



Best Practices

Best Practices in Preparing and Responding to Requests for Proposals (RFPs)

Issuing an RFP, evaluating the responses and selecting a law firm can be a lot of work for a legal department. Responding to the RFP can also be a lot of work, with many responses taking between 40-50 hours of staff and lawyer time. Yet it seems that neither party—the issuing company nor the responding law firm—is completely satisfied with its side of the process. Given all the work that goes into preparing and responding to RFPs, it is important to establish best practices for both sides. In response to this growing concern, Lex Mundi member firms, their clients and in-house counsel members of the Lex Mundi Client Advisory Council put their minds together to find ways to facilitate the process and to improve the chances for a successful response. These resulting best practices highlight important considerations and steps to take for both companies issuing RFPs and firms responding to them.

Introduction

Over the past few years, the use of RFPs for selecting legal counsel has been on the rise. Once limited to health care concerns, governmental entities and a few other substantive specialty areas, many companies are now finding the RFP process to be an effective method of identifying and selecting law firms. And the trend apparently will continue. Both in-house lawyers and representatives of law firms predict increased use of RFPs over the next three years.

Issuing an RFP, evaluating the responses and selecting law firms can be a lot of work for a legal department. Responding to the RFP can be a lot of work for those in a law firm. Many legal marketers estimate that 40-50 hours of staff and lawyer time can be invested in a proposal.

Yet it seems that neither party—the issuing company nor the responding law firm—is completely satisfied with its side of the process.

The purpose of this Working Together publication is to provide information on requests for proposals and to identify best practices that will improve the RFP process, both for the issuing entities and for the recipient law firms. If the process is fair and objective, and conducted for the right reasons, it can enhance the provision of quality, cost-effective legal services as well as the relationship between the client and the law firm. The information and recommendations below have been provided by corporate counsel and outside counsel in an effort to create better working relationships.

Overview of the Use of RFPs in the Legal Profession

There are many reasons why an entity may issue an RFP for legal services. These include:

- A legal need (a complex issue, a new jurisdiction, specialized substantive expertise)
- The company need for more due diligence in selecting law firms
- Routine due diligence or organizational mandate
- Change in general counsel or in-house staffing (e.g., increased outsourcing or downsizing of the legal department)
- Changes in the company (e.g., merger)
- Increased workload and limited in-house resources
- A desire for cost control, more accurate budgeting or greater efficiencies, particularly with routine work
- To establish a network of preferred providers or diversify the ranks of outside law firms
- To improve the quality of work performed by or the responsiveness of legal counsel
- To document the selection process on important matters
- To coordinate the selection and use of outside counsel within the legal department

The majority of RFPs seek to identify specific legal/substantive expertise in a defined geographic area. RFPs tend to be issued by the legal department, but there have been some recent and notable RFPs issued through a company's procurement department.

A substantial number of entities issue an RFP but do not hire a law firm from the process. What would be the reasons for this? They include:

- Routine due diligence on quality and cost of legal services
- Board request/Organizational mandate (e.g., for projects exceeding a certain dollar amount)
- To restructure the relationship with existing law firm(s)
- To receive ideas on how to handle a matter

Companies most frequently identify the law firms to receive the RFP through:

- Past relationships
- Discussions within the legal department
- Referrals from others in the business or the industry
- To a lesser degree, directories like Martindale-Hubbell or advice from consultants

The number of law firms that companies contact with the RFP varies dramatically depending on the nature of the work and the geographic coverage required. Discussions with in-house counsel reveal recent RFPs sent to between 3 and 30 law firms.

When evaluating the proposals that are submitted, companies use many factors to select counsel. Those that are most important include:

- Expertise: Representative cases or transactions
- Proposed staffing
- Proposed fees/cost
- Alternative/creative fee arrangements

Other factors that may be considered include:

- Firm location
- Absence of conflicts
- Diversity
- Technological capabilities
- Value-added activities

The written proposal document is important, too. Companies report that they evaluate proposals on:

- Creativity shown in written submission (i.e., differentiation)
- Adherence to the RFP guidelines
- An easy to follow, concise submission
- Timeliness (meeting the deadline)

Most companies and law firms agree that interviews are important. While the proposal may be used to whittle down the number of law firms to a "short list," interviews are key to evaluating the presence and presentation of the lawyers, and that all-important "chemistry."

Best Practices for Entities Issuing an RFP

A. Developing the RFP Document and List of Recipients

Provide a clear and comprehensive RFP document.

In particular, be certain that the questions are not vague and recipients understand what information the company is seeking. For example, if asking about diversity, indicate the parameters (e.g., women, openly-gay lawyers).

Tailor the RFP to the company's needs. Be specific about the nature and scope of the legal work for which the company has needs, instead of asking firms to bid on generic work. If possible, ask about a specific type of work or geographic scope.

