

I don't subscribe to the "client is always right" theory. Frankly, as a client, I'm not always right. Anything that makes me think otherwise might have less to do with my own keen intellect and savvy common sense than misguided sycophantic twaddle boosting an ego. Ultimately, that might cost my organization more dearly than the great results and savings I think I've achieved.

Consequently one of my biggest bugbears is not when outside professionals suggest I'm wrong (an area of fertile ground and abundant opportunity), but when they don't.

Selecting Law Firms — A Two-way Street

BY RONALD F. POL

Professional services firms, sometimes with millions of dollars of revenue dependent on keeping a client satisfied, may be reluctant to point out that some of their client's efforts might actually be counterproductive to the organization's interests; so clients may continue to harbor their own mistaken views for years.

An area particularly fraught with the risks of unexpressed views — and the resultant proverbial naked emperor resplendent in gaily colored imagined finery — is the process by which organizational clients select law firms, particularly in the context of requests for proposal (RFPs) or tenders for legal services.

Aside from financial pressures to allow clients to be "always right," firms don't always enjoy the robust relationships required for frankly saying "that was a stupid process." Even with existing relationships, such as when an incumbent wins, firms might still prefer not to jeopardize their success by highlighting the flawed process by

which they were selected. Although post-tender debriefings also allow feedback from unsuccessful suppliers, the commercial reality is that many of these firms, unwilling to risk their chances next time, often feel unable to fully comment on their experience of the process.

Defensible Output or Optimal Outcome?

I interviewed organizations involved in professional services procurement and learned about excellent processes and great outcomes.

With some organizations, however, there was a noticeable gap between the output achieved and the optimal outcome achievable. Even when prospective suppliers knew about this gap, the organization often remained unaware.

Although good processes do typically help produce the best outcomes, ironically the output-outcome gap seems greatest when organizations specifically focus on good processes. It also doesn't much matter whether an organization's definition of good process involves a "tried and tested" standard template, a series of strict rules for tenderers, a particularly complex scoring system, a procurement specialist, or any of the countless other rationalizations seemingly designed to obviate the need for clear thinking. When the talk is all about the process, the focus seems to be on producing a defensible output, not necessarily the optimal outcome.

Supplier Experiences of Legal Services Procurement

Evidence suggests that many organizations are also unaware of any gap

between the output achieved and the potential outcome because they have an imperfect view of the real impact of their own tendering processes, particularly when their primary post-selection dealings are with winning suppliers with little interest in revisiting the process by which they were selected.

In search of a frank assessment, I also spoke with the leaders of many professional services firms who shared their experiences of the procurement process from the supplier perspective, without the pressures of a specific engagement.

All of these firms accepted the value of tender processes and recounted many examples of excellent processes, yet their observation of other practices provide useful insights for managers responsible for professional services procurement.

1. Focus on output, not outcome.

Some procurement policies appear designed to produce a *defensible output* rather than the *best outcome*. Although necessary to demonstrate the value of the procurement decision to senior managers, an illusory value is sometimes expressed. For example, a rebate is negotiated to "demonstrate value" when the firm would have been happy to accept a lower hourly rate resulting in greater savings, yet more difficult to show than an annual refund check. Or a fixed price retainer option which might have created a strong incentive for the firm to streamline operations and lower fees overall is rejected in favor of hourly rates than could more easily be compared with other firms, to demonstrate value.

2. **Process over outcome.** Some organizations always "do an RFP every three years." The result is often that the incumbent is simply "rolled-over," at enormous cost involved.



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3. **RFP as panacea.** The decision to “go to RFP” is itself sometimes flawed. If there’s an issue with the current supplier, addressing it directly might achieve a better outcome.
4. **Inflating the numbers.** RFPs sent to large numbers of firms increases the number of tenders so that managers can “demonstrate a good process,” yet is illusory if some of those firms are not real contenders.
5. **Shortlist stacking.** This is where “favored” firms are added to the shortlist with an obvious bad choice. The preferred firms are easily selected after a “robust process.” “We are often one of the preferred firms,” says one firm, “yet we’ve seen others which could have added enormous value not even make the shortlist, over some clearly inappropriate.”
6. **Complex rankings replace common sense.** Complex ranking systems reducing all variables into numbers and selecting firms with the most points are frequently touted as best practice. Good systems are useful, but should complement and assist — not replace — good decision-making. Identifying and working with firms that over the life of the relationship deliver advice that optimizes value for the organization is perhaps more difficult, yet should always remain the essence of optimal decision-making.
7. **Deciding subjective factors objectively.** Detailed decision-making spreadsheets generate ratings and rankings that sometimes obscure the real issues. “We often succeed,” says one firm, “yet it leaves a bad taste when we know that some of the important factors are rendered into largely meaningless statistics to demonstrate a robust decision when it is anything but.”
8. **Value blockers.** Boilerplate clauses more applicable to widgets than professional services can constrain firms identifying real

value to the client. Preventing firms from talking to the client during the process often precludes anyone but the incumbent clarifying key issues and identifying innovative ways to deliver what the client really wants. Similarly, a clause notifying that the responses to all questions will be copied to all competitors has a distinctly chilling effect, typically precluding the most probing questions that might actually result in innovative ways of maximizing value for the client.

9. **Pre-determination.** Firms report learning relatively often that a preferred firm has in effect already been selected; this makes a mockery of the process, and the organization conducting it.
10. **Wasteful costs.** It often costs firms many tens or even hundreds of thousands of dollars to respond, yet some of these practices incur wasteful additional expenses that will ultimately be priced in, adding costs for all clients.
12. **Lowest price more costly.** When price is the determining factor, firms with the lowest hourly rates are often selected. This works fine for widgets with defined quality characteristics, but can actually *increase* costs in a professional services context. Four hours at \$500 an hour is not better than the same advice at \$700 which takes only two hours from an experienced professional with a precision and clarity of expression.
13. **Repeat RFPs.** “We have seen the same RFP document many times; the name and a few other facts are changed,” says one firm, “yet it is clear that no one has given much thought to what *this* client really wants. We go through the same old motions as before, and often win, yet the client hasn’t really let us help identify what will *really* add value, specifically to them.”

14. **Failure to properly monitor and manage selected suppliers.** Firms report succeeding at the RFP and then being left largely to their own devices. Many do this well, yet the need to manage the ongoing relationship effectively is often more important than the selection process itself. Active monitoring by an in-house team closely connected with the organization’s strategic direction and working with external lawyers will often save more money and achieve better results than virtually any three-yearly RFP panel selection.

15. **In-house lawyers poorly used.** The manner in which in-house lawyers are sometimes used can inadvertently increase legal risk and costs. If in-house counsel are legal technicians with little knowledge of the organization’s strategic goals and report several levels below the chief executive, this increases costs and duplicates effort as external lawyers independently try to gain sufficient understanding of the strategic issues for the lawyers to maximize their ability to add value and achieve optimal outcomes.

These comments were a surprise for some organizations. This suggests that a more meaningful dialogue between in-house and outside counsel can help produce better results. Ensuring that external suppliers have a full understanding of the client perspective is, however, not simply a matter of clients *saying* what they want, or even suppliers *listening* to what clients say. For a full understanding of the impact of your own procurement processes, it is also important not only to listen to what suppliers and bidders *say*, but also what they *don’t* say; and develop techniques to encourage open and frank dialogue between organizational clients and key suppliers. 🚩

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