



Title: RFQ: Keys to Effectively Responding

Date: Friday, September 4, 2015

Time: 10:15am-11:30am

Moderator:

Meshach Y. Rhoades
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Panelists:

Cristal DeHerrera
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City of Denver, Colorado
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Rafael Medina
Managing Counsel, Litigation
Global Labor and Employment Law
McDonald's Corporation
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Gates Corporation
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Walmart
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Tab 1 – Biographies or CVs

MESHACH Y. RHOADES, ESQ.

RECENT ACCOMPLISHMENTS

- Managed all legal aspects of The Coca-Cola Company's inaugural fifty state launch of Fairlife premium milk into the \$20 billion US milk beverage industry; engaging industry associations, USDA and FDA regulators and regulators in fifty states simultaneously to distribute product in the third most highly regulated and complex food industry in history; zero litigation, safety and compliance violations to date
- Led team of 25 lawyers and lobbyists to negotiate and secure distribution, supply chain, labeling, processing and general approvals for Minute Maid from all fifty-states, FDA and USDA regarding energy and dairy products
- Led team to secure approval for McDonald's Corporation to change key labels on best-selling children's product
- Favorably settled dispute regarding criminal and civil penalties for The Coca-Cola Company
- Favorably settled natural gas rate cases for number one company on Fortune 500 list in Utah and South Dakota
- Favorably settled case regarding breach of contract, breach of fiduciary duties and fraud against director while securing settlement offer for more money than client's estimated damages in mediation
- Achieved full dismissal for breach of contract dispute in California state court
- Favorably settled a patent dispute for a carrier involving its network facilities in Colorado federal court
- Successfully settled antitrust and contract against large paint distributor in Colorado federal court
- Successfully settled multi-level claim against client during the purchase of a subsidiary company from leading aerospace component provider and sale to a multinational corporation designing and manufacturing airplanes, rockets and satellites
- Achieved dismissal of large intellectual property litigation on motion to dismiss regarding jurisdiction in Colorado
- Successfully settled government reimbursement claims under significant time constraints with Colorado's largest transportation district

Of Counsel

Greenberg Traurig

December 2013-Present

- Exclusive counsel handling all dairy and juice label matters for world's largest juice/milk venture by volume with 2013 revenues exceeding \$23 billion regarding company's launch of new beverage product
- Team lead handling all legal work for Fortune 50 company regarding its dairy supply chain distribution, risk management, marketing and advertising campaigns, including internal budgets
- Team lead providing public relations and legal advice to CEO of largest juice company in the world regarding inaugural fifty state launch of premium dairy products
- Team lead providing regulatory and compliance advice to world's second largest private employer
- Litigate commercial, intellectual property, real estate, labor and employment, public bond financing, contract, telecommunications contract, class action, oil and gas and unfair competition in state and federal court nationwide
- Team lead for food and beverage distributors regarding compliance, distribution, label analysis and risk management

- Team lead to aerospace companies regarding aerospace litigation, contracting compliance and risk management
- Represent energy companies regarding nationwide rate litigation
- Represent telecommunications carriers regarding cloud computing, cable landing licenses, VoIP, commercial, and wholesale contract law and regulations and adherence to current federal, state, and administrative laws

Of Counsel

Kutak Rock

November 2011-

December 2013

- Litigated intellectual property, real estate, labor and employment, public bond financing, contract, telecommunications contract, class action, commercial, oil and gas, unfair competition, and pharmaceutical law
- Drafted complex commercial contracts, including non-solicitation, non-disclosure and confidentiality agreements, sales agreements, distributor agreements and settlement agreements
- Advised clients on regulatory compliance
- Represented pro bono clients in family, employment law and contract disputes

Corporate Counsel

January 2008-

November 2011

CenturyLink (formerly Qwest Communications International Inc.)

