

You've decided to issue a tender for legal services, commonly known as a request for proposals (RFP). You dust off the relationship agreements with your existing firms, dig out your last RFP, and hire a consultant to pull it all together. The consultant is quick to agree with the need to go out to tender: "Let's get on with it; we have a huge job ahead of us" (sung to the tune 'ka-ching' on any cash-register), but restrain the consultant for a moment and ask, "Why do I want to do an RFP?"

## RFPs and Tender—Should We, Really?

BY RONALD F. POL

Some of the common reasons suggest that sometimes there might be a better alternative.

1. "We're pleased with their work; they just need to sharpen their pencil."

So talk to them already! Will forcing them to spend lots of money on an RFP process really help reduce fees? How about a chat along the lines of, "We'd rather not have to go through an expensive RFP process and uncertain outcome; the real issue is your fees, which we think are too high." Most good firms will receive this message loud and clear.

2. "They screwed up; we haven't actually told them, and we want to keep them on board, but we need to send a message this will not be tolerated."

Will getting lots of other firms to spend tens of thousands of dollars pitching for your work really help, beyond signalling how fickle you are to work with? Tell them straight: "You got it wrong, let's put it right, and tell us what you'll do to make sure it won't happen again." Focus on the real issue, deal with it, and move on.

3. "It's been a while since we did an RFP; we need to test the market."

Like, duh, this means you've had your head in the sand the last few years? Surely you've kept up to date with what other firms are offering, new ways that other organi-

zations are managing external counsel, and current rates? If you haven't kept up, maybe the real reason for an RFP is because you've been asleep at the wheel. Wake up, buy some of the research, talk to your colleagues, and get back in touch.

4. "We're pleased with our current firm(s), they do a great job at great rates, but we have to conduct a fresh RFP every five years; it's policy."


This sounds like a Dilbert cartoon. Three pithy panels and we'd be lampooned on our own institutionalized stupidity. Just possibly, however, the policy might be a useful way of forcing us out of any complacency. If so, you may as well get into the spirit of an RFP with an open mind. But if it is a dumb

idea, at least minimise the harm; be honest with the firms. Don't dress it up as a huge opportunity for change if it isn't. Tell them it's being conducted as a policy requirement, and the incumbent will reapply. Sure, you may get fewer responses, but they'll be better; based on reality and a genuine understanding of the position. You also help maintain your organization's integrity—just a little.

5. "We've tried hard, and we've talked with them lots, but it's just not working out."

OK, it happens, that's life. So fire them; and maybe an RFP is a good way to find a replacement, but don't include the fired firm out of a sense of fairness. It's hardly fair to say, "We've decided to fire you, but first we'll let you think you have a chance, but, nah, just kidding, you're still fired." Be fair, be straight, show them respect and dignity, and don't add insult to injury.

6. "We want 'excellence, results, and mutual respect' from our relationship with external law firms, and we're genuinely open to a new way of doing things. Our current firms do a good job, but we don't know what we don't know, and we're open to firms themselves suggesting new possibilities."

OK, an RFP might actually be a good idea; you can now unleash the consultant to "make it happen." 

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*Email [editorinchief@acc.com](mailto:editorinchief@acc.com).*



RON POL is past president of New Zealand's Corporate Lawyers' Association and serial general counsel for public and private organizations. He also advises legal departments and law firms, and welcomes comments at [ronald.pol@teamfactors.com](mailto:ronald.pol@teamfactors.com).