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RFP Considerations For GC Stakeholders

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Introduction

Over the last 10 years, my company has had the opportunity to issue, as well as respond to, many requests for proposals (RFPs). Having been on both sides of the table gives us an interesting perspective. RFPs are a staple of many organizations' procurement processes; even if you are not directly handling the issuance of an RFP in your company, you are still affected by the outcome. To ensure that you get the product or service that will best meet your legal department's needs, you have to ensure that, as a stakeholder, you have a voice.

Responding to an RFP can cost a service provider between \$3,000 and \$5,000 for writing and production. It can cost the issuer far more when you factor in the time to generate, distribute and review all of the proposals. However, RFPs are a beneficial tool for your business if properly utilized and implemented. The process allows you to gain insight into the available options and evaluate the criteria

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that are most important. So how do you make sure that issuing an RFP is worth your while? In this article, I will outline five areas of best practice to help ensure that you get the right product or service for your company or matter.

1. Know What You Want

Before you begin drafting an RFP to send to potential providers, it is important to be clear about what you want to get out of the process. This includes carefully delineating the scope of your project and defining the objective of your requests. Keep in mind that the single problem that you initially set out to solve exists within a larger context. Therefore, determine if the product you seek needs to be able to expand its reach when necessary. Once you've thought through these integral questions, communicate your criteria and ideas to all relevant stakeholders. Then make sure you understand their points of view as well so that together you can create a comprehensive RFP. For example, the legal department and procurement may have different views on what is necessary to look for in a service provider. By requesting feedback from multiple sources with vested interests in the RFP, you decrease the chance that a pivotal part of the finished document will be overlooked. In short, be clear about which criteria are imperative to have and which are flexible.

Let me relate an anecdote that will illustrate how crucial it is to involve all relevant parties. A few years ago, LLM, Inc. was responding to an RFP, and we scheduled a call with the issuer to clarify a few of the questions. To my surprise, the representative from legal and the representative from procurement had never before met or spoken prior to the call. Although they worked for the same corporation and had similar objectives in mind with respect to the RFP, these two

key people had not communicated about their primary objectives. As you can imagine, they shared a similar vision for the end result, but their ideas of how to get there differed greatly. While the legal department saw huge cost savings by slightly broadening the scope of the project, the procurement department was solely focused on filling one specific need. If the two representatives had discussed their respective goals and concerns before meeting with us, the entire process would have been much more efficient. The quality of responses that you receive once you issue an RFP will be much higher if you take the time at the beginning of the process to establish your wants and needs with your team.

2. Lay Down The Law

If you have strong feelings about certain requirements, be clear in your proposal that respondents must meet these criteria. For example, if a certain level of guaranteed uptime is required for you to consider a hosted product, then this point should be noted accordingly. However, you should not be overzealous with requirements; carefully consider what you include. You do not want your RFP to be encumbered by "mandatory" criteria that are not truly necessary lest you eliminate a good candidate based on a non-essential criterion. The goal of the RFP process is to attract the best applicants to respond. As long as you are both selective and explicit with your requirements, they will be invaluable in causing the field of candidates to self-filter. This saves your organization time and money from having to review responses that you will ultimately eliminate.

3. Questions Of Quality

After you've touched base with all key personnel in your organization and developed criteria, you can begin to draft the

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RFP. Institutions such as the Sedona Conference® offer high-quality templates that can serve as a valuable reference and foundation for your own request. When creating your document, make sure you only include relevant questions. Otherwise you will have to spend time and money weeding through answers that don't pertain to your project.

Once you have a robust group of questions, evaluate the ratio of broad to narrow. Broad, open-ended questions are instrumental when they appear in conjunction with questions of a more precise nature. In other words, make sure you have both pointed questions with concrete answers *and* more open-ended questions so that you don't overlook features and services that could be valuable. For example, review is currently the largest cost expense in the litigation process, so naturally it is an issue most companies want to address. Some closed, or objective, questions you might ask are: "Does your product provide an easy way to graphically track review rate and quality of performance?" Or, "What is the average review rate across all of your active matters over the last twelve months?" The answers to these questions give you a clear idea as to functionality, performance, and how respondents stack up. However, you may be missing out on a provider's key, cost-saving features. In this instance, it would be beneficial to ask a more open question as well. Here one might ask, "What are the top three aspects of your product that can reduce review costs?" This allows the provider to highlight ways in which they can uniquely reduce costs. In short, context matters.

4. Purposeful Pricing

Pricing is an important piece of any response. Unless you are asking for a flat price for a specific litigation matter it can sometimes be difficult to do an "apples-to-apples" comparison. This is especially true if you are seeking a product to provide an array of services for your legal department and several unit rates may apply. Confusing matters further, one respondent may price a certain unit rate by gigabyte where another may price by page. To provide clarity, illustrate pricing

scenarios such as, "How much would it cost to produce two million pages of Bates-stamped PDFs with a delimited load file that needs to be sent directly to opposing counsel on a hard drive?" In addition to asking for the total cost, it is important to request a breakdown of unit rates that contribute to the total. You should also ask if there are costs that are not encompassed in the outlined scenario, such as project management or technical time.

5. Reciprocal Accountability

While the RFP process is oriented towards the needs of your company or project, you need to remember that you are also accountable to the potential providers. Scheduling a pre-proposal face-to-face meeting or phone call is critical to making sure that everyone is on the same page. In addition, provide the respondent with as many specifics as you can, especially when it comes to your budget. By having an actual number you accomplish two things: first, this information allows potential providers to assess whether or not it is in their best interest to respond to the RFP; and second, it is an easy way to see if both parties are a good fit for one another. The concern should not be that, by providing a budget, the respondent will take advantage of this information. Nothing good comes of trying to wrestle a \$600,000 solution to accommodate a \$400,000 budget.

Following this idea of transparency, do not hesitate to release non-confidential information on other service providers if asked: the names of providers who have expressed interest in responding, how many companies were sent the RFP, and if the incumbent(s) were included is constructive information. This gives the respondents a feel for the competition they will be facing and how they should respond. After you have chosen a single or multiple providers, send the other applicants a vendor evaluation report. If you keep notes or a checklist while going through the proposals, these evaluations will not be burdensome. Let them know how they performed in an anonymous comparison to the other vendors. This comparison should include their overall

rank, the pros and cons that were considered when their proposal was being evaluated, and most importantly, how they could have improved their proposal. Feedback of this nature will not only help the service providers, it will help you next time you are reevaluating your providers. They just might add those features or services you are looking for.

Conclusion

Remember that the RFP process begins before you write it. Everyone who will be significantly affected by the outcome needs to have a say in the content of the document. After you have gathered accurate information as to the desired functionality and features of the product or service that you will use, you need to create the document. Don't be afraid to articulate firm requirements, and consider using a high-quality RFP template as a foundation. The questions you include should be balanced between broad and narrow, or objective and subjective. You want to get specific answers from respondents, but also leave room for them to identify unique features of their products or services that would be relevant to your project. Realize that the RFP process is not a one-way street. You have to be accountable to your potential business providers; give them as many specifics as you can about your needs before they respond, and afterwards, provide them with a comprehensive evaluation of their response.

Lastly, do not discount meeting respondents in person to make sure that they are a good fit with your corporate culture. Having all stakeholders view a live presentation of the products and services offered will be illuminating. It is one thing to read a response to your RFP or to perform research of your own online, but another thing entirely to interact with the potential service provider in a dynamic setting. By taking this additional step, you will support the five key concepts discussed at length above. If you only take one idea from this article and apply it to how your company creates and issues RFPs, it should be that forethought, collaboration and transparency will lead to the most successful outcomes.