THE LOW DELTA FIRM: Demise of the Low Ball?

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If you are racing to stay competitive in today's rapidly-changing legal marketplace, you probably have learned some new words and acronyms.

- Convergence programs.
- Alternative fee arrangements – or AFAs.
- RFPs, those increasingly draconian client requests for proposals.
- LPM, that is, legal project management.
- LPOs, those legal process outsourcing enterprises.

The Key Selection Criterion

All of these neologisms focus on the most salient feature of the current legal landscape: the client is driving. Client demands for better efficiency, predictability, cost-effectiveness and communication are being translated into a new set of selection criteria for outside counsel. Chief among these is the ability to deliver the goods, consistently, as and when promised.

For in-house counsel, a single metric now rules supreme: ***Actual to Budget***.

In other words, clients are using their increasingly sophisticated financial analysis tools to monitor how closely your firm's actual billed fees parallel the estimates and budgets you trotted out early in the engagement. Many are using LPM in their own departments. *(See At the Intersection post, http://www.pamwoldow.com/2010/08/23/legal-project-management-moves-in-house/)*

The Pitch: Low and Away

We all know that historically, low-balling has been a common practice: a firm bids whatever number will snatch the business (whether or not the number is realistic or the firm can make a profit at that number), and once the firm gets in the door, is securely entrenched and has the meter running in a given matter, rate ratcheting begins and escalates.

For the client, the problem, of course, is that this practice produces huge variations between projected budgets and final bills. Obviously, blown budgets and constant overruns play havoc with a General Counsel's ability to forecast budgets for outside legal spend and make a mockery of the predictability of a legal department's budget. All too often, it causes the GC to lose face and credibility with the company's management: *Our other departments manage to their budgets. Why can't you?*

The Delta Force

Today, therefore, GCs are spending a *lot* of time scrutinizing the "delta" – that's math-speak for the difference – between budgets and actual fees of various engagements. High deltas mean a firm is not consistently delivering on the promised budget. Perhaps the firm is low-balling estimates and ratcheting fees later, or gaming the relationship. Or maybe they simply don't know what matters cost and are making "wet-finger" guesstimates. Whatever the cause, these budget-busting practices illustrate the maxim: "To guess is cheap; to guess wrong is expensive."

Down, Delta, Down!

So expect to begin hearing a new phrase that more clients are using to praise outside counsel: ***The Low Delta Firm***. This phrase signals a shift toward greater client vigilance regarding what is promised and what is delivered. Being "Low Delta" denotes a firm that can provide accurate and realistic budgets and then manage to those budgets. It suggests a firm that is willing and able to be held accountable for both efficiency and consistency.

Is your firm a Low Delta Firm?