

5 Trends Influencing RFPs For Law Firms

By **Matthew Prinn** (October 31, 2019, 4:25 PM EDT)

The Buying Legal Council's Americas Legal Procurement Conference took place in September in New York. Hundreds of legal professionals involved in either buying, pricing or selling legal services met to discuss the latest trends in the legal procurement industry.

Requests for proposals, or RFPs, were a common theme throughout the conference as they have become the standard tool used to compare law firm expertise, identify competitive advantages, solicit legal strategies and negotiate pricing.

Five trends in the legal industry related to RFPs include better technology, smarter questions, more request for pricing bids, the impact of unbundling, and a rise in diversity and inclusion initiatives.



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Better Technology

RFPs were historically distributed and managed via a word document asking the firm to provide a response in similar fashion. Word documents have little restrictions and allowed firms the freedom to include long responses and appendices. Particularly for large legal departments using dozens or more law firms, this led to RFPs being very difficult to manage, score and compare responses.

Many law firm responses were well over 200 pages and were a nightmare for legal departments to manage. We then saw companies turn to software tools like Ariba, which had been used for years in general procurement but were not customized to the legal industry. Law firms did not find these tools user-friendly and struggled to convey the law firm's value in excel boxes.

The entrance of RFP software tailored to the legal industry, that is both more user-friendly for responders and also makes issuing an RFP much easier to score and manage has been a game changer. RFP360, PERSUIT and Banyan RFP are examples of companies with products that allow you to compare and score law firm responses more easily.

One impact this is having is that you are seeing more legal departments use the RFP process for a specific matter with a quick turn-around time. Often times these RFPs are issued to firms already on a preferred panel and will only include a few questions tailored to strategy, staffing and price. This allows a company to get multiple proposals from different types of law firms in order to gauge the range of options.

Another trend we are seeing is companies who may have a small legal team, sometimes only one general counsel, getting involved in issuing RFPs to try to mimic some of the same results the larger legal departments achieved. Technology has made it so that even a one-person legal department can easily manage an RFP.

Lastly, one area of technology that is slowly making its way into RFPs is video. We've seen some law firms start to proactively use video in responses where they may link to something the firm created. What we haven't seen much of it yet, but we will, is RFPs that ask law firms to provide a video response to a question rather than a written response.

For example a chief legal officer may have a matter for which they are considering three firms. They may prefer to review three 10 minute videos of the relationship partner saying why their firm should be selected, rather than three written responses. Stay tuned for more to come in this area.

Smarter Questions

When RFPs first arrived in the legal industry many of the questions were transferred over from RFPs that may have been used to purchase raw materials or other products. When purchasing legal services, questions need to be customized to the legal industry. As legal departments have become more sophisticated, they have learned to draft questions in a way that gets better answers from law firms.

Many RFPs now include page or word limits on responses to avoid long run-on answers that read like marketing brochures. Legal departments are asking questions with an aim to compare law firm competitive advantages in a world where many law firms look and sound the same. These questions are drafted in a manner to illicit concise answers with easily identifiable punchlines.

Another trend we are seeing is RFP questions being drafted that require strategic thinking by one of the lawyers in the firm. While it's understood that portions of an RFP will include questions that the marketing team can answer with general firm information, the goal is to draft questions that require the lawyer to draft a custom response.

Many RFPs now focus less on checking the box for "legal expertise" and more on trying to compare the different legal strategies each firm would recommend. This change has resulted in many lawyers complaining about giving free advice. But if your competitors are willing to do that — and your response doesn't address the strategy question — you're likely to be eliminated from consideration.

We expect to see RFPs become shorter in length but smarter in drafting questions that require strategic answers customized to the company's business goals.

Pricing Expectations

The biggest change in RFPs on pricing is not in the questions being asked but rather the answers legal departments expect in response. For years, RFPs would ask law firms questions about whether they were open to alternative fee arrangements and what suggestions they may have for the company to consider. Ninety-nine percent of the law firms would respond with the same answer.

