



COUNSEL TO GREAT COMPANIES

# Finding the Right Fit

Best practices for selecting outside legal  
counsel using RFPs

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# Who uses RFPs to select outside counsel?

- 76% of legal buyers are using RFPs and an additional 17% plan to use them in the future
- 72% of legal buyers are using preferred provider groups and an additional 25% plan to use them in the future

\*Buying Legal Counsel 2018 Survey

# Which types of RFPs are they using?

## Matter-by-matter

- Shorter turnaround
- Likely more merit-specific
- Potentially smaller pool of candidates

## Broader legal services program

- Longer-term relationship
- Greater leverage in pricing and services

## Preferred provider

- Larger scale, long-term commitments
- Maximum leverage

# What are you trying to learn from an RFP?

- Law firm qualifications (general and specific expertise)
- Potential fees and fee arrangements
- Law firm culture and diversity
- Merits analysis

# What are the benefits of an RFP?

- (Usually) Free legal work
- Streamline list of providers
- Increase pricing and service pressure
- Formalized procedures may increase buy-in
- Conflicts

# Are there downsides to using an RFP?

- Meaningful time commitment: drafting RFP and reviewing responses to select counsel
- Your ideal counsel may not fit neatly into the box your RFP is creating
- Longer-term RFPs might limit flexibility
- Anchoring to initial analysis

# How are you drafting RFPs?

- Who drafts the RFP? Selects counsel?
- To how many firms are you sending them?
- How much detail do you request?
- How much interaction during the process?
- Single or multiple rounds?

# Responses to RFPs

- What has outside counsel done right?
- What have they done wrong?
- Have you worked directly with them to change the process over time?
- Has the process improved the quality of legal representation?



# What does your outside counsel think?

- Predictable
- Compete on a level playing field
- Lot of work without compensation
- May discourage/limit creativity
- Create longer term relationships and expand work opportunities

# What are the ethical implications of an RFP?

- **SCR 20:1.18 Duties to prospective client:**
  - “A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.” Thereafter, the firm “shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter.”

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- **Ethics Opinion E1-10-03: what is “significantly harmful?”**
  - “sensitive or privileged information that the lawyer would not have received in the ordinary course of due diligence:”
  - “long term significance or continuing relevance to the matter, such as motives, litigation strategies, or potential weaknesses”
  - “premature possession of information that could have a substantial impact on settlement proposals and trial strategy”

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- **SCR 20:1.6 Confidentiality:**
  - (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation...