

## Properly designed metrics can improve your chances to win an RFP

By Steven A. Lauer © 1998 \*

Corporate legal services are under pressure. Cost is scrutinized more closely than ever before. There probably is no law department that is immune to demands from business executives that it control, if not reduce, the budget for legal work.

This has caused in-house counsel to attempt to use techniques for cost containment that were previously unfamiliar to the legal profession. An example is the request for proposals to provide legal services (RFP). RFPs long have been used to solicit interest in providing construction services or in contracting with government agencies. They were virtually unknown among lawyers (as a tool for securing legal services) until recently. Law firms have received RFPs from existing and potential clients in recent years much more frequently than previously.

One of the primary goals (and, on occasion, the only goal) of a company that issues an RFP is lower costs for the subject legal work. The primary focus of a law firm's proposal should be the fees that it would charge (and the manner in which it would charge them) if awarded the work.

All proposals submitted by competing firms would have a similar focus, however. Moreover, a firm may have limited flexibility to propose reduced fees if its costs are relatively fixed. Or it may simply prefer to compete on terms other than merely the amount of fees.

How can a firm distinguish its proposal from those of its competitors? One way requires that it understand all the motivations of the company that issues the RFP.

Business executives demand that in-house counsel demonstrate the value of the legal work they provide and manage. Corporate management expects evidence that the legal work contributes positively to the achievement of their companies' business goals. No longer do they assume that any amount of legal expense is tolerable.

How can that value be proven? What units of measurement exist by which to make that proof? Unfortunately, there are few accepted standards for that demonstration. Some companies' law departments are trying to devise means of doing so. There is no industry-wide answer yet, however.

Law firms have a high stake in these inquiries. After all, their livelihoods are the objects of that scrutiny. Other than providing data – hourly rates and other financial information – law firms generally have not been involved in the substantive discussions. Firms should adopt a more proactive approach.

**[Quantitative measurement standards for things such as this are called “metrics.” While they cannot be as precise as the standard for length known as a meter, for example, they can help in-house counsel to make the sorts of comparisons that senior corporate management in selecting outside counsel. The more capably and confidently in-house attorneys can make reasoned choices among what appear to be equally good law firms, the more accepted those selections are and the better the legal work that results.]**

Nobody's better positioned than firms to help companies design meaningful ways to determine whether what they do truly helps the clients reach their goals in a cost-effective manner. The design of appropriate metrics requires familiarity with and an appreciation for the substantive work involved. Whether, in order to assess the reasonableness of one's litigation-related experience, you measure cycle time – the period during which litigation is open – or the amount of discovery undertaken, it is important to

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recognize the limitations that the measurement has in the real world and incorporate those limitations into your calculations.

How should a firm do this? First, of course, it should analyze its own work and try to determine what sorts of measurements would be meaningful for its present and potential clients. Because this might vary with the practice area, it is difficult to propose universal criteria.

After a firm has identified ways in which its type of work can be measured [**or graded**] on a quality scale, it should determine how it can present those measurements to its clients in order to distinguish (presumably, in a positive way) its work for them. It should propose to those clients that it share with them data by which to continue that measurement effort.

This will have several effects. First, it will demonstrate to those clients that it is willing to show them in a quantifiable fashion how well it represents them. Second, if the clients accept the offer to jointly measure future work with the same tools, the firm and those clients will forge closer bonds because they will be sharing data in a more meaningful way than has been the case previously. The metrics that they develop will represent a shared experience base, one which they will both rely on to demonstrate how they are [**jointly**] managing the legal work.

If a firm develops such measurements with current clients, it can then apply those same tools to its efforts to win new work in response to RFPs. When submitting a proposal, the firm should include an offer to work with the company that issued the RFP to measure the quality of the work awarded pursuant to the RFP.

What sorts of measurements might a firm propose? It should not simply count the number of out-and-out victories that it secures for its clients (even though that is important and certainly of interest to in-house counsel!). Corporate law departments are less and less willing to view litigation as a win-at-all-costs exercise. Accordingly, in-house counsel are interested in how frequently a law firm wins for its clients even when a win is something less like a settlement for an amount less than was expected, for example.

Try to devise metrics that address the concerns of corporate counsel. More and more in-house attorneys have realized that the length of time that a litigated matter is open, the less one wins (despite the ultimate resolution). Accordingly, metrics that specify how quickly a firm is able to dispose of cases for which it is retained (assuming that it doesn't just "give away the store" in order to close the file) will be of interest to many in-house lawyers. Does the firm pro-actively try to steer litigated disputes into alternative dispute resolution? If so, how successful is it in doing so? Data that demonstrate it does so more routinely than other firms would be of interest.

A firm should determine ways in which its representation of clients is superior to that available from other firms. It should then highlight those differences in its RFP responses. For example, a firm may be able to manage litigation carefully and achieve results equal to or better than those of other firms while expending less time doing so. It may rely on a leaner and more appropriate staffing approach than do other firms. If that is so, that fact should be used to differentiate the firm from its competitors. If it is aware that its clients enjoy the same quality litigation representation at a lower cost than do clients that use other law firms, it should mention that fact in its proposals.

**[It's unlikely that a firm will have very precise data on other firms' performance for this purpose. Firms often have a rough idea of how they compare in many ways (many firms claim in their brochures that they are better than other firms, but they rarely present empirical support for that claim). Even without precise comparisons, firms that believe they provide superior service, in a measurable way, would be well advised to support that assertion directly.]**

**[What sorts of measurements would be helpful to in-house attorneys? For many companies, settlement is the preferred outcome for most disputes, as opposed to trial. In-house attorneys worry that the cost of settling a case can easily exceed its value to the company. If a firm determines that its fees rarely exceed 25% of the settlement payment by its clients, perhaps that is a superior result that**

**its clients should know and that prospective clients would want to know. The shorter a dispute is in litigation, the better it is for the client that is paying the litigation expense. If a firm believes that it is able to resolve disputes more expeditiously as a rule, prospective clients should be interested in knowing that.]**

How can such information be presented? To the extent possible, it is helpful to use metrics and statistics. For example, if a firm routinely spends fewer hours in certain phases of litigation than do its competitors, while achieving its clients' goals, the average amount of time, or another measure of the effort involved, can be used. The firm should strive to present its accomplishments in as quantitative a fashion as it can – using metrics.

If a firm recognizes the concerns of in-house counsel for data to demonstrate how successfully they are managing legal work, its chances of winning an RFP competition should be heightened. It can do so by presenting data to demonstrate how it achieves those goals on behalf of other clients and by offering to work with the department that issued the RFP to measure the legal work awarded pursuant to the RFP in the future.