Denver, Colorado

- Provided legal and policy advice to CenturyLink, a Fortune 500 company, pertaining to telecommunications, commercial, and wholesale contract law and regulations and adherence to current federal, state, and administrative laws
- Managed right-of-way regulatory litigation and developed legal strategy and direction regarding CenturyLink general right-of-way regulatory compliance requirements
- Team lead as counsel for CenturyLink's long-distance network construction contracts
- Successfully negotiated more than sixty franchise and relocation agreements for Qwest's local/long distance companies; resolved multiple right-of-way related disputes with municipalities, state agencies and other governmental entities with millions of capital expenditure savings
- Team lead as counsel for Qwest's Facility Cost organization, a billion dollar organization, and settled over twenty-five multi-million dollar vendor and sales disputes over an eight-month period
- Led team negotiating vendor, distributor and sales agreements for Qwest's wholesale contract team
- Litigated and won judgment in Qwest's favor involving its long-distance network regarding right-of-way access, fees and mandatory relocation in Maryland
- Litigated and negotiated favorable multi-million dollar access agreement cases involving Qwest's local telecommunications network in New Mexico, Oregon, Utah and California
- Litigated and favorably settled dispute in Oregon regarding right-of-way access for Qwest
- Won judgment in Qwest's favor at the Colorado Court of Appeals regarding confiscatory network maintenance fees

Attorney

August

2004-January 2008

Holland & Hart LLP

Denver, Colorado

- Litigated cases regarding patent infringement, trade secrets, copyright infringement, trademark infringement, contract, class action, commercial, oil and gas, unfair competition, labor and employment and health care law

- Managed all aspects of intellectual property and complex commercial contracts and litigation, including non-disclosure and confidentiality agreements, sales agreements, distributor agreements and settlement agreements
- Advised clients on compliance with federal trademark, patent and copyright laws, and the Uniform Commercial Code, including preliminary injunctions and opposition TTAB procedures
- Successfully represented pro bono clients in family, employment law and contract disputes

Judicial Clerk

2003-2004

Hon. Senior Judge John L. Kane

United States District

Court of Colorado

- Reviewed civil dockets, including motions, petitions and memoranda
- Drafted legal memoranda, orders and opinions on summary judgment, discovery, attorney's fees and appeals issues

PROFESSIONAL ACCOMPLISHMENTS AND AFFILIATIONS

Professional Accomplishments:

- Award Recipient, 2015 University of Colorado Kalpana Chawla Outstanding Recent Alumni Award
- Selected Recipient, 2015 German Marshall Memorial Foundation Fellowship
- Selected Participant, Denver Metro Chamber's Leadership Denver Program 2014-2015
- Co-Chair, 2013 Hispanic National Bar Association Annual Convention (2000+ attendees)
- Denver Business Journal, 2012 "Forty Under 40"
- 2012 Law Week Colorado "Compleat Lawyer"
- Gubernatorial Appointee, Colorado Department of Corrections
- Appointee, Governor-Elect Hickenlooper's Department of Regulatory Agencies Transition Committee
- 2007 Colorado Hispanic Bar Association New Lawyer of the Year
- Colorado Bar Association Foundation Bar Fellow
- Gubernatorial Appointee, Colorado Counts! Committee
- Mayoral Appointee, Denver Latino Commission
- Selected Fellow, Leadership Council on Legal Diversity
- Selected Participant, Impact Denver/Leadership Denver Class of 2006
- Graduate, Colorado Bar Association 2009 COBALT Program
- 2009 Qwest Legal Department, Diversity Committee Leadership Award

Affiliations:

- National Finance Director, Hispanic National Bar Association (past Chair, Sections and Committees)
- Chair-Elect, Center for Legal Inclusiveness
- Co-Founder, Latinas First Foundation
- Board Member, Colorado Hispanic Chamber of Commerce Foundation
- Past President, Colorado Hispanic Bar Association
- Past-Trustee, Denver Bar Association Board of Directors
- Past Chair, Diversity in the Legal Profession Committee of the Colorado and Denver Bar Associations
- Board Member, Colorado Center on Law & Policy
- Board Member, University of Colorado Law School Alumni Board
- Board Member and Volunteer Attorney, Colorado Coalition for the Homeless
- Selected Appointee, HNBA/Association of Corporate Counsel 2010 Executive Leadership Training

- Past Board Member, Easter Seals Colorado
- Member, Florence Crittenton Services Hispanic Advisory Council
- Chair, Colorado Supreme Court Justice Monica Marquez “Dream Team”
- Member, Corporate Counsel Women of Color
- Member, Alfred J. Arraj Inn of Court
- Member, HNBA Noticias Editorial Board