Include the company's goals and objectives for the RFP. For many companies, the purpose of using an RFP is to create a selection process that is fair and objective. However, whether the goal is better decision making, price reductions or diversity, it is in everyone's best interest to be clear about the rules of the game.

Make it clear what the law firms will get in return. For example, if the company can guarantee a certain amount of work, it may result in much better prices.

Use the RFP to get a sense of how the law firms approach their work. Ask for more than "vital statistics." Inquire, for example, how a law firm approaches a deal.

Do not issue an RFP to get free advice or take a law firm's work product without paying for it. For example, a company should not request a strategy for litigation and then implement it without compensating the firm.

Be open-minded when seeking law firms to participate in the RFP. There may be hidden gems of law firms that can be uncovered through proper due diligence (e.g., discussions with others).

Make the number of recipient firms proportional to the number of firms to be hired. For example, if the company only intends to hire one firm, it may not be productive for either side if 30 firms are asked to participate.

Do not ask firms to guarantee that the rates are its lowest rates offered. This presents a difficult situation with respect to other important firm clients.

Be selective about the information requested. Identify clearly the criteria on which the company will judge the law firms and focus questions and information gathering in those areas. For example, if the company hires lawyers, not law firms, what is the purpose of firm metrics? This focus will help the company avoid asking for statistics that are difficult to produce or, in the end, irrelevant. Some law firms pass up proposal opportunities because the data required is overwhelming. If the company is asking for some extensive or unusual information, explain why.

Consider conflicts issues. For example, if the company asks law firms to provide suggestions for strategy in a particular matter, will this conflict the unsuccessful firms with potential clients? In addition, if the company would consider it a conflict if a law firm worked with certain companies, identify those companies in the RFP instead of asking the firm to identify potential conflicts. For ethical reasons, law firms often can not respond.

Ask for a non-disclosure agreement.

B. Exchanging Information with the Law Firms

Provide recipient law firms with background information that will help them prepare a tailored and informed proposal. Both companies and law firms agree that this greatly enhances the quality of the proposals developed. This could range from historical data on the areas covered in the proposal (e.g., fees or volume of cases), to the role of in-house counsel to expectations for the future (e.g., workload anticipated). For example, one company listed the company's core values and asked each law firm to indicate how it could support them.

Be honest about the odds. If the company is issuing the RFP for a reason that might affect a firm's chances of actually receiving business, or if the company is unlikely to hire a law firm (or a new law firm) from the process, tell the recipient law firms. For example, the company's board may require annual review of relationships. This will allow the firms to make better decisions about the resources invested in the response. Avoid issuing an RFP to other law firms if the process is simply a method to negotiate the relationship with the incumbent firm (e.g., a new pricing structure).

Contact the law firms directly before sending the RFP. This helps them prepare and also provides an opportunity to discuss the company's goals. If the company has a good relationship with the firm, this also provides an opportunity to talk about the process, e.g., "Sorry about the form, but we're required ..."

Allow the recipient law firms to contact the company for more information or clarification of the RFP document. Law firm representatives believe this is one of the keys to preparing a thoughtful and responsive proposal. In some cases, they may want additional details related to the matter; in other cases, it may be to clarify one of the questions asked on the RFP. Law firm representatives indicate the best RFP processes are those in which they are allowed to have a conversation with company representatives. If the company does not allow direct contact, tell the law firms why. Then, at a minimum, provide a forum where law firms can pose and get their questions answered (e.g., Web site, teleconference, etc.).

Outline the process. Let the recipient law firms know how many firms have received the RFP and how many firms the company anticipates selecting. This will help the firms determine their odds of success and make a better business decision about whether or not to respond. Even better, tell the law firms which other firms have received the RFP so they can differentiate themselves and make it easier for the company to judge their relative strengths and weaknesses.

Respect the confidentiality of the law firms' information. Return the proposal if the firm was not chosen.

C. Managing the RFP Process

Keep the RFP process within the legal department. Procurement departments may not have the same understanding of the importance of the relationship between inside and outside counsel, and the in-house legal department will always mandate and oversee the legal work to be done. In fact, some legal departments regularly issue RFPs to satisfy the procurement department.

Consider a multi-round, or staged, process. The first round could request very limited information from a larger number of firms in order to identify the best fits for the particular need. The second round could request a more in-depth response from a short list of firms. The third round would be an interview with the finalist firms.

Avoid on-line RFPs. They limit the information firms can provide (i.e., by limiting the characters allowed in a field) and make it difficult for firms to distinguish themselves.

Give law firms enough time to put together an effective and customized response. Law firm representatives suggest that anything less than three weeks is taxing and difficult, yet a number of companies give firms less than two weeks (and as little as five days) to respond.

Stay on schedule. Many law firms have reported waiting six months or more for decisions to be made. This is particularly trying when they have invested substantial time and energy in a response or, worse yet, were given a very short timetable to respond. Thirty to sixty days is an appropriate turnaround time for a decision.

