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Responding to a Request for Proposal: Time, Money, People and the Law

This course will help you define your process for responding to RFPs — and earn a CE credit!

COURSE DESCRIPTION
A combination of increased competition, rising costs and growing scrutiny by management, auditors and investors, has made the RFP process the gatekeeper for new law firm business. In 2016, the average law firm, according to LexisNexis, reported receiving 200 requests for proposals (RFPs) each month! Managing that workload has become a substantial exercise for firms large and small. That tide of inquiries brings issues of ethics, regulation, economics and strategy that should implicate legal management professionals. This course will examine the key elements of an RFP strategy.

COURSE OBJECTIVES
- Identify the key elements in an RFP.
- Define the parameters for when the firm should respond to an RFP.
- Examine ethical issues that may be presented by the RFP process.
- Identify the team members for the process.
- Break down the potential financial implications of responding to an RFP.

Abraham Lincoln’s clients often came to him on the day their matter was scheduled for trial to ask the Illinois rail-splitter if he would serve as their counsel. Today, a client inquiry is likely to first
appear in the form of an email or express letter comprised of 3 to 30 pages of questions presented as a formal request for proposal (RFP).

Knowing how to ethically, economically and strategically manage these efforts requires a significant amount of bandwidth for firms large and small.

Five major issues regarding RFPs are deserving of legal managers’ close attention:

1. What goes into preparing a winning response to an RFP?
2. What are the issuers of RFPs looking for in a law firm proposal?
3. What are the regulatory and ethical issues presented by the RFP process?
4. What should the proposal-drafting process entail?
5. What are the costs of responding to an RFP?

INITIAL CONSIDERATIONS
Depending on the complexity and scope of work contemplated, the process of responding comprehensively to an RFP could take anywhere from 4 to 40 hours. Making that sort of time investment into a speculative venture like an RFP response should mean that the effort is seriously and professionally pursued — not slapped together as an annoying side project. Even the biggest law firms report that their success rate in the RFP process is 30 percent or less. When an RFP is sent out to dozens of firms at once, the expected success rate is clearly lower.

For law firms in aggressive growth mode, or those struggling to keep their work pipeline full, this can be a difficult decision to make. If the chances of success are slim, is there any reason to put the time and effort into preparing a proposal? The answer to that question depends on two things: 1) How accurate is your assessment of the chances of success? 2) How much is the time put into the project really going to cost the firm?

Determining chances of success regarding any particular RFP is clearly difficult (unless, perhaps, your firm already has a pipeline to information from the requesting organization, say from a pre-existing relationship). But as imprecise as the process of making that determination may be, in a world where time is inelastic and one of the most limited of resources, doing the research necessary to gauge the likelihood of success is well worth the time.

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CLM® Application Credit for Functional Specialists: 1 hour in the subject area of Human Resources Management (HR) towards the additional hours required of some Functional Specialists to fulfill the CLM application.
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HRCI: HR Certification Institute® pre-approved this program for 1 HR (General) credit toward recertification.
SHRM: This program is valid for 1 PDC toward SHRM-CP and SHRM-SCP recertification.

For example, finding out what you can about the requestor online, polling your colleagues within the firm, or even talking with colleagues outside the firm about the organization issuing the request may help you understand whether the organization has longstanding relationships with other firms. A check of public documents, such as U.S. Security and Exchange Commission (SEC) or state filings, may reveal the relevant relationships of larger entities. A glance through the plaintiff-defendant index in the relevant courthouses — both state and federal — may provide some insight as well, both as to existing relationships with law firms and the type of issues otherwise facing the issuer of the RFP.

Once the decision is made, make the necessary investment to formulate a quality responsive proposal, it makes sense for the persons involved to take on an “all-in” attitude toward the effort, despite being engaged in a speculative investment of time and passion. A flawed, incomplete, tardy or half-hearted effort will constitute a waste of time and resources. If the response team leader finds the team unenthusiastic, they should consider either changing the roster of participants or the decision to proceed. Preparing an RFP, like trying cases, is not for the faint of heart. Issuers of requests for proposals, like juries, can sense a lack of enthusiasm and confidence.

Understanding the elements of a compelling response to an RFP is central to identifying the skills that should be brought to bear on the project. Those elements, in turn, are dictated by the expectations of the organization issuing the RFP. Understanding what potential clients want to see in a proposal should drive the decisions about what to include in the proposal and which individuals should be assigned to the task.
ELEMENTS OF AN EFFECTIVE PROPOSAL

What is it that potential clients say they value most in proposals?

