaningfully with the right metadata and making them searchable and retrievable. Store well, search well, retrieve well. That’s the key.”

2. Apptus Contract Management

Bassli noted that Microsoft’s contract management system had recently launched a third-party tool from Sciquest; however, Sciquest is now ending support for that solution. Microsoft chose instead to switch vendors, and will transition to Apptus early next year.

Microsoft utilizes a set of contract templates that is available company-wide. The templates are in a locked-down format, making the system easy to use. Employees must simply input data directly into the template. Bassli notes that there is “nothing to prevent them from making their own contracts outside of the system” but that Microsoft’s internal education and rigorous purchasing and sales processes make that risk very small.

In terms of third-party systems for templates, Bassli emphasizes that the tools used “are what they are – we [Microsoft] buy best in class, but it’s a developing area.”

In response to the importance of data security for contracts stored electronically, Bassli says, “We take this very seriously. The key requirement is that cloud contract management providers coordinate with their security and they make it top priority.”

The role of the contract management function is “to understand risk mitigation and risk tolerance,” notes Bassli. “Microsoft believes in the cloud, and partners with its contract management providers to ensure best practices.”
Over the last decade, contract management has matured and come into its own as its own area of corporate practice. “An increased focus on contracting started with the downturn of the economy,” Bassli says. “Companies see the value of contract management now. At Microsoft, the legal department partners with our businesses to help evolve the contract management functions. The field is showing continued growth and the market is creating educational solutions for people interested in working with contracts. Contract management is becoming a distinct professional career path.

3. Leading Practices and Future Focus

As contract management evolves across all industries and types of companies, a variety of resourcing models are emerging. In many cases contracting falls onto legal departments out of sheer resource restraint in the business and then the obligation to get contracts done leaves the legal department with no choice but to somehow absorb that work. Bassli notes that “Legal departments, however, are finding new ways to handle that work within its department by leveraging Legal Process Outsourcing companies for less expensive legal support work or new forms of attorney staff arbitration at lower cost points that traditional law firms.” Contract management is a great example of pseudo-legal work that is changing the way legal services are performed.

The key to contract management, says Bassli, is for corporate counsel to “get internal policies aligned first. Understand risk mitigation and risk tolerance. Then go to process, and only then to automation.” By considering what needs to be in the contracts first, corporate counsel will better understand what is required of the contract management system. As Bassli advises, “Tools need to come last. Don’t look for a magical tool. Make a solid process, and then automate it.”

B. HP ENTERPRISE

Steven Walker, Vice President & South Pacific Counsel for Hewlett Packard Enterprise, South Pacific

1. Smart Solutions for Contracting

HPE’s Office of the General Counsel (OGC) identifies technology and innovation as a cornerstone of its strategy, and invests in sophisticated solutions to support and enable how it delivers services for the contracting process lifecycle for HPE’s direct-to-customer products and services business. Steven Walker, Vice President and South Pacific Counsel for HPE in Australia and New Zealand, explains that the difference between how the OGC delivers these core services a few years ago and today is "night and day."

For the OGC, this is the result of a transformational journey dating back to 2012, at which time the department comprised some 1,100 lawyers and contracting professionals across the world working on customer transactions. Walker explains that historically, corporate legal departments captured data on staffing and internal/external spend, but little else. Decision-making around strategy and management was mainly through manual data gathering, and the experience and gut-feel of seasoned managers, who were typically promoted because they were great lawyers, but not necessarily great people leaders accustomed to managing by metrics. The OGC set itself the transformational challenge of process re-engineering and modernizing using smart solutions delivering sophisticated tooling and instrumentation – generating real time data – and simplifying and harmonizing positions and practices, to become a best-in-class department operating on the basis of data-based decisions.

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Walker describes the migration towards embedding legal technology across the department as assisting the OGC to “generate crucial data on our workload and services, manage our services better, and enable data analytics around how and where the department is spending its time, and enabling insights into how and where we should or shouldn’t be spending our time, and how we can do things better and more quickly for our clients, and ultimately, HPE’s customers.”

