

WHO REPRESENTS AMERICA'S BIGGEST COMPANIES

BY REES MORRISON

Getting to Know You

Seven tips for crafting more effective requests-for-proposals.

AS A CONSULTANT TO LAW DEPARTMENTS ON MORE THAN A DOZEN COMPETITIVE bids, I have found few that do efficient reviews of the responses that they get to their requests for proposals. Many different techniques and methodologies are used in these reviews, and not all of them are productive. Corporate law departments don't compare notes much, and law firms stay mum about competitive bid processes, so it is difficult for either side to make the best possible use of this potentially very helpful tool. To remedy that gap (at least partially), here are seven innovative tips for conducting competitive bids.

1. Send the request for proposal to the managing partner of the firm. Some law departments send their RFP to the relationship partner, if the department has used the firm before, or to the head of a practice group if the work to be done would fall to that group. The problem with either approach is that the recipient may not give the RFP a completely balanced (i.e., fully informed) view.

The managing partner of the firm, by contrast, is more likely to take a firmwide perspective, to involve everyone who should be involved in the response, and to give the RFP the importance it deserves. When the managing partner receives the RFP, it also eliminates the potential for unproductive squabbling over origination credits. For that matter, it makes sense to call the managing partner's office before you send the RFP in the first place.

2. Only ask questions that will help you make the decision about which firm to select. It is very easy to load up an RFP with all kinds of requests for information or topics for the law firm to discuss. But it's more useful to ask sharply focused questions: What offices have they closed in the last two years; do they make a distinction between equity partners and nonequity partners? Some law departments succumb to the urge to ask essay-type questions such as "What is your philosophy about advancement of associates?"

The test for whether a question is effective is simple: Are the answers to it likely to help you separate out the more desirable from the less desirable law firms? If, for example, almost all the firms will answer similarly, then you have merely put them through an exercise that

leads to no benefit on either side. One technique for testing the effectiveness of a potential question is to devise a scale that will allow you to score likely answers. If a scale proves difficult to devise, don't ask the question.

3. Invite incumbents (firms that have recently worked for the company), strong contenders, and some long shots to respond to your RFP. Some law departments make the mistake of sending their RFPs only to incumbents. By so doing, they miss opportunities to bring in new blood and competitive juices.

Incumbent law firms always have an advantage over a new firm in that they understand more about the client, its business, and its key executives, but it is also true that the law department knows the warts of the incumbent firm. In any

case, it is better to invite some law firms that are known to be strong, but have not recently (perhaps ever) represented the company.

A further step is to invite at least a few firms that may be long shots, but that also might bring creativity, attractive terms, or a new mix of ideas to the table. Think of the selection of law firms to receive the RFP the way high school seniors consider which colleges to apply to. Take some safety schools, some stretch schools, and some solid contenders. And you should disclose, in the RFP, the identities of every law firm you have invited. It gives the group a clear sense of how serious you are and the strength of the competition.

4. Describe hours of anticipated work, not fees. Most law departments, if they include in their RFP materials anything about the estimated volume of services they seek, state those services in terms of fees paid in the past, or likely to be paid in the future. For example, the RFP may say: "Over the past three years we have averaged \$1.3 million per year in fees

Notwithstanding a law department's most careful efforts to be unambiguous and complete in what it provides, law firms will want to ask questions so that they can submit better proposals.

The cost is relatively low for the law department to sponsor a bidders' teleconference call. On such a call, all of the law firms can dial in and ask questions anonymously. One or more lawyers from the law department will be available to field the questions. If the department has to get back to the firms with more information, that is certainly acceptable. And by holding such a conference call, a law department can also take a long stride toward making sure that every law firm has an equal opportunity to hear the same questions and the same answers.

6. bring to the surface assumptions in the proposals, and address them fully and specifically. No law firm can understand all the facts and circumstances on which it is basing its bids, so each law firm makes its own assumptions. Rarely do those law firms explicitly state the assumptions

them to the best of the law department's ability. Even better, the law department can circulate to the remaining law firms—assuming there is a second or third round of proposals—any assumptions that might improve the proposals of the remaining firms. For example, "Assume there is not more than one class action pending during the period of the services."

7. Collect two rounds of bids. Many competitive bids permit the law firms to submit only one proposal. It is their best and final submission, right out of the gate.

A much better practice is for the law department to ponder the first round of proposals and narrow down the number of law firms that make it to the second round. Before the second round, however, give the firms additional information and clarify assumptions.

More importantly, tell the firms remaining in the second round the range of proposal amounts in the first round—of the firms still standing in the second round—so they can calibrate their proposal against that range. When the competitive bid allows for a second round of proposals, it usually means that the second round average drops somewhat, and the proposals converge on the most probable market-based figure.

Fortunately, these seven steps are not difficult to put into practice. Hopefully, they will make everyone involved in the request-for-proposal selection process better informed and more effective.

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With law firms basing bids on different assumptions, they all propose terms for deals according to different sets of facts.

paid for this kind of litigation." Naturally, the law firms that respond to the RFP will anchor their proposal amounts around that figure.

A sounder approach is to convert the historical data and the projected amount of services into hours of lawyer work. You can do that if you calculate the effective rates of several firms who represented you in the service area and determine from those figures a roughly representative hourly rate to divide into the total amount spent. If a law department couches the anticipated work in terms of hours, law firms that have lower hourly billing rates will come back with lower proposals.

5. Hold a bidders' teleconference before the first proposals are due. It is unwise to restrict the information available to the law firms involved to whatever the law department chooses to put in its RFP.

on which they bid, and rarely do law departments request a thorough detailing of those assumptions. Different firms make different assumptions, which means that in real life, they are not all proposing terms of an agreement according to the same facts. For example, one firm might assume no more than two class actions will be brought; another firm, in a different context, might assume that patent review committees meet quarterly and cover the entire company's output of proposed inventions. The disadvantage of unstated assumptions is that in almost every case the law firm has proposed a higher figure to make up for its ignorance about some set of facts.

If the law department requests from law firms a list of whatever operative assumptions the law firm bases its proposal on, the law department can then accept the assumptions as reasonable or correct

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