Here are some thoughts derived from a review of various commentators, counsel and clients regarding the RFP process:

1. Generally, make sure you address each of the specific areas of inquiry contained in the request for proposal, at a minimum. Potential clients that have gone to the work of issuing an RFP may be sending their request out to either a handful or perhaps as many as 40 recipients. When the responses come in, one of the easiest ways to winnow down the stack is to check each response for completeness. Failure to address a question contained in the RFP is likely to be a quick disqualifier.

2. When dealing with a potential client that is unfamiliar with your firm, provide a high-altitude introduction to your organization, describing its geographic coverage, history, size, culture, diversity and achievements.

3. Specify the experience the firm’s attorneys have in the core area addressed by the RFP. If there are related areas that seem relevant, address them as well.

4. Identify and describe the key players within the firm who are available to provide the services contemplated. Call attention to specific achievements and credentials.

5. Specific references to previous case assignments germane to the task at hand should be included wherever possible and wherever this can be done while respecting client confidences.

6. Rates and alternative billing approaches are of great interest to all entities issuing RFPs. Today’s marketplace increasingly demands candor in this area. RFP issuers often disregard proposals that fail to address fees up front and with specificity.

7. Billing practices and systems are almost always of interest to issuers dealing with a substantial assignment. Indicating flexibility and attentiveness, when deliverable, is very helpful.

8. Technological expertise (especially regarding defense measures) and overall respect for confidentiality is vital. Highlighting the steps your firm takes to address these concerns and your firm’s overall level of sophistication in this area can make your proposal standout.

9. Recommendations from other clients and stories of satisfied clients should always be given adequate play, when permissible.

10. The traditional listing of representative experiences is of considerable value as well, especially if accompanied by a brief discussion as to why that effort is germane to the task at hand.

Style considerations also matter. Proposals are not legal briefs — they are sales presentations. They should move briskly, be devoid of errors and free of heavy prose. Most issuers of an RFP value brevity and thus prefer to read documents written in a creative, fluid, active fashion. This skill is not common to most lawyers who write briefs, contracts, pleadings and motion papers pursuant to the rules of civil procedure or the dictates of established caselaw.

CHOOSING THE TEAM

In most firms, there is a go-to lawyer who both determines whether a proposal is worth the effort and who ultimately takes the laboring oar in preparing the document. The fact that a senior lawyer is involved at least assures that the proposal writing process will be informed with broad experience.

At the same time, relying on senior lawyers comes with its own set of disadvantages. For one thing, such individuals have alternative demands on their time, many of which are billable at a high rate. That makes the opportunity cost associated with their involvement in the proposal drafting process very high. Furthermore, the most senior and knowledgeable lawyers in the firm are often also those who manage their responsibilities on a “last-minute-crisis” basis. This is an invitation to failure in answering a request for proposal. Responses received late are often summarily dismissed. Even a barely timely response may suffer when compared to an early and comprehensive response, as first impressions count in the proposal process.

Depending on the complexity and scope of work contemplated, the process of responding comprehensively to an RFP could take anywhere from 4 to 40 hours.
Professional writers, working inside or outside of a law firm, can also be utilized — often on an as-needed basis — to develop effective proposals at a reasonable cost.

Responses, if taken seriously, deserve to be dealt with as urgent matters addressed by gifted writers, well-organized team leaders and knowledgeable firm advocates. Much as law firms have come to realize that the ideas and impressions of the lead partner don’t necessarily serve as the best possible foundation for a marketing campaign, the specialized requirements of the RFP response process can often be better served by less senior personnel with relevant skills, access to necessary information and a reasonable cost profile.

WHY SO MANY RFPs?
Why are RFPs proliferating? Several trends seem to contribute to this reality.

First, many corporate legal departments have ascribed and committed themselves to “best practices” when retaining outside service providers. Bringing the notion of competitive bidding — or at least open competition — to the counsel retainer process is now a high priority for corporate general counsels who are under unrelenting pressure to reduce the cost of outside counsel.

Another reason is that mandates from corporate budgeting executives, chief financial officers and the like may specifically mandate the use of the RFP process as a means of demonstrating that something other than habit or personal relationships drive legal department decision-making.

Also, unhappy past experiences may lead the client or potential client to want to take a new look at old law firm relationships. Using the RFP approach can provide cover to legal department personnel who wish to deflect uncomfortable inquiries from incumbent counsel.