The building blocks underpinning this transformation were a unified and simplified set of templates and commercial norms (or contracting positions) across HPE’s businesses and regions, coupled with re-engineered contracting processes which were leaner, simpler, and more efficient. This re-tooling was deployed along with a customized version of Apttus, which is a contracting solution native to Salesforce.com, the CRM system used by HPE. Business clients submit requests for legal support within Salesforce.com, which are then routed to legal managers who can dynamically route (and re-route) the work for optimum support, whether co-located with the client or the OGC’s offshore legal services captive. The contracting professional accesses deal information online in real time, from a PC or mobile device, working within the tool for the transaction lifecycle. Key transaction documents and information (e.g. customer name and industry, product and service scope, deal type and size, risk assessments, drafts, and governance opinions) are captured along with additional metrics, such as turnaround time and time to assign legal support. The introduction of this platform allowed the OGC to exert control over its workflow and begin data intake for contract support services. Several hundred OGC users fielded over 14,000 requests for legal support in fiscal year 2015.

Walker explains that the OGC implemented an additional application (Midaxo) for contracting professionals working on complex, high-value services transactions (e.g. outsourcing), to provide enhanced support in the form of workflow, decision-support, checklists, and templates. These contracting applications are augmented by additional home-grown and third party tools – from digital signatures to KPI monitoring and analytics – helping the OGC to manage contracts in both pre-award and post-award phase. Walker is excited about the future prospects for harnessing data-driven insights as the OGC continues to mine information on its services, giving rise to impactful, targeted improvements for the benefit of internal clients and HPE customers. OGC managers already access dashboards of vital information, such as time taken to assign legal support, volume of inbound and inflight work, as well as crucial business-outcome metrics (integrated into service delivery), such as time taken to complete transactions, and time-tracking data on time incurred engaged on particular transaction categories.

2. Future Contract Management

Walker believes that while contract management has truly established itself as a discipline in its own right, there are opportunities to evolve, and challenges ahead if it does not.

The most fertile ground for disruption is in the initial sourcing phase. Walker believes that the traditional adversarial model for major technology procurement is no longer fit for purpose for purchasers and vendors, and requires revolutionary change. The model has long been characterized by people-intensive processes and extended negotiation periods with a prolonged focus on both impractical allocations of (frequently theoretical) business and economic risk as well as possible ‘divorce’ scenarios, while parties inch to the commercially palatable middle ground. This is an artifact of well-trodden paths intended (justifiably) to manage perceived risk, yet it undermines focus on the ‘marriage’ of willing commercial parties, and the very collaboration in terms of shared success, pragmatism, trust and relationship-building required for relationship longevity. Delays in sourcing impede purchasers and vendors from rapid realization of business outcomes in fast-moving, competitive environments and will become increasingly intolerable. Walker says that "contracting professionals have a duty to evolve and innovate, to talk to clients about what success
means for them, rather than assume doing same things same way will get best outcome into the future.” Lawyers and contracts professionals should not take for granted that they will be the default choice to lead sourcing functions in the future, as technology becomes smarter and artificial intelligence eats its way up the food chain.

In the coming years, repetitive activities in sourcing engagements will be increasingly performed by technology, and online platforms will become the norm for intermediating between customers and suppliers for initial engagement and management of relationships. In the technology sector, at least, volume contracting for standardized offerings will become the norm, and even major procurement exercises will be on the basis of standardized online forms, with some degree of choice and customization integrated into online contract builders operating against pre-determined decision-trees. Contracting professionals must adapt to incorporate these tools, re-calibrate their approach to business risk, and in doing so, maintain their relevance while demonstrating value to frustrated business clients under pressure to deliver timely business outcomes.

3. Practices for Leading Legal Departments

Walker advocates five pillars for leading in-house departments, who are striving for continuous improvement and ways to meet the ‘more for less’ challenge. These pillars must be built upon a robust and deliberate people strategy which, put simply, addresses the need to retain or attract the talent needed to ensure so that the right people are in the right jobs at the right time.

The first pillar is that the department should have a deliberate service delivery and sourcing strategy for the next 2 – 5 years. This starts with, “a thorough evaluation of the end-to-end services portfolio. The key questions are: (a) where is the department spending its time today and on what; and (b) where, in the future, does the department need to spend its time, and on what, to support the client’s business strategy. A horizontal (outcome level) or vertical (activity level) segmentation approach may help.” A legal support model should then be developed with the overriding objective that “precious legal resources (whether internal talent or external spend) should be allocated to activities which are either highest risk or most strategic in terms of competitive edge for the client. Services or activities which are repetitive, susceptible to commoditization or of relatively low risk or reward to the client should be unbundled and administered via the most efficient sourcing strategy, whether it be internal, external supplier (e.g. law firm, LPO/LSO), technology, or a blend.”

