

Value Practice: FMC Technologies' Value Challenge RFP Process for Litigation

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Background

FMC Technologies' legal team is constantly trying to find new and better ways to procure and deliver legal services to its internal clients. One of the team's key tenets is delivering cost-effective legal solutions via strategic alignment of legal services with desired objectives, which means value and not just cost savings. The company's General Counsel shares that, over the last decade, this value-adding initiative has delivered good results for the company, including winning more cases, reducing case cycle times, reducing total dispute resolution costs, and reducing legal spending as a percentage of revenue.

This ACC Value Practice piece features the legal team's self-described 'FMC Technologies Value Challenge' – a non-traditional, fast track RFP process to streamline its preferred service provider network. Using only three pieces of paper, a tweet and a meeting during the three phases of the process, the legal team ultimately selected eight firms with which it has forming a cooperative, collaborative team to handle all of the company's litigation.

RFP GOALS & EXPECTED OUTCOMES

Step 1: Determine Goals.

FMC Technologies' goals included:

- Further converge an already converged group of preferred law firm providers.
- Strengthen and deepen the available and pre-qualified law firm bench.
- Align with value-driven law firms that are actually “talking the talk and walking the walk” rather than law firms who simply provide lip service to the value concept.
- Ensure that the right law firm resource was available to handle the right legal need when and if that need arose in the future.

In terms of outcomes, the department's expectations were broad: (1) panel of law firms would stay intact as is with no changes, (2) panel of law firms would change drastically or turnover substantially, (3) certain law firms would be selected by case type specialty (e.g., plaintiff contract, defendant contract, mass tort, plaintiff intellectual property, defendant intellectual property, personal injury), (4) one law firm would handle all litigation, or – and this was the most innovative – (5) creation of a non-equity joint venture with the law firms selected to handle all of the company's litigation.

RFP PROCESS

Step 2: Determine how this would be different from any other RFP process ever conducted.

The legal team's second step was to determine how this FMC Technologies Value Challenge would be different from any other RFP process ever conducted. The team already knew the amount of paper required would be significantly less than the traditional paper generating machine, it just didn't know it would be three (3) core pieces of information.

Phase I: Simple, 1-page Questionnaire

In order to find right – thinking law firms, Phase I would be a simple, 1-page, questionnaire containing 14 questions which required a yes or no answer:

FMC Technologies' Value Challenge- Phase I Questionnaire

- Are you willing to use the Covenant with Counsel (a 1-page, mutually-balanced engagement letter in substitution for the typical, 8-page, over-reaching law firm engagement letter) as the basis for the engagement?
- Confirm that there are no existing conflicts with FMC Technologies?
- Confirm you do not and will not request blanket, advance, waiver-of-conflict requests?
- Are you willing to use our ACES™ (Alliance Counsel Engagement System) for litigation engagement model (our homegrown, performance-based pay, alternative billing system which aligns our desire for cost-effective litigation resolution with fair compensation to the law firm)?
- Do you use Serengeti Tracker (our ASP delivered, matter management software system used as the information and collaboration platform for all of our internal and external matters) for making matter status reports and collaboration on key documents?
- Do you submit all invoices electronically (to eliminate paper shuffling and reduce processing steps and time)?
- Do you accept a Visa P-card to process all invoices (a 4 to 15 day payment processing time as compared to the typical 30 to 60 day time frame for paper invoices)?
- Will you use whatever e-discovery service provider or software we select if we choose to have that work done by a party other than your firm?
- Do you provide early case assessments within the first 90 days of a matter, even with limited information?
- Do you use decision tree software or analysis (this is the tool we use to discuss matters with our internal clients – most of whom are MBA's – and how we set reserves for FAS 5 purposes)?
- Do you provide budgets to your clients for every matter in which you provide legal services (if your law firm answers no to this question, run away as fast as you can)?
- Do you regularly participate in lessons learned/after action processes to reduce future risk and improve performance (the need for a “holistic” approach with an overall goal of managing risks to avoid disputes is a core competency of our legal department)?
- Do you accept structured customer feedback on performance?
- Do you have members on the team that will work on matters for FMC Technologies with actual courtroom trial experience?

FMC Technologies' legal team specifically told the firms that it would not look at websites or any attached extraneous material – however, the firms should feel free to augment their questionnaire responses with a 1-page (no more) explanation of what makes them different from all the other legal service providers that FMC Technologies could engage.

Using Legal OnRamp (“LOR”) and other well-publicized platforms, the law department literally invited the world to participate. There was no entry fee, no pre-selection, no barriers to entry, no preferences to incumbents or to other groups. LOR hosted the threaded discussion in the open and transparent process so that all interested firms has access to precisely the same information throughout and any one could ask questions – some the legal team answered, some it chose to leave open.

