HOW TO Establish Predictable Pricing for Litigation Support

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Is pricing for legal support services backwards and unpredictable?

Historically, e-discovery services are priced based on the amount of data in the initial collection and through processing on a gigabyte level. Of course, the initial collection number often increases as the compressed files are opened and their true size revealed. Then, the hosting piece is calculated based on both the volume of data and the number of users that access the system for review. Add to that some project management fees and you have, well, a big unpredictable bill.

In the insurance industry, customers can choose from fixed, variable, and term rates depending on their level of risk exposure and budgetary constraints. Using a similar line of thinking, how can corporate legal departments use their negotiating power to maximize services rendered while minimizing exposure to unforeseen costs?

First, let's take a quick look at the pricing options that exist in the industry, and unpack the pros and cons:

A La Carte
In the a la carte model, you take each component of the project (collections, processing, hosting, etc.) and price it out with multiple vendors. This tactic of promoting competition between vendors ultimately drives down costs, and can be a good deal if the various vendors work well together. The downside is that you can waste valuable resources and man hours negotiating handoffs between companies and coping with any technical issues that arise.

Hourly
In this case, the work being done is not tied to the size of the data set, but rather it focuses on the manpower required to do the work—which, in reality, may not be all that different for processing 100 gigabytes or 100 terabytes. On the other hand, a human (not hardware) driven model creates a financial disincentive for the vendor to utilize technology and process innovations that will reduce the amount of human time spent on a project—which is a bad thing in any technology-driven service area, such as e-discovery.

Per Custodian
If you know the number of custodians involved, negotiating a set fee to collect and process data on a per custodian basis helps manage the bill and minimize any surprises. That said, if the per-custodian rate factors in high-volume potential, there's a decent chance you will overpay.

All-In
The more work you offer to a given vendor, the more negotiating power you have. With full transparency and predictability of costs, corporate legal departments are increasingly moving in this direction. But what are the risks involved?

Just like per-custodian pricing, this opens you up to overpaying. The per-gigabyte model can be fairly effective in that it establishes a unit price that can be negotiated against multiple parties. With the "all in" model, vendors lose a guidepost for setting prices, which will ultimately result in market distortion and finally less competition. The "all in" approach may be effective if you already have a vendor you're comfortable working with and you want to establish more favorable pricing based on past volumes, but it's never without risk. No company will hazard going into the red in the event of a massive-volume project, so the final cost negotiated will surely have some insurance built in.

So given the pros and cons of the various pricing options, how can corporate legal departments guarantee high quality services that are both affordable and predictable?

There is a two-pronged approach corporate legal departments must take to limit the scope of payouts. The first is to fully vet all vendors in advance. "I don't have time" isn't an option if managing costs is priority—start the process now anyway. The worst time is when you have an existing matter and you need to make one hundred immediate decisions. Reach out to your current vendor and at least five others with an RFP. Get some new players in the mix, too, and find out what technologies or process innovations are they using that your current vendor is not. Second, discuss pricing now. Decide which pricing option is best for you and then set the agenda at the negotiating table. In the end, this strategy ensures that your chosen vendor is building a solution based on your needs, not forcing you to follow theirs.

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