Second, the department should foster a culture of innovation so that staff appreciate why it is vital to actively and deliberately look for ways to do things differently and better, and in so doing, they become receptive to new working methods and tools. Third, the department should develop a lean habit, ruthlessly applying lean principles to department business processes. Walker says, “Lawyers are a little like sharp instruments, and waste in legal process (e.g. unnecessary or inefficient governance) tends to blunt them quickly.” Fourth, identify whether the department has the necessary legal operations capability (project management, change management, process experts, technical and financial support) to enhance its fitness for the future. This capability is vital for modern legal departments.

Finally, the best departments will have a technology roadmap underpinning and enabling these pillars. If they haven’t already, legal departments should invest in the tooling to take control of their workflow and data/document environments through the many new legal solutions available. Workflow systems should support management of inbound client workload as well as operations (e.g. billing). Contracting systems should not only help staff to do their work more efficiently and achieve better outcomes for internal clients and customers, but also deliver business intelligence and real-time reporting for managers, shining a bright light into previously dark spaces, and enabling the

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development of integrated KPIs and metrics aligned to business success. This will help general counsel and legal managers articulate the value of the legal function in data-driven terms, and maximize the prospects of capturing CEO/CFO engagement, and therefore, investment in the legal team. Legal budgets are notoriously under pressure, so Walker recommends considering opex opportunities via subscription models as an on-ramp to new technology.

C. NORTHWEST BANK

Richard Laws, Executive Vice President, Chief Counsel; Matthew Loranger, Assistant Vice President; and Tom Townsend, Chief Risk Officer,

1. Contract Management and Organization

Northwest Bank operates under a two-part Third-Party Risk Management Program: risk management and contract management. Both parts of the Program are “owned” by Northwest’s Risk Department with assistance provided from subject matter experts throughout the Northwest entity. Initially, the business units utilize Program documents to determine whether formal bidding is required and thereafter works with the Risk Department to complete due diligence on involved third parties. Once decisions are made, the Northwest Legal Department works with the business in all areas of contract development and management. By allowing the Legal Department to lead this effort, regulatory requirements can best be fulfilled and the business can work directly with subject matter experts in the Legal Department rather than channeling questions through the Risk Department and having them act as a conduit.

Northwest uses VendorPoint as the vendor management solution, with document tracking provided through its own SharePoint site. “The difficulty with these systems,” notes Loranger, “is that there is no break between onboarding new relationships and handling existing relationships.” Given that banks face regulations from several different sources, “no software solution models itself on a particular regulatory scheme – for example, the solution does not always mirror what the FDIC wants,” says Loranger. “It would be nice to have a solution that modeled itself on FDIC requirements,” he notes. Currently, Northwest customizes all of its efforts to satisfy all regulatory requirements.

2. Contract Management Program

The biggest concern on the legal side of contract management is that third-party risk management is a very high priority for regulators, says Laws. “There are high standards to meet, [standards] third parties don’t always meet.” The contract management role, therefore, must include asking “vendors to do a lot of things they don’t always want to do because the bank has to do them.” The key with this effort is to “work with the business through all phases of the on-boarding process so maximum leverage can be applied to achieve regulatory goals and requirements,” says Laws. The problem to avoid “is getting to a place where a third-party is selected; commercial elements are negotiated; and, the business simply expects the Legal Department to get the contract in place,” added Laws. Fortunately, Northwest has developed a Program that avoids this common problem.

Moreover, the consolidation of third-parties has become a more prominent issue, as the industry has seen a shift. “Vendors have become one vendor, adding something of a consolidated risk factor.” In
response to this shift, Laws advises that contract management include “stay[ing] on top of mergers and acquisitions to make sure new entities are as good as the old ones.” Additionally, “adding something in every contract that says the contract can be assigned if the vendor is bought, but the vendor has to give [him] advance notice and let [him] do due diligence on the buyer.”

3. **Contracts and the Regulatory Environment**

Banks are subject to one of the strictest regulatory regimes, with few other industries facing the same level of regulation. “It is a challenge for any bank,” says Laws, as “they are at the intersection of a dozen regulations – Gramm-Leach-Bliley, other privacy regulations, federal and state guidance, etc.” This large intersection of regulations makes understanding the system that much more difficult, with a lot of companies falling “behind the eight ball on reading and understanding all applicable regulatory guidance.” This struggle is something that could negatively impact banks as third-party and contract management continues to grow and change. “We live in a fast-moving world,” says Laws, so “get moving – know and understand the regulatory guidance and build a system. Get out to your business lines and educate them on the importance of contracts and really knowing who your providers are.”

