

## Chief Compliance Officer, In-house or Outsourced?

A recent article from the online legal newsletter posed this question and then went on to discuss how some small companies in the financial services industries were finding that outsourcing the compliance function to be beneficial. Unfortunately this very short article, while noting that there could be drawbacks to outsourcing and that due diligence is warranted, provide no real useful information, even at the 50,000 foot level, that companies could use as a basis to start their decision process.

So let's look at some important starting points and the Pros and Cons from 50,000 feet that companies should consider when determining whether outsourcing the compliance function is the right way to go.

While my focus will be on companies in the U.S. Government contracting industry, these starting points and Pros and Cons could apply to any industry.

One of the first things a company needs to ask itself, are we in a financial and/or contract position that it makes economic sense to hire a full time chief compliance officer. The second question, if the answer to the first question is yes, should that compliance position be filled by a lawyer or a non-lawyer. The answer to the second question depends on type of compliance issues, legal or financial/contracts that have the highest risk exposure for the company. In my opinion for most small and mid-size companies, the legal side could be handled more economically by outside counsel, while the financial/contract compliance side requires more day to day oversight.

Now let's assume that the answer to the first question is no, what do you do? The first thing you do is determine if your compliance requirements are such that you could satisfy those needs by a combination of in-house resources and outside professional services. If so what are the Pros and Cons to this approach?

**Pros** – The cost is minimal and you have access to a qualified professional/firm, assuming proper due diligence was followed in selecting the professional/firm, that can assist the company when the in-house resources cannot adequately address the compliance issue(s).

**Cons**—Your in-house resources may assume (and you know what that means) they understand and can address the compliance issue(s), therefore they do not seek assistance from professional/ firm the company has engaged. In other words, they do not know when to ask for help. Another drawback under this approach is, the outside professional/firm may not be available to address the issue when you call, or the firm you hired may put someone on the issue that is not adequately qualified.

The second possible scenario is, the company determines that in-house resources are not adequate to address existing and new compliance requirements due to an increase in contract activities, significant increase in new regulations, and the decision to expand the company's market into negotiated contracts (FAR 15) which bring on a whole host of new compliance regulations. So how does a company address this increased need for compliance knowledge and expertise, while the company is still not in a financial position where it makes economic sense to hire a full time chief compliance officer?

One avenue is to increase use of the companies outside professional/firm to guide the company through the compliance requirements associated with the changes in the company's contracting environment. While this is an option, the company will find out quickly enough that they will spend more on consulting fees than the cost associated with hiring a compliance officer. So how does a company obtain the necessary expertise and control costs?

An option is to negotiate with the outside professional/firm a lower fee per hour for a guarantee number of billable hours per month. Essentially the company would be retaining the professional/firm as a part time in-house compliance officer. How much the standard hourly fee is reduced should be directly tied to the number of billable hours per month the company is willing to guarantee.

The important aspect here is for the company to have as clear as possible an understanding of the level of effort that would be required of the professional/firm per month. Underestimating the number of required hours leaves the fee too high, and overestimating would result in the company overpaying even at the reduced hourly fee. Knowing what you know and do not know as it relates to compliance requirements will help greatly in determining the level of assistance needed.

So what are the Pros and Cons of this approach?

**Pros** – The Company has dedicated in-house knowledge, albeit from an outside professional/firm, for a specific number of hours each month, allowing the company to address its needs and requirements in a cost effective manner until such time as those needs and requirements change.

**Cons**—The greatest risk to a company choosing this approach is not writing the agreement so that the services provided actually meet the needs of the company. Unless the contract with professional/firm clearly states the terms of how and when the dedicated professional hours are to be fulfilled each month, the company could find that it is not receiving the level of services it actually needs.

As you can see, this article just scratches the surface on the factors that need to be considered when deciding how best to address a company's compliance requirements. If interested in learning more about this subject, feel free to contact me at the email address below