

# Proper Proposals

BY KEITH ECKER

Last year Exelon Corp. launched a massive RFP process to contract its outside legal service providers for 2008 through 2011. Forty-four law firms received invitations to participate, and 42 submitted proposals. In the end, the utility company rewarded 35 firms with positions on its preferred providers list.

“The RFP allows us to consolidate most of our outside legal work with a limited number of preferred provider firms that understand our company’s businesses and legal needs, are recognized as experts in their practice areas and provide Exelon with substantial discounts from their customary rates,” says Sandra Byrne, a legal administrator for Exelon.

This RFP attempt was Exelon’s third in six years. The company has a policy to regularly conduct these large-scale RFPs to streamline its outside counsel list, cut costs and find top-quality service providers.

But using RFPs for the practice of convergence—reducing the number of outside law firms with which a company works on a regular basis—isn’t their only purpose. Take for example Votorantim Investimentos Industriais, a Brazilian holding company. Last year its legal department sent out about 20 RFPs for various projects, averaging three per project.

“The use of RFPs is effective for acquisitions, bond issues, large corporate transactions and mass litigation,” says Alexandre D’Ambrosio, the company’s general counsel. “We prefer not to have exclusive relationships with law firms, so the process helps us avoid the perception that we have favored the selection of certain firms for personal reasons.”

Although Exelon and Votorantim use RFPs, their processes and purposes are different. This contrast is a microcosm for the varied opinions on RFPs, from those that see it as a tool for convergence to those that see it as a tool for special projects.

“RFPs are part of a larger trend by legal departments to try to keep a handle on both costs and management of outside law firms,” says Joel Henning, a consultant at Hildebrandt International Inc., a global professional services consulting firm. “There are situations where it makes sense to use RFPs and other times where it doesn’t.”

## Trimming Trends

RFPs gained prominence among in-house counsel in the early 1990s as a convergence tool. This trend came about as a result of several factors. First, it became increasingly apparent that legal departments were operating inefficiently. It wasn’t rare to find a dozen outside law firms working on similar matters for one legal department. Second, in 1992, DuPont responded to this dilemma by developing its signature legal model, known as the DuPont

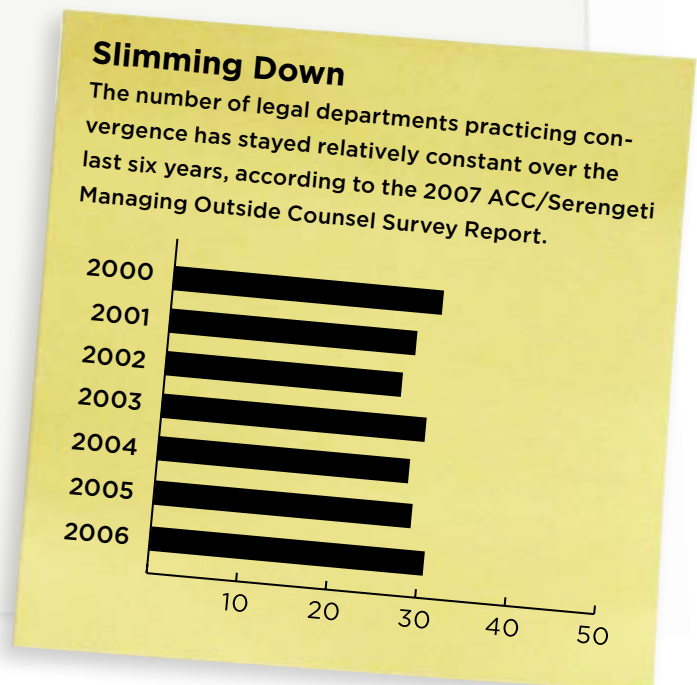
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Legal Model, which entailed creating preferred provider lists to help cut down on the number of outside firms contracted for legal work. At the time, the tactic was revolutionary, and other legal departments soon adopted similar methods. “When I used the RFP process around 1996 for a convergence program at Cendant Corp., the DuPont model was being bandied about throughout the legal press,” says Rick Wolf, the founder of Lexakos, a legal spending consulting group and the former head of global compliance at Cendant.