One thing Northwest has done to help minimize risk associated with third-party contracting is to develop a library of standard Northwest contracts for use by the business with pre-approved legal language. Laws noted “this not only minimizes risk, but also makes things much more efficient as the business can get to the point of execution much quicker if they use our templates.”

4. **Leading Practices and Future Focus**

“Contract management has become more sophisticated,” says Laws. “With the increase in regulation in the last decade, especially in the due diligence, privacy and security areas, there is more discipline and sophistication in contract review and negotiation.” Emphasizing the increased role of cybersecurity, Laws explains “The bank is not only responsible for third parties, but also for fourth and fifth parties. Buyers of goods and services used to just pay attention to prime contractors, but now you must know the other contractors the prime uses and understand who they are from a risk perspective.” This increase in due diligence has inevitably led to an increase in time devoted to contract and third-party risk management. As Townsend comments, “Three or four years ago, contract management took up only 15% of a person’s time. Now it’s a fulltime position. In order to be successful, the company needs a dedicated resource.”

In terms of best practices for banks, always remember the strict regulatory regime they face. “Even though bank examiners have been saying risk management is a priority, secondary sources suggest a lot of banks don’t have a good third party risk management system in place,” comments Laws. Laws suggests that all banks actively develop a strong risk management system that highlights the importance of contracts and third-party risk management. Laws advises, “Companies need to pay more attention to contracts than ever. Every contract must have clear terms and conditions dealing with confidentiality, termination, limitation of liability and disclaimer of damages and other issues of regulatory and commercial concern.” On top of that, Laws noted that, “once the contract is executed the work really only begins. A system must be developed to conduct ongoing risk assessments (depending on the risk rating of the third-party) and to escalate concerns or service level issues to those in management who can score the third-party and utilize other subject matter experts to make decisions for Northwest.”

Laws added it is important to consider attorneys who have a strong software background. Laws
noted that he was “brought up’ in a direct bank,” so he developed a solid understanding as to how software and banking intersect. “This helps [him] deal with these issues [and] better educate the board and other stakeholders within the bank.” Laws added “It’s no secret that we live in a highly complex, fast-moving, and technological world. Attorneys must be quick on their feet and stay abreast of all the issues impacting their business lines and the transactional divisions.” As Townsend notes, “If something goes wrong with a third party – it is hacked, and the hack goes to customers – that is the bank’s problem. The bank screwed up, even if they did anything wrong. This places great importance on knowing your third-parties almost in the same way you know your customers and having teams in place to deal with such issues.” Laws concluded, “You can outsource services, but never the risk. Don’t wait. Get serious about the issues; know who you’re dealing with; and protect your business and customers.”

D. BT GROUP

Dr. Stefan Winghardt, Managing Director & Head of BT Legal Germany & Austria

1. Contract Management And Organization

The BT contract management system allows key issues to be visualized in a “cockpit” format. Red, amber, or green status is displayed for contract monitoring from prospects and pipelines through to finished orders. Contract managers can thereby monitor KPI trends and performance, and use that data in joint regular reviews with the internal board and with the customer. The system also includes a risk register connecting with risk mitigation strategies; onerous terms; and key assumptions and dependencies.

The organizational set-up is mission-critical to BT’s contract management function. BT is currently reshaping the organization in Germany. Presently, contract management is organized under business operations rather than in the legal or sales departments. This raises an issue because reporting responsibilities have been unclear, and the CM role is not connected to customer-facing functions or to legal and compliance objectives. The new model is to streamline the contract management role to focus on actual customer needs, business growth, as and risk prediction and management.

“In the new organization, contract management will have direct and dotted line functions to enable the triple legal/commercial/business job of contract management: growth, service quality combined with contract compliance, and dispute management,” says Winghardt. “Contract management is moving from a reactive administration role to a proactive center of excellence and SPOC function for all ongoing matters.” The challenge is upskilling individuals to fill that expanded role.

2. Contract Management Role

In the current environment, Winghardt says, “there is a high expectation of quality alongside a high degree of cost-awareness, end-to-end service, and an in-depth understanding of business.” Contract management combines two conflicting interests: pleasing the customer, while defending the company against potential claims from those customers. To strike that balance, a contract manager needs to be aware of the details of the company’s contractual obligations in greater detail than others in the company.

“The contract manager needs to rely on instant and thorough support of legal, procurement, and
service management,” says Winghardt. With that support, “the contract manager can find that balance of prioritization” while giving legal the right information at the right time.