EDUCATION

University of Colorado at Boulder School of Law

May 2004

Juris Doctor Degree

Boulder, Colorado

Honors: Academic Diversity Scholarship Recipient
 Berenbaum, Weinshienk & Eason Scholarship Recipient
 Board Member and Associate Editor, Colorado Journal of Environmental Law and Policy

Activities: Elected Justice, University of Colorado Appellate Board
 President, Colorado Law Sports and Entertainment Students Association
 Vice President, Colorado Law Intellectual Property Students Association
 Treasurer, Colorado Latino Law Students Association
 Regional President, Hispanic National Bar Association Law Students
 Intern, University of Colorado Legal Aid and Defender Program

Regis University

May 2001

Bachelor of Arts, Political Science and Communication Arts

Denver, Colorado

Honors: Ranked/Graduated #1 in Class
 Summa Cum Laude; Dean’s List (four years)
 Rocky Mountain Athletic Conference/ Phillips 66 Academic All-American
 Rocky Mountain Athletic All-Conference
 Phillips 66 Student Athlete of the Year
 Regis University Student Athlete of the Year
 Regis University Female Athlete of the Year
 Regis University Crest Club Alumni Female Student Athlete of the Year
 Full Athletic Scholarship (Women’s Basketball)
 USA TODAY Academic All-American
 Basketball Congress International All-American

PRESENTATIONS AND PUBLICATIONS

Presentations:

- *HNBA General Counsel Roundtable: Effective Strategies for Creating a Business Pipeline*, HNBA Corporate Counsel Conference, San Antonio, 2015
- *E-Discovery Oversight*, HNBA Annual Convention, Portland, 2013
- *Avoiding Ethical Pitfalls: Tips for In-House Counsel*, HNBA Mid-Year Conference, New Orleans, 2011
- *Government Oversight Under the Obama Administration*, HNBA Corporate Counsel Conference, San Diego, 2010

- Annual Cherry Creek High School Diversity Conferences, Cherry Creek, Colorado, 2006-2010
- *Latinas in the Profession*, Lincoln High School Career Opportunities Week, 2008-2009
- *Lawyering Today*, Denver Public Schools High School Career Week, 2008-2009
- Over 45 presentations at local colleges, high schools and elementary schools on the legal profession
- Numerous presentations at the University of Colorado School of Law and the University of Denver Sturm College of Law on diversity in the legal profession and balanced practice from 2004-2015

Publications:

- Co-Author - International Litigation: Choice of Law, *The International Lawyer*, Summer 2006; 40:2
- Co-Author - The Road Toward Diversity Leads to Inclusiveness, *The Colorado Lawyer*, August 2011

REFERENCES

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- | | |
|---|-----------------|
| • Richard Baer, General Counsel, Liberty Media | (720) 875- 5442 |
| • Barbara Brohl, Executive Director, Colorado Department of Revenue | (303) 252-8423 |
| • Bruce Strothers, Senior Counsel, The Coca-Cola Company | (281) 302-4362 |
| • Wendy Nunnelley, Group Vice President, Minute Maid | (281) 302-4422 |

Cristal DeHerrera

Cristal T. DeHerrera is Deputy City Attorney for the City and County of Denver. She was appointed in 2014 by Mayor Michael B. Hancock, and her responsibilities include overseeing the day-to-day operations of more than 200 attorneys and staff in one of the largest public law offices in the Western United States. She also advises the city on a wide range of legal and policy issues.

Prior to joining the City and County of Denver, Ms. DeHerrera was a shareholder at the law firm Brownstein Hyatt Farber Schreck, where her practice focused on mergers and acquisitions, private equity, public and private securities offerings, capital formation and securities advice.

Ms. DeHerrera has been recognized with several industry awards and is active in philanthropic and community issues. She is on the board of directors of Rocky Mountain Youth Clinic and the Colorado Hispanic Bar Association, and she served as co-chair of the National Hispanic Bar Association’s 2013 annual convention and on the planning committee for the Clinton Global Initiative’s 2014 CGI America conference. She also has held leadership positions supporting numerous community organizations ranging from the Downtown Denver Partnership to the Denver Public Library.