D. Making the Final Decision

Develop a good decision-making process. This could range from having the right team involved to outlining a reasonable schedule. For example, the company might put together an executive committee to establish criteria, review the proposals and shepherd the decision-making process.

Interview the finalist law firms. Companies truly seeking strategic partners will not select firms based solely on written responses. The lack of interaction between law firm and company representatives may be one reason that so many law firms dislike the on-line RFP process.

Meet the team. Ask the finalist law firms to bring the key people who will be working on the company's matters, including senior associates.

Move from a quantitative to a qualitative approach. Use meetings to explore the firms' approaches and to

judge the potential relationship. For example, ask firms to explain their staffing levels.

Conduct reference checks of the law firms the company is considering.

E. Notifying the Participants

Contact all the law firms that responded. As one might expect, a firm that invests the necessary time to prepare a thoughtful and tailored proposal is anxious to learn how it was received. However, many firms report not hearing from the company, or only after inquiring.

Be open to discussing the company's decision. If an unsuccessful law firm contacts the company to learn why it was not selected, provide some candid feedback. Contacting the company demonstrates the firm's sincere interest in the company. This may help the firm improve its proposals in the future.

Best Practices for Law Firms Responding to an RFP

A. Implementing an Effective Response Process

Organize RFP protocols within the firm to ensure timely and effective response. For example, if the firm has a marketing department then any RFP should be routed to the marketing department within 24 hours. Many firms give primary responsibility for developing the proposal to the practice group. Wherever the responsibility resides, the proposal process should have top management support.

Recognize the importance of a good proposal response process to acquiring new business. The proposal process should have top management support.

When determining whether to respond, consider potential conflicts. First, run a conflict check immediately; that may answer the question of whether the firm can participate at all. Even if no pure conflict exists, consider other issues. For example, if the firm provides the company with a strategy for a litigation matter, will it be conflicted out of other representations if it loses the bid? Or will working for the entity be perceived negatively by another good client in the same industry?

Be selective. Preparing an effective response to an RFP can take scores of hours. Discussions with law firm marketing professionals reveal they respond to roughly two-thirds of the opportunities they receive. There are many possible reasons not to respond:

- The client or work does not fit the firm's strategic vision or desired image

- The firm lacks expertise in the area of the work
- The firm has a business or ethical conflict
- The work may stretch the resources of the firm
- The firm perceives that it is not a true or attainable opportunity
- The response time for submitting the proposal is unrealistic

In some instances, however, it may be worthwhile responding to a proposal even if the firm feels its chances are slim; it can be an opportunity to introduce the law firm to the company and show that the firm is interested.

Put together a good team of lawyers and marketing professionals, and put one lawyer in charge of coordinating the effort. The team should start by outlining the timetable and scope of the proposal to ensure everyone is on the same page. It then becomes easier to develop the message and write the document.

If allowed, contact the company representative for additional insights or information. This should be done after reviewing the document closely and conducting proper due diligence, thereby avoiding questions that can be answered through research or public information. Ideally, meet with the prospective client to discuss the company's goals and expectations.

Follow the rules. For example, if the issuing party forbids contact with others in the company, do not go around that person. If the RFP asks that the firm only respond in certain areas, limit the proposal to the areas highlighted.

Submit the proposal by the due date. Even better, send it early; this may result in someone spending more time reading it.

Honor the confidentiality of information provided.

If possible, insert the firm in the process. If a client considering issuing an RFP, or does so regularly, volunteer to help write the document.

B. Developing Responsive Content

Customize the proposal. Companies are not looking for firm history or boilerplate descriptions of practices; they are interested in learning how the firm can help in their specific situation.

Conduct due diligence. Visit the company's Web site and review other publicly available information, such as financial data. Put together briefing books and run the prospect through the firm's database. Then demonstrate this knowledge in the proposal by providing as much insight as possible into the issue, the company or the industry.

Be helpful. If it is a new legal area or issue for the company, for example, the issuers of the RFP may not know what questions to ask. Give as much information as possible on process, likely outcomes, etc.

Answer the questions completely. They are usually being asked for a reason. For example, for companies in some regulated industries, certain information is mandatory. Make it easy for the recipient to find the responses by organizing the proposal around the format of the RFP.

Analyze the situation and, if appropriate, outline a strategic approach. The client wants to know how the firm will approach the matter, and what outcomes may be anticipated. For example, if it's a specific litigation matter, how would the firm approach it—settle, fight, get out of it? Present facts, ideas and alternatives.

Provide details on pricing. Obviously, the cost of legal services is a big question mark for the company, so firms should provide detailed information on rates, assumptions for time requirements, and estimates of fees where possible. At the same time, it is important to be realistic; companies do not appreciate firms that "lowball" in order to get the work and then try to adjust the fees upwards. If the proposal addresses alternative pricing arrangements, be specific; do not just indicate the firm is open to discussing them.

