



REQUEST FOR PROPOSAL: THE ESSENTIAL BEGINNING OF EACH PROJECT

Ellen Freedman, CLM
© 2005 Freedman Consulting, Inc.

A Request for Proposal (“RFP”) is an invitation to vendors to bid on the sale, installation and/or service of a product. Typically, the RFP specifically states the requirements of the product/service sought, its intended use for the firm, the evaluation criteria which will be used to make the final purchase determination, and any additional considerations connected to the purchase. An RFP should be used for *any* purchase of significance to the firm; not just those which are costly, but also those which potentially might have a major impact on the firm in some meaningful way.

Why go to the bother of the time and expense of issuing an RFP? There are numerous reasons why a firm should go through the RFP process including

1. Follow the most basic legal tenet, e.g. get it in writing. In fact, RFPs and the selected vendor's proposal should be incorporated by reference into any final contract, using language such as “*The contents of any proposal(s) prepared, and marketing literature provided to the firm, are to be explicitly incorporated into any agreement between the vendor and the firm.*” Should the vendor ultimately fail to fulfill the requirements set forth in the RFP, it will be much easier for the firm to seek satisfaction.
2. A properly written RFP will eliminate misunderstanding and resultant disappointment, and ensure that the vendor clearly understands what is expected. It provides the firm with the advantage of stating requirements in non-technical terms it understands, which are less subject to error.
3. Use of an RFP helps ensure that the firm will receive at least the minimum amount of information requested, in a format which is easier to digest than might otherwise be provided.
4. The RFP establishes the firm's expectations regarding contractual terms for purchase. It requires vendors to either decline to bid if they cannot

abide by the stated terms, or to clearly state any exceptions to those terms. It is more effective to identify "deal breakers" before investing a lot of time in reviewing a proposal and negotiating a deal.

5. Generally, vendor proposals are easier to compare on an "apples to apples" basis when they all respond to the same RFP.

Who should write the RFP? In larger firms, the firm Administrator or Office Manager usually writes the RFP, with input from appropriate potential users, and the approval of the Managing Partner or Management Committee. Often times consultants are hired to assist in developing the RFP. By using an inquiry technique, they can quickly ascertain the requirements of the firm, and incorporate them into a standardized RFP format. It may not be unique, but it will certainly serve the purpose.

The individual(s) at the firm most familiar with the product or service being sought, as well as the needs of the firm, should assist the author(s) of the RFP. For example, if searching for a new copier, the current "key operator" should help to specify the requirements of the new copier. If seeking computers, a select group of staff and attorneys should help to specify the features needed. At a small firm, an attorney may be the author of the RFP, assisted in specifying requirements by select individuals.

Assistance in writing an RFP can come from various sources. Sometimes another firm which has issued an RFP will share theirs. However, since an RFP generally contains firm-sensitive information, the RFP may not be shareable in entirety. Often, just receiving the table of contents of an RFP is sufficient to enable another firm to create their own; feeling comfortable they have not overlooked anything which should be included. Another excellent resource is the Association of Legal Administrators. They have numerous publications and articles available on writing RFPs. And of course, outside consultants can capably assist the firm in this regard, often helping to ensure that important considerations are not overlooked, which may have otherwise been missed. It can be a wise investment in dollars.

There is no set formula for what should be included in an RFP. As a general rule, the following areas, at a minimum, should be covered:

1. The minimum requirements of the product or service. Also encourage the vendor to provide additional details beyond the firm's stated requirements. This is done through open-ended questions, such as *Explain the strategy that will be employed to convert documents and import them into the new document management software.*



2. An overview of the firm and relevant facts which could impact on the long-term appropriateness of the solution presented. Facts such as firm size, area(s) of practice, anticipated growth, and how the firm wishes to utilize the product or services sought in the RFP, at present and in the future, provide the vendor with essential information to use when there are choices of product or service from which to select. In addition, this overview can serve to protect the firm. For example, if the firm is selecting copiers, it is important to *anticipate* growth.
3. A request for current, similarly-situated references. Even if you know the vendor, make sure their customers are currently happy—there might have been changes since the last time you did business.
4. The cost of training. Will on-going training be free? If you buy a copier, for example, do they train only the current key operator(s), or come back at no charge to train the new employee if turnover occurs?
5. Documentation. You need to ensure that any documentation will come to the firm, including warranty cards, product bulletins and instructions, and so forth.
6. Installation procedures. For complicated purchases, like computer networks or telephone systems, you want to know how installation will be accomplished, to make sure the firm is comfortable with the proposed implementation.
7. Unit Cost. The easiest way to lose control over pricing is to have everything lumped together in a bottom line figure. Know what you are purchasing, item by item, component by component, if possible. Sometimes it will also encourage spending more or less in particular areas, as the cost justification becomes clear.
8. Service Costs, which are often one of those "gotchas" not examined prior to purchase. Remember the strategy of Gillette, which originally gave away the shaver in order to capture the aftermarket in razor blades. So too, sometimes a vendor may deeply discount a product in order to secure the aftermarket of service. Have the vendor price the anticipated service costs over several years. Add that number to the purchase price to properly evaluate and compare proposals based on price.



9. Warranty terms should always be spelled out clearly, both in terms of firm expectations, and by acknowledgement in the vendor's proposal. Incorporating warranty requirements into the RFP can provide some measure of security to the firm, and at least will identify up front what may well be a deal breaker.
10. Desired terms of payment should be included both in terms of expectation of progress payments which are tied to certain key events, as well as to define what the firm feels those key events should be.

The RFP should specify what the critical dates are, and the firm should try to adhere to these dates. In particular, a cut-off date for submission of proposals should be set forth, allowing for a reasonable period of time for response. The firm should strongly consider whether it would want to do business with a vendor which cannot respond to an RFP in reasonable time. What does that say about their ability to meet your purchasing requirements on time and within budget?

A properly written RFP will clearly define the firm, the requirements and expectations for the product or service, establish important contractual issues, addresses transactional issues, and provide the vendor(s) with some open-ended questions which will allow demonstration of knowledge and mastery of the product or service. It eliminates misunderstanding and miscommunication, and can ultimately save the firm a tremendous amount of time when properly written. It doesn't have to be lengthy or a work of art to be effective. And it isn't a tool just for large firms or huge projects.

A version of this article originally appeared in the December 6, 2004 issue of Pennsylvania Bar News

©2005 Freedman Consulting, Inc. The information in this article is protected by U.S. copyright. Visitors may print and download one copy of this article solely for personal and noncommercial use, provided that all hard copies contain all copyright and other applicable notices contained in the article. You may not modify, distribute, copy, broadcast, transmit, publish, transfer or otherwise use any article or material obtained from this site in any other manner except with written permission of the author. The article is for informational use only, and does not constitute legal advice or endorsement of any particular product or vendor.

