

Is It Time To Use An RFP-Based Procurement Process?

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We spend a lot of time assisting corporate buyers in procuring products and services they need to operate their businesses. The goal is always the right quantity, at the right quality, delivered at the right time and at the right price. In this procurement process, the "Request for Proposal" or "RFP" is getting more use.

The mere mention of the acronym "RFP" evokes an eight inch stack of paper with hundreds, if not thousands, of requirements to respond to and evaluate. But effective RFPs don't have to be large and unwieldy. Once the domain of government and the largest of companies, smaller companies are finding the RFP to be a very effective procurement mechanism.

For one reason, drafting an RFP requires a business to think critically about its needs. Cost savings can be achieved if you determine that your company does not need the latest features and extra cost of the deluxe widget. Yes, once you think about it, that regular, lower cost widget will do just fine.

Another reason RFPs are becoming more popular is they plot a "road map" for the procurement and contract negotiation, and they lay a foundation for the relationship between vendor and buyer. The RFP process requires vendors to submit bids within a framework that you have created to fit your business. Not only are you able to compare "apples to apples" when you review the responses, each vendor knows that its pricing and services will be compared with others, and we all know what the result will be – actual competition to win your business.

Elements Of A Basic RFP

The RFP process does not need to be complicated, it can focus both you and the vendor on your business requirements, and it will set the parameters of your business relationship with the vendor. Unfortunately, people have misconceptions about the RFP process and as a result, hesitate to use it. However, a moderate investment of time and effort on the front end will result in a simple yet effective RFP that will allow you to fine-tune your procurement, yield higher quality vendor responses, and avoid disputes that can ultimately turn into costly litigation.

RFPs are bidding documents that, in their simplest form, ask vendors to bid on your project. Depending on the project, a good RFP will contain a number of key elements:

- administrative requirements and rules;
- vendor qualifications;

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- a description of the products and services you seek;
- specifications;
- form agreements; and
- legal issues.

Administrative Rules: All RFPs should contain a section describing the administrative requirements and rules of the procurement process. This section will tell the bidders how and when to respond, and will inform them of the general rules. You should set a procurement schedule that lists the significant dates in the procurement process and informs bidders of the various deadlines.

The administrative section should also describe the required format for the proposal – if all proposals are submitted using the same format, it will be easier for you to review them and compare vendors. It's also a good idea to include, without limitation, reasons a proposal will be disqualified.

Vendor Qualifications: You should have the right to pre-qualify vendors and, in most cases, the vendor employees who will be assigned to your project. Consider the general experience of the vendor in providing the services, as well as its ability to manage the project. How many similar projects has the vendor completed, and how long have they have been providing similar services to other companies? Can they provide references? Also consider their financial strength – is there a chance they might file for bankruptcy or cease operations in the middle of your project?

You should also consider setting forth certain qualifications for staff assigned to the project, such as a specific level of education, experience, or technical certification. You may want to reserve the right to require resumes. For certain projects, you might specify disqualifying factors for vendors and their employees, or require background checks.

Project Description: To adequately respond to your RFP, the vendor will need to understand exactly what you want to buy, and in many cases, why you want to buy it. This should be the most detailed section of the RFP.

You want to receive the best vendor responses, so be as specific as possible when describing your project. If you wanted to buy a computer, you wouldn't simply ask for a computer – you would consider what you need it to do, and among other specifications, you would ask for a certain minimum processor speed, with a certain amount and type of



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memory, and a certain type and size hard drive. You might need the computer to be delivered to a specific place on a certain day. Similarly, if you need a blue widget, you wouldn't want to ask for something blue, which is too subjective – depending on your project, you might even supply a color chip. *That is, on a much smaller scale, how you want to write your RFP.*

Form Agreements: Consider including some of your own form agreements for the vendors to review and mark-up. This will give you a head start on negotiations, as you'll get a better idea of how each vendor operates, as well as some starting points for negotiations.

Legal Issues: You can prevent some legal disputes by including certain language in your RFP and by clearly reserving your rights. First, specify that your company is not required to award the contract to the lowest bidder, or to any bidder at all. If none of the proposals is adequate, you don't want to be forced to choose one. Reserve the right to withdraw the RFP at any time, without penalty and at your sole discretion. If market conditions change significantly, you don't want to be obligated to award a contract for services you may no longer need.

Evaluating The Bids

Just as bidders are required to follow the administrative rules of the RFP, you should also keep some rules in mind when dealing with the bidders. First and foremost, make sure you treat all of the bidders fairly and equally. If an unsuccessful bidder thinks that another bidder had an unfair advantage, they could challenge your procurement process.

After you set your rules, stick to them. For example, if you set a schedule for accepting bids, don't make an exception for a bid that arrives a day late – return the bid, unopened, to the sender. If you make an exception for one company and word gets out that your procurement process is tainted, it could be very awkward and expensive to resolve.

Avoid even the appearance of a conflict of interest. Be aware of who on your procurement team is contacting the bidders' employees. Consider excluding certain bidders, such as your company's affiliates, and be careful if you have close ties to anyone bidding on your project. It can be very difficult to explain why you awarded a competitive contract to your spouse's company – even if they competed and won the contract fairly.

Negotiations

Your RFP should attract multiple bidders and, as a result, you will have more leverage in negotiating with the finalists. When selecting finalists, narrow the field of competing bidders to two or three at most, depending on bidder response and your company's requirements and resources.

Review vendor form contracts carefully, with the assistance of counsel if possible, and be wary of signing a form contract provided by the vendor. Where feasible, it's best to use your own contract form. Vendor forms are generally one-sided. For example, a vendor form usually includes self-serving indemnification language and lengthy disclaimers of warranties, or may contain the requirement to provide references or free publicity. Most buyers would not find these provisions acceptable, and vendor forms should only be used as a starting point for negotiations, if at all.

Get Help If You Need It

If you need help drafting your RFP or contract, or negotiating with vendors, consult your attorney. An attorney experienced in contracts and vendor negotiations can advise you on the legal issues related to your RFP. They also will help you to identify bad provisions and points of negotiation in vendor contracts. Although it's best to seek advice early in the procurement process, your attorney can provide valuable advice and assist in negotiations with vendors even after you have selected the vendor and signed the initial contract.

Conclusion

If you've previously bought only off-the-shelf products and services for your company at listed prices, it may be time to consider using an RFP-based procurement process. A good RFP does not have to take six months to write nor does it have to be the size of the phone book. The RFP process will provide benefits that go beyond the basic goal of getting bids on your project.

The process of writing the RFP will require you to consider your company's needs, and will allow you to ask yourself the tough questions before you deal with the vendors. You will be able to focus on your company's requirements and more precisely target your vendors and the services you buy.

Through the RFP, you get to tell the vendors what you need – not the other way around. You will know you need the functional widget, not the deluxe widget, and can avoid high pressure sales pitches. You get to tell the vendors how to respond, which will make it easier for you to compare their products and services.

You will also gain advantage in negotiations. Vendors will know they are competing for your business and you'll get more competitive responses. Once you choose the finalists, you'll understand the market, and the vendors will have made representations about their products or services in writing.

With a little bit of effort on the front end, you can customize the services you buy based on your specific needs, get better responses, screen vendors more effectively, get an edge on negotiations, **avoid legal disputes, and ultimately, get a better product or solution for less money.**

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