Provide specifics on proposed staffing. This includes being very clear on who the responsible partner will be, as well as identifying the other key members of the team, their area(s) of expertise, and their anticipated role(s) in the relationship.

When it comes to capabilities, show, don't just tell. Firms should illustrate their expertise by providing lists of representative cases or transactions, outlining industry experience, and providing client references. Articles or other supporting materials should be relevant to the areas being sought. The more details and examples the firm can provide the better. And never overstate qualifications.

Focus on the firm's strengths, not the weaknesses of its competitors.

Be enthusiastic. Do not be afraid to look like the firm is hungry for the business. And remember: The purpose of most proposals is to make the "short list" for work or for an interview. Be sure the submission is interesting and responsive.

C. Formatting a User-friendly Document

Prepare an error-free, typo-free document.

Package the proposal in an attractive and logical presentation. Make it easy for the client to find information (e.g., tabs, table of contents).

Outline the proposal in a strong Executive Summary. This introductory section should persuade the company why the firm should be awarded the work.

Be creative. For example, a pitch to an entertainment company could be provided on a DVD.

D. Conducting an Effective Meeting with the Client

Always request an opportunity for a face-to-face meeting with the client to discuss the proposal. Such a meeting allows the client to ask questions and assess fit and style. Law firms should use the meeting to add to and clarify (rather than reiterate) the information contained in the proposal and to develop a rapport with the client that can be a crucial factor in the decision to award the work.

In preparing for and conducting the meeting the law firm must maintain focus on demonstrating that it can meet the needs and concerns of the client. Refrain from planning to spend valuable time explaining the overall depth and range of your firm's practice capabilities. Instead, if the client has a specific problem, ensure that you communicate an appropriate solution. Anticipate the questions the client is likely to ask-about its business and industry, how the file will be managed and staffed, whether proposed fee arrangements can be modified (and how), your responsiveness, and so on- and prepare your representatives to deal with them effectively. Also, prepare a series of your own questions that demonstrate your interest in the client's needs, such as asking what factors the client considers important in selecting legal counsel.

Inquire how long the meeting will last and how much time you will have to make a presentation, so you can determine how many firm lawyers to bring along, what their roles at the meeting should be, and how to cover all the key points you want to make. Staffing is very important to clients, and their representatives will be interested in meeting the lawyers, including senior associates, you have chosen to work on the file. If possible, give each lawyer an opportunity to say something about how he or she will contribute to the client's success.

Find out as much as you can about the people who will represent the client at the meeting. What are their positions and responsibilities in the company, and their corresponding interests? Who are the effective decision-makers? What communication styles are likely to be effective in getting your points across? For example, do particular individuals prefer "big picture" expositions while others are more interested in logical analysis supported by evidence or by impact on people?

Once the planning is complete, rehearse the presentation, including answers to anticipated

questions from the client. Ordinarily your colleagues can be effective in the role of critiquers. You might also consider bringing in a professional coach to review the entire presentation and provide feedback on it, especially if obtaining the work is particularly important for your firm.

It may be appropriate to employ audiovisual aids, including PowerPoint slides, during the presentation to get across a message that is difficult to communicate by verbal means alone. Care should be taken in their use, however, because client representatives have already seen your written proposal and you do not need to duplicate it at the meeting. Perhaps more importantly, a central purpose of the meeting is to permit you to convey a sense of your personality, and you should not let props divert you from doing this effectively. Do not resort to a formal presentation at the expense of engaging client representatives by asking and inviting questions.

E. Learning from the Process

See the proposal process as the beginning, not the end, of the firm's relationship development with the prospect. Through the firm's response, it will have begun a dialogue with representatives of the entity, which hopefully can be continued.

If not selected, seek feedback from the company. Do not get defensive or challenge the client's decision; try to learn what the firm could have done better or differently so it can improve the odds with the next opportunity. It may be best to have an uninvolved or objective person from the law firm contact the company.

If the firm has a good relationship with the company, make suggestions for improving the RFP process in the future.

Conduct a debriefing session within the firm to appraise the firm's response to the particular opportunity and improve future proposals. Everyone needs to put egos aside and share information to improve future responses. It can be helpful to ask someone who was not involved in responding to the proposal to conduct the feedback session and comment objectively.

Capture the lessons learned in a form that facilitates effective future use. It is not enough to simply keep copies of the RFP and your written proposal and PowerPoint slides used at the meeting. Include intelligence that will help your lawyers enhance their responses to RFPs. If the firm was awarded the work, on what basis did it win? If it was not, why not? After completing the analysis, place all the information on a searchable database in the firm's marketing or knowledge management system so it can be accessed to inform future responses for this and other clients.

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