

How to Be a Smarter Buyer of eDiscovery Services

Summary of transcript of Brian McManus's speech at the Information Governance & eDiscovery Strategy Exchange in Washington, D.C., as prepared for delivery on Sunday, 8 September 2013.

Introduction

Brian McManus, CEO of Lighthouse, a practicing lawyer from 1982-1993 and telecommunications and technology executive since 1993, kicked off the IQPC conference, by noting that this is a great opportunity for all of us to check our practices against our peers, and to learn about the challenges and opportunities that lie ahead for the industry. Lighthouse is an ediscovery service provider, and we focus on helping our mostly corporate clients improve their ediscovery practices and reduce their overall ediscovery spend.

With Lighthouse as tonight's cocktails sponsor, I have the privilege of providing some food for thought to chew on over your cocktails. I am going to talk you about how to be a smarter buyer of ediscovery services. The three categories of recommendations I am going to make to you tonight are these:

1. Identify and vet providers who you can PARTNER WITH; that means find a service provider with whom there's a good cultural fit, that is, your interests and capabilities are mostly aligned, you like them, and you trust them;
2. In your contract discussions, use your negotiating leverage, but CREATE A HEALTHY PARTNERSHIP, not a Win-Lose relationship, and pay attention to some often overlooked but important items to include in your contracts; and

3. You're not finished as a buyer when you sign your contract. You need to get your workflows organized at the outset of the relationship, and then make sure that there are periodic check-ins and connections to ensure that your objectives are being met and to identify areas for improvement.

Sounds simple, right? Ok, let's get into some practical details on how to find the right fit, how to negotiate a fair deal, and how to focus on implementation post-deal, as part of your buying process.

Vetting Your Service and Technology Partners

First, before you even engage with the candidate pool, know what you're looking for. Some steps often omitted in the buying process are:

- a. Talk to all the right stakeholders in your organization;
- b. Prioritize what's **most** important to your organization—**not all requirements are created equal**.
- c. Engage outside resources if needed.
- d. Identify what areas of the EDRM you are going to be insourcing during the course of the relationship, and make sure the candidates fit that insourcing model.

Second, find the right pool of candidates with which to engage. Some commonly overlooked tasks:

- a. Talk to people who know the space. There are a myriad of networking groups like this one: CeDF, ILTA, the ACC, to name a few. All of you have outside counsel or other trusted partners (e.g., us, Hudson, Nuix, kCura, etc.), who can help you identify the right candidates based on your key requirements.
- b. Decide upfront if you should focus on small/medium providers or large providers; you can look at both, but, if you do, you probably haven't really prioritized your requirements. Here's a sampling of questions to help you decide which type of provider is likely right for you:
 - i. Is multi-continental coverage by one partner critical? Large by definition.
 - ii. Is it critical that you have an end-to-end service provider? Large, because they'll have depth at each stage of the EDRM.
 - iii. What consulting needs are critical? Large firms have more depth; but, with smaller firms, you can often get a more senior person to engage throughout your project.
 - iv. Is cost or predictability of spend critical? Smaller providers are more flexible on price and pricing models.
 - v. Is workflow and tool flexibility critical? Smaller providers have more flexibility and are more likely to be innovators rather than followers. Also, if you have a significant investment in-house in Clearwell, Recommind, or other processing and culling tools, you are more likely to be happy with a smaller provider with more flexible and adaptable workflows.
 - vi. Is it critical to you to have influence on your provider's product development roadmap? You will with smaller providers.

Third, once you've narrowed your pool through talking with other knowledgeable folks and deciding which type of providers are likely to be a good fit,

conduct an RFI/RFP process. This is a time-consuming process, but the only way to build something great and long-lasting is to start with a strong design. Three types of questions and one step in the RFP segment of the process that are often overlooked are:

- a. How do the service provider's metrics map to your current metrics? E.g., do you know your cull rates, or your spend per custodian for the relevant part of the EDRM for which you are buying services? Do you know your current error rates or your current exception rates for your processing tool or review services? Etc. Make sure that you know your current metrics, so you can evaluate the candidate's stated metrics.
- b. Does the service provider have SLA's? If you're not asking your candidates if they have SLA's in place and how they've performed against them, you are missing an important opportunity, and some telling answers.
- c. If you are buying software and services, questions that would be commonly asked if you were buying software only are often forgotten, such as, are there hidden costs like upgrade fees, maintenance fees, or other types of fees that should be part of what you are buying?
- d. Lastly, a step often overlooked in the RFP is including a proof of concept or scenario plan, where the candidates take a set of data and walk you through their end-to-end process and results. In my experience, not many buyers do this, and it's a great way to differentiate between good prospective partners on your list, to find the best one.

