

# JUST REWARDS

In today's economic climate flexibility seems to be the name of the game. Clients are demanding it more and more of firms. However, it's sometimes difficult for firms to determine just how flexible they can be without taking a loss.



An example of how this new challenge is playing out occurred recently when FMC Technologies, Inc., an oil

and gas equipment company, posted a request on Legal OnRamp. They asked for, "tech-savvy, innovative firms that are open to alternative billing arrangements."<sup>1</sup> While FMC received 50 responses from firms who had determined that they could be as flexible as requested, you have to wonder how many other firms decided not to bid.

An FMC representative remarked that, "...he is surprised so few of the country's largest firms submitted questionnaires." He went on to say "a cynic might conclude that the vast majority of firms chose not to respond because they are neither willing nor able to embrace a changing competitive landscape where customers want new legal service delivery models"<sup>1</sup> That comment highlights that at least for some clients there is a gap between the client's expectations and firms' traditional hourly billing approach. If a firm wants to access those clients, the firm will have to find a way to close that gap.

The problem for many firms is that they don't know where to start with alternative billing. Though they may dislike hourly billing as much as the client, it is challenging to replace the hourly billing model without knowing how much to recover in another billing structure and how to implement the new model.

We spoke with Pamela Woldow, a principal with Altman Weil, Inc., (and the consulting firm's official alternative fees "guru"), to learn how firms can best determine when and how to offer such

arrangements. Woldow noted that the best time to decide to enter into alternative fee arrangements is, first if your clients are asking for it, and second if you feel that you can gain a competitive advantage from doing so.

Woldow advises, "The first thing that must happen is for the firm to determine what it costs to deliver the services it

provides. Unlike clients, lawyers don't generally think about service costs, instead they think in terms of hourly rates."

She suggests some good places to start would be in more routine areas such as employment or patent law, or any area where there are repetitive tasks. Woldow notes that firms should proceed with a level of caution and clarify the arrangement in an engagement letter.

"There also needs to be an understanding between the firm and client that adjustments may become necessary. The original fee arrangement is based on certain assumptions and if those assumptions change, adjustments will need to be made." As for what client to begin with, Woldow suggests, "It's best for the firm to get their feet wet with someone they know."

If a firm is to be successful with alternative fee arrangements they will need to think about it from every angle. Asking a number of questions before engaging in new fee arrangements will increase the likelihood that they will be beneficial to the firm's practice. Including proper language in engagement letters will lessen the risks involved. With proper due diligence alternative fee arrangements can not only be possible but profitable for many firms. They can also be just what the firm needs to be flexible enough to attract new clients.

FN1: Few Large Firms Answer FMC's Calls for Help, June 15, 2009, <http://amlawdaily.typepad.com>