Changes in personnel within the corporate legal department may lead to a “take a fresh look” approach to the retention of legal counsel, too. Injecting competition among firms serving a common client can often improve communications, responsiveness, staffing and billing practices of those firms who have come to realize that their work will always be measured against the performance of other entities.

Finally, the increased complexity of legal challenges and resultant specialization of lawyers and law firms means that clients increasingly need to identify a new area of outside service provider expertise.

Firms that are most successful in gaining work through the RFP process still succeed only about 25 percent of the time when they submit a proposal. With many issuers dispatching RFPs to anywhere from 3 to 30 law firms, the odds of winning a specific assignment, are often slim. In view of this, the most important thing firms engaged in responding to RFPs can do to ensure they are getting a fair return on their investment in proposal writing is to determine which opportunities carry with them a reasonable chance of success. Then, once the decision is made to go ahead with a submission, they should deploy the proper mix of skills and knowledge that will create a timely, impactful and economically sensible proposal.

Using previously drafted firm descriptions and tweaking prior proposals can speed completion and reduce costs. This can be the task of administrative personnel with communications skills. It does not take a $1,000-per-hour partner to assemble and edit an effective response to an RFP. Using such high-priced talent drives up the cost of creating a proposal and drives down the likelihood of dispatching a prompt response.

AVOIDING INTERNAL DISTRACTIONS
What about the notion of origination credit? Ideally, this is an issue for the firm’s senior managers to decide in advance. The administrator may assist in developing a firm-wide process for crafting RFPs and contribute to greater harmony among partners, greater efficiency in crafting proposals and higher success rates in submitting proposals.

As an example, it could be understood that if a particular partner is the initial recipient of an RFP that person will share in the origination credit, even if the substantive area of law involved has nothing to do with that person’s practice. Furthermore, if substantive inputs are obtained from others in the firm, it should be understood in advance that their participation will be noted and considered if the proposal proves successful. If the firm is fortunate enough to have a nonpartner or outside source with the skills necessary to lead the effort, that fact alone could do much to make the response effort as efficient, timely and effective as possible.
Another thing to keep in mind is that testimonials by clients or celebrities are a particularly nettlesome area. They are approved in some states, restricted in others and apparently banned entirely in still others.

ETHICAL CONSIDERATIONS
Proposals are subject to the same set of ethical and regulatory restrictions as lawyer advertising. Those rules are complex, constantly changing, and vary from state to state (a challenge for multistate law firms). A survey of those rules and sampling of cases would require a separate article, but areas that deserve care are worth highlighting.

First, the general rule in all states is that use of false or “inherently misleading” information is prohibited. Thus, while exaggeration or subtle suggestions not grounded firmly in discernable fact are acceptable in other fields, such puffery is suspect when utilized by lawyers. Even a factually accurate statement — if presented in a way that is likely to be misunderstood by the reader — can be found to be “inherently misleading.” Many states ban or restrict the use of terms like “specializing” as well.

Secondly, these limitations apply not just to written statements of fact but to characterizations, images and even client endorsements. Pictures or statistics that suggest an inaccurate picture of firm diversity, for example, can lead to disciplinary proceedings.

Another thing to keep in mind is that testimonials by clients or celebrities are a particularly nettlesome area. They are approved in some states, restricted in others and apparently banned entirely in still others. Again, knowledge of the applicable state rules is an important part of the RFP response process.

Finally, the penalty for violating such ethical rules can involve lawyer disciplinary proceedings, even if the error was the result of a non-lawyer action. Ultimately the partners or leaders of the firm — as well as the lawyer supervising the drafting of the proposal — are ethically responsible for content. This does not mean that every element of a proposal needs to be created by a lawyer, but it does mean that someone well-versed in the applicable state limitations on ethical marketing should review the final product before submission.

CONCLUDING THINGS TO REMEMBER
Requests for proposals are proliferating and law firms big and small are wise to have an effective strategy in place for determining the following: 1) which requests deserve a response, 2) how great an effort should be made to prepare each response, 3) who should participate in and oversee the proposal-writing effort, and 4) how to follow up and evaluate the effectiveness of proposals after dispatch.

The cost of creating an effective proposal can be significant and should be managed just like any other budget item, with legal management professionals and managing counsel looking for efficiencies, effectiveness improvements and risk management on an ongoing basis.

ABOUT THE AUTHOR
Keith Hanson is the Managing Partner of Hanson Law Group in Barrington, Illinois. He has been an equity partner in firms as large as 500 lawyers and as small as 5 lawyers. He is also a mediator, writer, college professor and public official. In those roles, he has authored both requests for proposals and numerous responsive law firm proposals.

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