The answer would say "Yes, we are open to all types of alternative fee arrangements" and proceed to list the definition of each type of alternative fee arrangement model. The response would then say "we

would be happy to discuss once we have more information" and would not proceed with any specific alternative fee arrangement offer, and many times the selected firm would revert back to hourly billing with a discount.

Both sides (the issuer and the responder) are evolving, although at what seems like a snail's pace. Law firms are finally starting to realize that if they just provide the generic definition of what an alternative fee arrangement but their peer firms are providing more aggressive pricing responses, they are not likely to be selected.

Law firms are naturally risk averse and don't want to be boxed in to a number based on a written RFP response where they didn't have all the data they needed to devise a hard bid.

In circumstances where the responder doesn't have enough information, law firms should at least paint a picture of how the alternative might be structured based on their understanding of the work and use placeholders, estimates or hypotheticals until further information is clarified.

However, the problem with pricing in RFPs doesn't land solely on the plate of the law firms. RFPs typically do not include enough information for a law firm to provide a fixed fee or strategic alternative fee arrangement.

Particularly if the law firm has not done work for the company before, it's nearly impossible to propose a hard bid unless the RFP includes all the information a pricing director needs, such as historical spend data, staffing preferences and deep insight about the matter or portfolio of work they are bidding on.

The best a law firm can do in these instances (when they are unable to gain more insight from the issuer) is to try to convey to the client how they may have structured alternative fee arrangements for similar client work, describe the process they would follow to create the alternative fee arrangement or provide hypothetical scenarios as examples while noting that exact figures would need to be confirmed following more detailed discussions with the legal department. Just listing well known definitions of what an alternative fee arrangement is will never get you a great score on the question.

While pricing has always been a component of RFPs, we are also seeing changes in the prominence it is playing in certain RFPs. One trend we are seeing is some RFPs (sometimes under different terminology such as RFXs or rate questionnaires) are focused solely on pricing. The RFP document will typically include requests for benchmarking data on hourly rates, requests for volume discounts, alternative fee arrangements and other value-add items.

But what these RFPs often lack are questions tied to legal expertise or requests for more information on the qualifications of the lawyers. In fact, many of the exercises do not ask a single question about the firm's legal capabilities or lawyers. We expect to see more of these since, from a legal department's perspective, these exercises have little downside and provide an opportunity to gain leverage in pricing negotiations.

Unbundling and Alternative Legal Service Providers

Another trend we are seeing in RFPs is a broadening of the playing field. As legal departments unbundle their portfolio of legal work, they are categorizing it in different buckets. Not all work is bet-the-company work that requires a top tier law firm charging top rates.

Legal departments are interested in hearing from midsize, boutique or alternative legal service providers to see if there are portions of work that could be more cost effectively be allocated to them. RFPs are asking law firms for ideas and solutions to how they can retain the same quality of legal services in a more efficient and cost-effective manner.

This has opened the door for many alternative legal service providers to pitch their services for portions of a large company's legal portfolio. Rather than seeing all alternative legal service providers as competition, we are seeing some law firms look to partner with them for certain projects where having some work done by a traditional large law firm and other portions of the matter done by a more cost-effective option would provide value to the company.

We previously noted in this article that advances in software technology were enabling more companies that may not have a legal operations department to issue RFPs. The flip side of that is that there are more opportunities for smaller law firms to participate and win work that they may not have been invited to do in the past. A firm's geographic location or the number of lawyers under the firm's letterhead is no longer seen as an obstacle to being able to handle the work at the same quality as larger national firms.

Diversity and Inclusion

For years we have seen questions in RFPs related to diversity and inclusion. But lately, rather than just having a standard question of "what is the firm doing related to diversity and inclusion?" we are seeing more focus on the actual diversity of the team performing the work and looking for more formal metrics.

For example, law firms hired by large companies with purchasing leverage like Microsoft have implemented formal initiatives with metrics to ensure that matters are being worked on by a certain percentage of diverse lawyers for any preferred panel provider.

Law firms are also now using diversity and inclusion as a competitive advantage in their RFP responses. Firms that have the Mansfield Plus Certification are already using that to differentiate themselves from peer firms in RFPs. As diversity and inclusion progresses, we expect to see diversity and inclusion as a standard question in RFPs across the legal industry.

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