The result: A total of 52 law firms from across the country – including some in the AmJur 100 and some with as few as a three lawyers - submitted responses to our Phase I questionnaire. The law department used a redlight/greenlight chart to determine who would move to phase II. In fact, the legal team didn’t even know the names, locations, or sizes of the firms in this triage process – the reviewers simply looked for red lights in the “disqualifier boxes” and maximization of green lights in all the other boxes. Based on that neutral, blind process, 32 firms moved onto Phase II.

Phase II: Excel Spreadsheet Specific to Litigation plus Tweet

With respect to Phase II, the legal team wanted to be as transparent as possible regarding what was at stake for the law firms who moved into this next phase.

Phase II consisted of a 1-page Excel spreadsheet with three areas of information:

- First, a listing of various types of litigation and a request for the firms to stack and force rank themselves as to the types of litigation they actually handled.
- Second, a case category summary of the law department’s external legal spend and budgets for the last 5 years.
- Finally, a request for the firms to provide the same category summary metrics as well as indicative budgets to handle each of our case categories.

In addition, in a separate, off-line process, firms were asked to send a Tweet as to why they wanted to be a preferred provider to FMC Technologies, Inc and why the legal team should spend valuable team time resources to meet with them. The discipline of effectively communicating in a 140-character tweet was precisely the kind of cultural litmus test the legal team was looking for.

Phase III: In-Person Discussion

Of the 32 law firms invited to this Phase, 16 firms moved into Phase III, which consisted of a 2-hour, in-person, discussion between law firm representatives and the FMC Technologies legal team.

The communication materials to kick off this Phase consisted of a 1-page email to the law firm contacts setting forth the following meeting goals:

FMC Technologies' Value Challenge- Phase III Communication

1. We expect to meet the firm's proposed relationship manager with the philosophy in our Covenant with Counsel of a B2B relationship – not a B2A relationship – with “B” meaning “business” and “A” meaning “individual attorney”.
2. Beyond the proposed relationship manager, the firm is free to bring anyone else to the meeting.
3. Be prepared to answer any question we may have about each element of your responses to each phase (the 1-page questionnaire, the 1-page spreadsheet, and your Tweet).
4. We want to know how you will conduct the intake-planning meeting about resources, communication, focus, schedule, etc.
5. We want to know how you do project management.
6. We want to know how you'll determine what resources to use.
7. We want to know how you'll do an early case assessment in the first 90 days of a matter.
8. We want to know how you'll train your associates and give them experience—without imposing undue cost or risk on us.
9. We want to know how you'll participate in after action and continuous improvements.
10. We **really** want to know what truly innovative ideas you have deployed and are thinking about for improving performance and delivering value.
11. We will answer any questions you have about ACES and the Covenant with Counsel.

Note that these meetings were not about explaining law firm capabilities or regurgitating law firm brochure or promotional materials. The meetings were, however, all about providing context to the law firm value and financial submissions of Phase I and Phase II along with robust, round-table discussions about wringing value from a system that desperately needs to be fixed while identifying folks with the right cultural fit – folks that the legal team actually wanted to and would enjoy working with.

The General Counsel for FMC Technologies notes that, in some ways, the “normal” law firm marketing and law department RFP processes were “turned upside down as well as inside out.” He also shares, “it’s easy to find those with the right credentials, experience, and training. Indeed, the world is filled with competent, excellent lawyers and law firms. In such a world of plenty, quality is a given as opposed to a differentiator. It’s the price of admission -- the ante for a seat at the table. As such, in our non-RFP process, meeting our engagement standards was the first threshold. Meeting our performance metrics the second. Then and only then were the softer-side of cultural match relevant.”

THE OUTCOME

The legal team selected 8 firms and is forming a cooperative, non-equity joint venture to handle all of FMC Technologies’ litigation. Key aspects of the arrangement - still being worked through - include:

- A general Serengeti Tracker matter for joint venture administration purposes (all JV members will have access to this matter and case status reports and financial performance metrics will be posted to this matter for review by all members)
- A LOR “private ramp” to facilitate sharing of information and leveraging capabilities through a virtual firm structure.

- A team for a particular matter will be formed reflecting the collective expertise, experience, and location of the JV members
- The FMC Technologies responsible attorney, as well as all law firm team members, will provide self and peer evaluations
- ACES bonuses generated by successful resolution of the case will be distributed based on contribution and the evaluations
- Annual savings sharing between FMC Technologies and all joint venture firm members based on annual target / metric budget savings and reflective of evaluation results

What is important to note with this structure is that even if a firm contributes no attorneys to a case during the year, they will share in the bonus distribution based upon their content and process contributions, ideas and innovation for the improvement of the overall team performance.

Contact Information

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