Ms. DeHerrera earned her J.D. from the Boalt Hall School of Law at the University of California, Berkeley, and her undergraduate degree, with honors, in Political Studies from Pitzer College in Claremont, California.

Rafael Medina

Rafael Medina began his career as an attorney for the National Labor Relations Board in San Juan, Puerto Rico, where he worked for four years. He then represented management, primarily in the transportation and maritime industry in San Juan and the Caribbean for almost nine years in a small boutique law firm. In 1991, Rafael joined McDonald's as an attorney in the Labor and Employment Group primarily assigned to the United States. Since 2007 Rafael has continued to work with Latin America on labor and employment issues affecting the brand. In addition, he oversees employment litigation and is team liaison on social media and diversity issues within McDonald's.

Gina Casias

Gina Casias is an experienced in-house counsel, having practiced labor and employment law for almost 20 years. She currently works at Gates Corporation, the leading global manufacturer of power transmission belts and fluid power products, managing their global human resources, labor and employment legal matters as well as global litigation and arbitrations. Prior to that, she worked at CenturyLink, the third largest telecommunications company in the United States. Gina has extensive experience in wage and hour issues, investigations, compliance matters, and early dispute resolution. Gina is the Co-chair for the ACC Employment Law Practice Committee and the Inclusiveness & Leadership Committee. Gina is a Colorado native who earned both her B.S. in International Business & Marketing and her J.D. from the University of Colorado-Boulder.

Tab 2 – Course Materials (articles, publications, other materials)

A good RFP will help the writer collect comprehensive and comparable bids for an equitable evaluation of potential service providers. Panelists will discuss the issues attorneys must keep in mind as they prepare a response including added value, identifying weaknesses, pricing and other important matters.



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5 Mistakes To Avoid When Responding To An RFP

By **Jonathan Randles**

Law360, New York (August 6, 2014, 5:50 PM ET) -- It's no secret that competition among law firms for new business is incredibly fierce. As companies look to spend money as efficiently as possible, procurement departments have increasingly become involved in the process of securing outside legal services.

Enter "requests for proposal," or RFPs: a mechanism that creates a competitive bidding process for choosing law firms that has become increasingly popular in the corporate world. The shift in philosophy is pushing lawyers to adapt and learn how best to create a compelling response that will get a potential client's attention — and business.

"Clients are more sophisticated now in their buying, so they're exploring options more than they ever have before. As an industry, we're all experiencing that," said Jill Huse, director of marketing and business development for Moore & Van Allen PLLC.

"It used to be that the legal industry was more relationship-driven, but cost has become a big factor because of the pressures clients are facing to control their legal spend," she said.

Law360 spoke with Huse, Association of Corporate Counsel Vice President and Chief Legal Strategist Amar Sarwal, and Littler Mendleson LLP's Jacob Modla — a former senior executive and deputy general counsel for Family Dollar Stores Inc. — for insight into the potential pitfalls attorneys should avoid in putting together an RFP response.

Here are five mistakes to avoid:

Responding to Everything

The first step is to pick a proposal that you have a realistic shot at being picked for. With the prospect of potential new business and revenue, it's understandable why lawyers might be interested in responding to as many proposals as possible. But this shotgun approach may actually end up working against them.

By being selective, lawyers will not only be able to devote more time and effort to draft a better response but will also be able to make a more compelling case as to why their team would be the best for a particular project, Amar Sarwal said.

General counsel are going to be inundated with responses. The more RFPs a lawyer replies to, the more likely it is that the responses will be generic. And a generic response is unlikely to catch a company's attention.

"It's hard for lawyers because we are trained in school to be generalists, and we are afraid that if we become too specialized, we'll miss out on potential business," Sarwal said. "But we need to know what matters are in our wheelhouse so we can convey that confidence that we can really deliver."

"Otherwise, we end up chasing everything and very little because the responses we give will end up being superficial," he said.

The Kitchen Sink Approach

A challenge lawyers face in trying to craft a successful RFP response is analogous to the temptations some writers feel when pitching a story to an editor: You want to wow them with your idea, so you send them dozens of pages explaining your story and showcasing your writing style. But what editors, and potential clients, really want is for writers and lawyers to stay on point.