And in fact, more than a decade later, convergence is still going strong. According to the 2007 ACC/Serengeti Managing Outside Counsel Survey Report, the percentage of law departments engaging in convergence efforts has remained fairly constant, around 30 percent, for the past six years (see “Slimming Down”).

But as companies’ expectations of legal departments changed, so too did the purpose of RFPs. Business personnel began cracking down on legal department spending. No longer would the heydays of unlimited resources prevail; instead general counsel are now expected to manage their department just like any other department, budgets and all. This means general counsel are seeking out high-quality work at reasonable prices, and even looking for competitive proposals for specific matters.

“What we’re seeing more recently is fewer mass proposals and more targeted project proposals where corporations are saying, ‘We have this type of litigation or this specific piece of litigation that we are looking for firms to handle,’” says Don Rupert, partner and marketing committee chair at Marshall, Gerstein & Borun.



## When to RFP

There's not a lot of data to back up the claim that this form of RFPs, or competitive bidding as some call it, is actually on the rise. According to the ACC/Serengeti report, a minority of law departments (about 25 percent in the past couple of years) issue RFPs for competitive bidding purposes (see "Competitive Bids"). Still, some experts say the use of RFPs has become more common among larger companies that have large enough cases to justify the time-consuming procedure.

"You're not going to go through the RFP process on something that is small because who is going to want to bid on it?" says Stewart Weltman, founder of Weltman Law Firm, which specializes in complex litigation and litigation consulting. "By definition, the RFP process is usually going to involve someone who has big claims."

Aside from the size of the case, there are other guidelines in-house counsel can use to determine whether executing an RFP process will provide any benefit. For example, RFPs tend to be less advantageous for highly specialized matters.

"Securities enforcement or antitrust are two types of matters where an RFP process wouldn't be just a waste of time, but counterproductive," Henning says. "You might spin your wheels and ultimately have to junk the process, realizing that you need to go with the best possible lawyer or law firm rather than the one that provides the most appealing bid."

However, when it comes to more commodity-type legal work, RFPs can prove useful.

"If a company has a substantial amount of commodity work, such as simple labor and employment litigation, then RFPs would make sense," Henning says. "On one hand, the company would have some useful data to share with those they choose to send an RFP to with regard to what they're looking for, and also it's likely that there would be a number of competitive law firms out there that could submit creative bids."

In addition, work that involves discretionary spending would be more prone to the RFP process than litigation work, where nondiscretionary spending is a given.

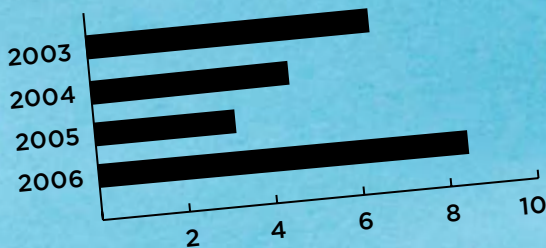
"Spending around compliance training for employees, litigation readiness, content management and document management systems are all better candidates for the RFP process than nondiscretionary spending, where you want to find the best qualified candidate and spending isn't critical," Wolf says.

## Producing Proposals

GCs typically make the decision about when the RFP process should be used. Oftentimes it is the GC's duty to help draft the RFP. Although questions will vary depending on the type of legal work for which the RFP is intended, there are some fairly standard dos and don'ts to the drafting process.

### Competitive Bids

While the number of legal departments employing RFPs for competitive bidding has hovered around 25 percent over the last couple years, the average number of RFPs per in-house counsel has fluctuated.



SOURCE: 2007 ACC/SERENGETI MANAGING OUTSIDE COUNSEL SURVEY REPORT

By following these guidelines, in-house counsel are more likely to get adequate responses from their outside candidates.

First, there's the issue of to whom the RFP should be sent. This includes not just which law firms, but how many law firms and who is the appropriate recipient. Experts agree that sending the RFP to too many firms is a disservice to the legal department, resulting in more legwork than necessary.

"You need to manage the responses," Henning says. "Remember, you're a private company, not the government. You don't have to send the RFP to everyone."

The list of recipients should include a variety of firms, some the company is familiar with as well as one or two highly reputable firms with which the company has no prior relationship.