Finally, when you are ready to make a decision, check multiple references. If your service provider is the right partner, the references should be somewhat similar to you, and should be able to confirm that the attributes that are important to you—remember, you've identified those clearly and prioritized them—are in fact the attributes of your candidate. Also, make sure you ask each candidate's references the same questions.



Negotiating With Service Providers

In short, my recommendation is this—leverage your negotiating power, but make sure that the deal creates a healthy, long-term relationship with your service provider. Don't be a greedy buyer of ediscovery services, be a smart buyer. If you don't cut a fair deal, here's what will happen: you will get skimpy service, sometimes from unqualified people; you will get "change orders" that are expensive and contentious; you will get no investment from your service provider or perverse investment, i.e., investment in what they can charge you for rather than what's important to you.

Let me be more specific: In the buyer's relentless efforts to get the best price, here's a list of items often overlooked by buyers that are usually at least as important as price:

- a. SOW's and Budgets per project—make sure that, in the contract, the service provider is required to define the project and set cost expectations before it starts;
- b. Attach the key reports to the contract, and define the frequency of reporting, and the turnaround times for modifications if you decide you need modifications to the reports; the industry, your relationship, and your tools are all evolving—your reports should, too;
- c. Insist on SLA's that are reasonable but meet your objectives and have some financial consequences for the service provider if unmet.
- d. Require periodic meetings at no cost to you, other than travel costs if you want face-to-face meetings.
- e. Negotiate an alternative pricing model (e.g., flat fee per GB, flat fee per doc, flat fee per month within defined volume bands) if you think you might want to take advantage of one during the term of the relationship.

Starting the Implementation Right and Strengthening the Relationship over Time

As a smart buyer, you are not done at the signing of the contract; you need to make sure that you start the implementation off on the right foot, and then you need to have those periodic check-ins I referenced. Again, let me be more specific:

To start off on the right foot, be sure that you have an eDiscovery Playbook documented. Then, make sure the reporting suite is what you want—in practice. On your first project together, make sure the reporting you negotiated in your contract matches your expectations and actually meets your needs. Next, make sure your teams are working well together. This includes everyone in the service chain.

Finally, make sure you invest in the relationship going forward. At Lighthouse, we meet with our major clients twice per year, at no cost other than travel cost to the client, and review the client's goals. At our periodic meetings, these are the kinds of things we discuss:

1. Are we following the playbook?
2. Have we discovered anything over the last 6 months that is creating a recurring problem (In-house, at the technology provider, in the review teams, with outside counsel)?
3. Is there anything we can standardize, automate or templatize?

This step—investing in the relationship through these periodic meetings—is the best means to achieving better quality, more consistency, and better economics in your ediscovery processes. In other words, this is the best means to achieving a smarter buy.



Conclusion

Obviously, this conference is about a whole lot more than connecting corporations and service providers in a buy/sell process, but, when you are engaging with a potential service provider at this conference, let me give you three practical questions that you can ask to help you decide whether to have further discussions:

1. Does your company name begin with Lighthouse?
2. Who are your top 3 customers, can I get references from all of them, and are those references working directly with your project managers or product?
3. Do your customers show improving metrics over time? If so, can your references give me some specific examples?

Thanks again from Lighthouse for joining us tonight, and I hope you all enjoy the conference.

About Lighthouse

For 25 years, Lighthouse has provided innovative software and services to manage the increasingly complex landscape of enterprise data for compliance and legal teams. Lighthouse leads by developing proprietary technology that integrates with industry-leading third-party software, automating workflows, and creating an easy-to-use, end-to-end platform. Lighthouse also delivers unique proprietary applications and advisory services that are highly valuable for large, complex matters, and a new SaaS platform designed for in-house teams. Whether reacting to incidents like litigation or governmental investigations, or designing programs to proactively minimize the potential for future incidents, Lighthouse partners with multinational industry leaders, top global law firms, and the world's leading software provider as a channel partner.

Connect with us to see how Lighthouse can best support you.

(206) 223-9690 | lighthouseglobal.com | info@lighthouseglobal.com

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