Experts said law firms should make sure that their response focuses on the specific issues or projects discussed in the RFP. Brevity is also important. Often, it's difficult to write succinctly about a complex legal issue, but being able to do so will show to a potential client that a firm has command over the subject matter.

Sarwal said it's a sign of "bad lawyering" if a firm is unable to clearly articulate the issues at hand and how to tackle them. He also discouraged law firms from including marketing material or attorney biographies in their proposals, saying responses should be fine-tuned to the particular matter at issue.

Being able to break down legalese is also appreciated by general counsel who have to pass along potential proposals to other corporate executives less familiar with legal jargon.

"When you get an RFP you want your response to be as focused as possible on the client's specific needs," Modla said. "A lot of law firms think they need to respond by the pound. What I mean by that is, if somebody asks you for a response on a specific project or need, you don't have to send them a 50-page treatise."

Overreaching on Price

Setting a reasonable price or fee arrangement is important, but it shouldn't be the only thing law firms use in trying to draft a winning response to an RFP. Moreover, if a response does include a proposed price, the fee should be realistic.

The tug of competition from rival law firms and the pressure to attract new businesses can drive lawyers to set an aggressive price point. Sometimes, the price can be too aggressive and could cause firms problems down the road if they do come out on top of the RFP process.

Modla said lawyers need to be realistic and make sure that the price they offer to clients will work for them and their firm.

"Sometimes, lawyers and firms that really want to do the work get too aggressive with the pricing," Modla said. "They put in a response with a price and then later find out that they can't deliver at that price. You don't want to go back to a client midstream."

"Companies are going to make decisions based on what's in that response, and they're going to hold you to it," he said. "Before you submit your response, check yourself. Make sure you're not setting the price at your own expense."

Skimping on Specifics

Read enough BigLaw websites and you're bound to come across these phrases to describe a firm over and over again: The firm is "full service"; the firm has "a deep bench"; the firm is "client first"; the firm has a "collaborative culture." These overused phrases may work on a law firm's website, but lawyers should avoid cliché and instead focus on specific ways they could help a client on the particular matter the client is seeking assistance on.

If the RFP is requesting help on a class action in Ohio, mention in the response any cases dealing with a similar issue that the firm has worked on and offer some analysis on how that experience can be used to help the client in their matter. While attorneys may be hesitant to do so, lawyers should — if possible — include some of their proposed legal strategy in their RFP response. If you believe, for example, that you could defeat a bid for class certification, explain why, Sarwal said.

Chief financial officers and other corporate executives are looking for predictability. They want to know how much a case will cost and how quickly it can be resolved, Sarwal said. General counsel want to have accurate estimates on the cost of the case and how long it would take until it's resolved.

Huse said information in an RFP should also highlight what makes a specific law firm unique. Moore & Van Allen has several accountants on staff who are familiar with the business side and legal side and can help serve as a bridge with clients, she said. The firm's IP group also boasts attorneys who also have backgrounds in engineering.

This type of information can help a law firm stick out in a sea of proposals, Huse said.

"You need to try and customize your response to differentiate your firm from the competition and not rely on generic text that can be found on your website," Huse said. "By customizing your answers, you can show the client that you took the time to understand their business and demonstrate that you really care about the relationship."

Forgetting a Phone Call

Before responding to an RFP, it's important to try and speak to someone at the company to get more background into the legal matter they are seeking help with. Besides helping to build a working relationship with a potential client, a conversation can help attorneys perform due diligence on the company and the issue at hand.

It's not unusual for a business to produce what is, essentially, a boilerplate RFP that provides little in the way of salient information on the company or the specific legal matter it is requesting outside help on. Speaking with the people who actually wrote the RFP, then, is invaluable in determining whether you and your law firm are well suited to respond to the request.

Speaking to someone in person or over the phone is also an important way to stand out from other lawyers and firms that are going to be responding to an RFP. Huse said taking the time to speak with someone is a way to show that you take the RFP seriously and an important first step to developing trust between yourself and a potential client.

"Don't respond right away," Huse said. "A conversation really is the best way to learn about what a client wants, and it also helps open the lines of communication."

--Editing by Jeremy Barker and Philip Shea.

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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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