RFPs should be addressed to one of three contacts within the firm. If the legal department has established a relationship with an attorney at the firm, it should be sent to that lawyer. If not, the RFP should be sent to the firm's managing partner or its marketing

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department. Either way, it's likely the recipient will be able to forward the request to the appropriate contact.

The next thing to consider is what type of questions to include in the RFP. Some general questions are a given, including an overview of the law firm's stats, such as the firm's size, and its diversity statistics and initiatives. But the majority of questions should be targeted toward the specific project for which the legal department is seeking proposals.

"Specificity is a good thing," says Michael Gray, head of Jones Day's labor and employment practice in Chicago. "For example, if you're seeking work for a specific matter, ask them how they would respond to the complaint, who would they staff it with, what is their expertise in this particular area and what type of budget it would take to contest this case."

Because one of the key purposes of RFPs is to cut costs, asking a number of questions about fee arrangements is a necessity.

"Oftentimes we'll see a lot of broad questions about money, such as 'describe your cost or billing structure,'" Rupert says. "Most firms that respond to RFPs today do a disservice if they don't include a reference to alternative-fee arrangements to show that's something that's open for discussion."

Finally, set a deadline for the proposals. The whole process, from drafting the RFP to selecting a firm, shouldn't take more than about three months.

"The deadline will depend on the scope of what you're seeking, but you should be fielding responses within about a couple weeks after sending out RFPs," Wolf says.

## Beauty Contest

The real work begins once the law firms submit their proposals. The GC, along with any other pertinent staff members, should sit down and review the proposals, picking out the top candidates based on his or her personal criteria.



To read more about the RFP process from the law firm perspective, visit [InsideCounsel.com](http://InsideCounsel.com).

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At this point, the department should contact the top candidates and ask them to come in for a face-to-face meeting.

“I don’t think you get answers about quality from a written document,” Weltman says. “For quality reasons, you have to know the person, sit down and eyeball them, and get a feel for them.”

Not only is a face-to-face meeting beneficial for in-house counsel, but it’s also a service to the prospective law firm because, after all, these are the people their attorneys will be working closely with as well.

“In-person meetings are a great idea and work to our benefit,” says Judith Archer, partner at Fulbright & Jaworski. Archer formerly worked in-house at AT&T. “We can answer questions they might have, and frankly, given the personal nature of the outside and in-house counsel relationship, it makes sense,” she adds.

It also gives in-house counsel the opportunity to ensure that outside counsel are serious about keeping quality high and costs low.

“You can ask the firm to bring into the room everyone who’d be working on the matter,” Weltman says. “If they can’t all fit into the room, then you know it’s not going to be a good relationship. As in-house counsel, you only need what the project requires; otherwise you’re wasting money.”

And in the end, that’s what RFPs come down to: maximizing a company’s return on its dollar for outside legal services. Even if it doesn’t mean a drastic reduction in costs, RFPs should result in better quality legal services at a competitive price.

“Oftentimes law departments aren’t as concerned about the overall reduction of spending as they are about how they are spending the money,” Wolf says. “RFPs are the starting point for you to classify your vendors and track your spending with them.” ■

## Factoring in Formalities

An important issue to consider when launching the RFP process is the degree of formality the process should take. Consultant Joel Henning advises legal departments to avoid the pitfall of making the process too rigid. Too often, he sees legal departments act like the government, adding layers of unnecessary bureaucracy and red tape that hinder the process.

“Legal departments that make the process overly rigid are insisting on the form rather than the substance of the proposals, which deters them from achieving their goal of getting the best lawyer or law firm at a competitive price,” says Henning, who works at Hildebrandt International Inc., a global professional services consulting firm.

Recently, there’s been a trend toward informal RFPs. Rather than the multi-page questionnaire typically associated with RFPs, these requests often take the form of an e-mail and contain significantly fewer questions.

“More often we’re seeing far more informal e-mails where in-house counsel are asking for proposals, but they’re cutting to the chase of particular matters and concerns,” says Michael Gray, head of Jones Day’s labor and employment practice in Chicago. “So they’re looking for help with specific issues, matters or regions and aren’t looking for more general information about the firm.”