BT offers a wide range of network services, from standardized connection products to complex outsourcing solutions and consulting matters in the areas of unified communications, cloud computing, and security solutions. This diverse set of offerings requires an individualized approach to find the best-fit solution in each case. “The contract management approach also needs to be flexible, and focus on prioritization and a partly-modularized service approach,” states Winghardt. “In order to be efficient and to establish a learning circle within BT we therefore develop contract and organizational models to categorize different types of requests and issues to translate them into modular and part-standardized solution responds.” This approach includes standard contract templates for requests that happen on a more frequent basis combined with models for how to proceed on other scenarios, such as flexible contract models for contract extensions and change of control situations.

3. Data Protection

At BT, data protection starts with the organization of electronic files. The legal department developed an internal archiving handbook determining which contract data are stored, where, who has access to it, who is the responsible party, and how should it be filed in the repository, among other issues. Access rights are managed and monitored by the system administrator, while the filing process and ongoing access is separately tracked and internally audited. BT does not allow contract materials to reside on individual hard drives or personal devices.

BT uses proprietary security and cloud computing solutions to manage:

- Encryption devices.
- Secure and quick submission of large documents.
- Network access control and privilege identity management.
- Firewall, intrusion detection, threat monitoring, and managed log retention.
- Data back-ups.

4. Leading Practices and Future Focus

Over the last decade, contract management has changed from “a simple contract extension and change management role to complex project management role” that enables sales initiatives and incorporates aspects of a business consulting and risk and compliance management. Most recently, Winghardt says, “Contract management is becoming even closer to the sales role to expand and improve customer relations and to support achievement of business and compliance targets. These objectives require changes in the organizational structure behind the contract manager, with direct allocation of support functions.”

One leading practice is a clear understanding of the role of contract manager versus other functions in the organization. “After contract closure, who is dealing with the subject matter and ensuring that KPIs and milestones are met, that suppliers are properly involved, that cooperation obligations of customers are met, that contracts requirements are observed, and that legal communication is issued
where necessary? The company should set up a RACI matrix for each function to understand delimitation and responsibility.” Winghardt emphasizes. At BT, “It is key to involve contract management early in complex projects to understand the hot spots where difficulties can arise in the transition phase after contract closure.”

Winghardt recommends contract managers look into parallels in the construction business, where project control instruments are very developed and reflect critical path organigram and phasing models. These models are instructive for other industries. He also emphasizes that it is important to maintain proper legal communication around contracts. Winghardt notes that contract managers should “understand in advance what the team would like to achieve in a meeting / conference call; draft written minutes after meetings and include action owners and time lines; and note in the minutes if there is a common understanding how to solve a current issue under the contract. If there is a dissent, what are next steps to overcome that dissent? Tracking these contract activities is essential.”
IV. Additional Resources

Please note that inclusion on this list does not constitute a recommendation or endorsement for any product, service or company, nor is the absence of any product, service, company, or resource from the list an indication that it is not worthy of your attention. The following are simply resources identified by companies interviewed or by ACC as items of interest that may be helpful to you if you wish to pursue this topic further.

A. ACC Resources

1. Leading Practices Profiles

Leading Practices in Providing In-House Legal Support for Corporate Governance Initiatives and Compliance and Ethics Programs (2016)

Leading Practices in Law Department Staffing: Allocating Internal and External, Lawyer and Non-Lawyer Resources to Drive Value (2014)

Legal Department Leading Practices for Adding Value and Moving Beyond the Cost Center Model (2010)

2. Education Programs

Preventing Litigation Through Contract Drafting Skills (2016)

Contract Lifecycle Management? Endpoint or Starting Point? (2016)

Risk Mitigation through Contract Lifecycle Management (2016)

Implementing a Contract Management System (Roundtable Discussion) (2016)

The Technology Choices We Make (and Why They Matter): Identifying and Addressing Risk Issues in Technology Contracts (2016)

3. Additional ACC Resources

http://www.acc.com/legalresources/quickcounsel/dmcmrmakms.cfm

Contract Management: What is Realistic for My Department?
http://www.acc.com/legalresources/resource.cfm?show=1301091

New GC? Top Ten Ways to Succeed in Your New Role

Small Law Department Contracting Manual
For more Leading Practices Profiles please visit http://www.acc.com/legalresources/lpp
Organization, Productivity and Effectively Managing Workflow
http://www.acc.com/legalresources/resource

Top Ten Innovations to Improve Enterprise-Wide Contract Management,

Contract Processing and Management Policy for Non-Procurement Contracts, Policy, May 2010,
http://www.acc.com/legalresources/resource.cfm?show=1184122