

I asked 100 general counsel how law firms could improve their responses to RFPs. “Focus more on our needs” and “clarify our needs by talking to us and others more” were top. No one thought law firms currently do this well. This is a message for firms, but do we actually *let* them do it well? The following observations suggest that some RFP processes are designed seemingly to *prevent* firms from putting their best foot forward.

10 Tips to Determine if Your RFP Is a Toxic Tool

BY RONALD F. POL

1. “OK, let’s prepare the RFP document.”

First, ask why. An earlier column explored common ‘reasons,’ which suggest alternatives [*ACC Docket*, July/August 2007, “RFPs & Tenders – Should We, Really?”].

2. “Let’s get help with the RFP process.”

Good idea, but watch being sucked into the vacuum of an expensive, time-consuming black hole of unnecessarily complex processes and documents. You manage lawyers to positive outcomes; do the same with legal consultants.

3. “We want access to the consultant’s expertise.”

Great, but don’t confuse this with the ability to generate a ‘checklist

RFP’ drawn from just about every question asked, with exhaustive schedules and detailed requirements. A colleague describes the best experts as having “a sharp pencil and agile mind.”

Put another way, template-driven ‘checklist RFPs’ commonly require the expertise and experience of lawyers proposed for your team in prescriptive detail, yet I can’t recall an evaluation in which this section wasn’t mostly ignored; every good law firm has experts, just like every other good firm. So, don’t force firms only to demonstrate *expertise*; what you *really* want is to demonstrate how they will use their expertise to meet your needs.

4. “OK, we’ll ask the important questions, but we have to be thorough so let’s ask all those other questions, too.”

Anything that doesn’t go to the core of what you need robs firms of time to consider more deeply how to identify what really adds value, how they can best deliver that value, and how they can demonstrate it in terms that meet your needs. Why distract them? And why force them to bury it like a needle in an information-overload haystack? Aren’t you busy enough already?

5. “This RFP is important, it’s taken ages to get right and time’s pressing. Let’s issue it and give them a full two weeks to reply.”

This might be ok for ‘widgets’ where specifications are clear and the only real issues are price and deliv-

ery terms. If you want professional services firms to demonstrate a real difference (especially if you’ve also bogged them down with the need to answer pointless template questions), here’s a radical concept: Show them the respect you require of them; ask how long they need to respond, and set the deadline accordingly.

6. “Complex spreadsheets score each firm’s response to each question. Each question, and each section, is weighted. This generates a score for each firm. We can be certain of choosing the best firm.”

The only real guarantee from wrapping subjective information in a cloak of apparent objectivity is poor decision-making. Objective analysis is useful—for objective data. Look at objective information on the one hand (areas of expertise covered, hourly rates, etc), and subjective on the other (how well your managers work with the firm’s lawyers, their demonstrated point of difference for meeting your needs, etc.), and have the courage to use brain as well as calculator for the final decision.

7. “That sounds a bit harsh; surely, process is important, too.”

Process is critical, yet output differs from outcome. Good process will produce an output (selecting a firm or panel of firms), yet this doesn’t guarantee the best outcome (the optimal value proposition over the term of the relationship). Good process is necessary, but not sufficient.

For example, one organization spends \$5m a year on lawyers. It followed a complex process which it told



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me *therefore* produced the best result, yet even the most basic analysis suggests they might be able to improve the quality of legal service *and* save maybe \$1 or \$2 million per year. Output? Absolutely. Best outcome? Maybe not.

8. “We’ll be fair; as soon as the RFP is launched, firms can’t speak with anyone here except the consultant, and responses to every query will be copied to all respondents.”

You want them to focus more on your needs, yet refuse to let them find out how best they can do so? And if they try to discover it, your answer is copied to their competitors? Yeah, right, they’ll *really* ask meaningful questions now.

So, freak out the process junkies,

and try *not* to design a process that actively stifles optimal outcomes. And if you’re really bold, maybe even *encourage* firms to discover how best to meet your needs. If fairness is a level playing field, tell them all the same thing: “talk with anyone you like to discover how best to meet our needs, and we’ll answer questions in confidence.”

9. “Firm X is clearly best, but Y has cheaper hourly rates. The CFO is on our backs to cut costs and probity is important, so we’ll have to select Y.”

If price really is your main driver, don’t tell them you want “innovative ways of delivering optimal outcomes,” then select on price; tell them straight from the outset.

Value for money and commercially astute guidance is better than “cheap” advice anyway. Low headline rates can prove costly; it’s better to pay \$500 for an hour’s sage and experienced advice that delivers a good outcome than three hours at \$300 for inconclusive advice. Put the calculator down and haul that brain out again.

10. “Wrapping up, what do we really want to achieve from an RFP?”

Requiring firms to “jump through hoops” that don’t generate better solutions creates only more *output*, whereas the best RFPs are designed to generate optimal *outcomes*. 🚩

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