

ASK AND YOU SHALL RECEIVE

How RFPs can improve corporate legal services

■ BY STEVEN A. LAUER

THE PAST FEW YEARS have seen a virtual upheaval in the relationship between corporate legal departments and their outside law firms. Corporate America has grown increasingly leaner and meaner—and, in a sense, so have its lawyers.

More than ever, law departments, while still participating in the nitty-gritty of the legal work itself, are expected to manage their costs effectively and to provide better reports to corporate management. Of the many new tools that

in-house counsel are using to select and oversee outside law firms, one of the best is the request for proposal, or RFP.

An RFP can be used to define the relationship between in-house counsel and outside lawyers—old and new firms alike. A request for proposal can make outside firms more aware of precisely what the client wants: Firms that participate in an RFP should be asked to address those expectations.

But simply issuing an RFP is not enough. A corporate legal department must take a number of deliberate steps if it hopes to fully realize the potential of an RFP. For starters, it must identify those firms from which it wants proposals, making sure to open up the field to invite firms that have not previously done work for the company.

In addition, all RFPs, regardless of the type of work involved, should clearly state how the company expects its outside firms to interact with its in-house attorneys and its business managers. Most RFPs focus on the outside

firm's fees and costs almost exclusively, but an RFP should really aim more broadly at establishing a collaborative effort between the firm and in-house department.

It's important that the text of a request for proposals be as specific and practical as possible—going well beyond high-minded but vague statements about providing cost-effective service and responsiveness to the client's needs. An RFP must make the legal department's wants and needs clear to the outside counsel. The expected results must be measurable.

The RFP process, when conducted thoughtfully and consistently, can work well—infusing objectivity and reliability into the selection process, as well as increasing efficiency and reducing legal costs. It introduces into the counsel selection process the concept of objective criteria for comparing legal services.

While the RFP process has its critics, the use of numerical scales to rate law firms is gaining currency. The idea was recommended in a recent report by the Greater New York Chapter of the American Corporate Counsel Association. Take it from me: As one who has designed and applied objective criteria in selecting outside counsel, I believe it is not only feasible but also effective.

In-house attorneys have typically selected outside counsel on the basis of unwritten criteria, often applied inconsistently. Many selections have been made with little regard to the quality of a firm's work. Rather, they have been based on long-standing relationships that began under circumstances that might have been very different from today's needs.

The first step is to identify the criteria to be used in choosing firms. It may be that your office has a lot of work that needs to be done simultaneously in multiple, far-flung jurisdictions, making an outside firm's geographic breadth a critical factor. Or it may be that your legal work is concentrated in one locality, but requires more fire-



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power, so that the depth of a firm's resources in that one jurisdiction is of utmost importance.

If your company has a lot of repetitive but relatively straightforward disputes with customers—for example, small collection cases unlikely to involve novel legal or factual issues—you might value a firm's ability to delegate the primary work to lower-level staff. If you are selecting counsel to handle a complicated antitrust matter, however, it might be better to evaluate firms on the basis of their high-level talent or their experience in the field.

Once you identify your criteria, you must determine their relative importance to the process. This helps you create a formula for measuring and comparing candidate law firms—a scoring standard that represents your expectations vis-à-vis the legal services provided by the outside counsel.

Just establishing a scoring scale, however, does not achieve the primary goals of an RFP: objectivity, reliability, and consistency. All it does is provide a common measure for the various criteria. And if different people are involved in making the selection, there is a danger of inconsistency in how scores are applied. Some people are “hard” graders; others are “soft” graders. Thus, a scoring scale of one to five (or one to ten) must be coupled with guidelines on how to apply the

scale. This will promote consistency in the evaluations and provide a rational, defensible basis for the final selection. Criteria should be weighted according to their relative importance, which may depend on the type of work sought, in calculating the aggregate score for each firm.

There is another, larger benefit to preparing scoring guidelines and using them consistently. By familiarizing everyone in the department with the definition of “excellent” or “outstanding,” for

it to mean—neither more nor less.”

Only when lawyers use the same terminology about quality, service, and value—and are certain that they are doing so—can they make judgments about those standards. Once in-house counsel are in agreement about the standards to apply, then they can determine which firm meets those standards better than others.

These standards can be applied on a continuing basis by regularly evaluating outside counsel. Periodic “report cards” would either provide assurance that outside counsel are fulfilling expectations or point to a need for improvement.

Carefully written RFPs, together with a more objective selection process and regular reevaluations, will not only ensure that the right firm is chosen for the job, but will also promote a better

client/firm relationship. ■

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example, a common parlance can emerge for the slippery concept of quality. It will never replace all the subjective factors in decision making, but it can be of enormous value in an exchange of opinions about outside counsel.

Unless people can be confident that they have in mind the same meaning when they use the same words, they will continue to function like Lewis Carroll's Humpty Dumpty, who said, “When I use a word, it means just what I choose

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