

The Art and Science of the RFP Response

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Disclaimers

- We're lawyers, but (even if) not your lawyers! This is not legal advice
- Comments based on our general experience for clients and on our own behalf, *not* on any particular company's procurements
- Wide range of RFP-type practices, including at your company, and some vary from what we describe and indicate
- We do not engage in the consultants' "capture management"

Our perspectives

Rob James

- Transactional lawyer in energy, infrastructure, manufacturing and marketing fields, US and abroad
- Public clients as well as private company clients
- Mix of RFP (“tender”) and long-term relationship procurements
- Service on client RFP drafting and response selection teams (e.g., SF Giants ballpark)

Marques Peterson

- Hybrid litigation / transactional lawyer in aerospace & defense, science and technology fields, US and abroad
- Department of the Air Force Office of General Counsel; also public and private clients
- Government procurement of goods and services via RFPs (“tenders” or “solicitations”)
- Counsel to clients on RFP responses and challenges to government award decisions

Plan for session

- This PowerPoint is intended for reference, before or after our hour
- We will review the issuer's motivations: why RFP?
- Quick overview of the RFP process
- Zero in on the contents of an RFP response
- Use the rest of our time to address the thorny questions that come up
- Pillsbury is available for, and welcomes, your follow-up questions and comments!

Welcome to RFP World

- If you offer goods, services, or technology to sophisticated customers, then you probably already live in *RFP World*
- How often do you come here? Are you a regular player, or a tourist?
- **Government** (civilian/military, federal/state/local),
Industry (regulated/unregulated),
Education (K12/higher),
Healthcare (reimbursed/non-reimbursed), ...
- Traditional economic drivers: objectivity, fairness, efficiency
- Institutional drivers: increase certainty, use leverage while there's competition
- Socioeconomic drivers

Acronyms of RFP World

- Surveying needs and marketplace, comparing to operations and plans:
Operational Requirements (OR), Technical Specifications (TS)
- Sizing up the market:
requests for information (RFI), requests for qualifications (RFQual), prequalification
- Procuring commodities:
requests for quotation (RFQ), invitations to tender (ITT)
- Procuring complex products, systems, technology:
request for proposals (RFP), invitations to bid (ITB)

How does an owner approach an RFP?

- **First things first**
 - Do we make or do we buy?
 - Any changes in operations or plans?
 - Assemble a team—procurement, operations, product, finance, legal, DE&I, ...
 - How is the incumbent doing?
- **Confront the tensions**
 - Comfort with incumbent *vs.* competition and novelty
 - Avoidance of transition risks and costs *vs.* trying different offerings

Why does an issuer issue an RFP?

- Why not just negotiate with your favorite or incumbent vendor?
- What does the issuer desire?
 - What does the team think is *needed*—functions, performance, time, acquisition and life-cycle cost, sustainability...
 - What *constraints* is the owner subject to—financial caps, operational deadlines, ...
- What does the market offer?
 - Who are the vendors in the space? What are competitors, suppliers and customers doing? What are consultants and reviewers saying?
 - Industry standards, market leadership, trends
 - Role for RFIs, SOQs to identify and screen potential vendors
- Using an RFP to connect the desires with the marketplace
 - Borrow from past RFPs, or change up the process or substance?
 - Granularity to assure certainty, or generality to encourage creativity?

The RFP process: entering the “funnel”

- **RFI or Qualifications stages**
 - Especially in public works and other settings where price will control the final decision
 - Prescribed by law or company policy in some cases
 - Focus on organizational capability, position in market, culture
- **RFP stages**
 - Gating (next slide)
 - Extras: value-adds permitted by RFP that are distinctive to proponent or bidder, incumbency and transition factors
 - “Down selects”: shortlist, price round, qualifications-then-price round, BAFO
 - Award, protest process, execution

Focus on gating—the RFP requirements

- **About you:** years in operation, ownership and financing, bios
- **About your business:** geographic and product lines, physical locations, production capabilities, output/downtime, QA/QC, health/environmental/safety, claims
- **About your customers:** sales and retention data, major customers, references
- **About you in the marketplace and community:** major competitors, your own vendors, industry, socioeconomic credentials
- **About your specific product offering:** technical specifications, price, staffing, feedback processes, initiative, training
- **About incumbency:** describe transition from existing solution, or benefits of your own incumbency
- **About resilience:** initial price and lifecycle cost analysis, ability to sustain and to scale. Is this procurement focused on present, or in a long-term relationship?
- **Case studies:** details of comparable sales or installations
- **Are gating factors weighted?** percentages often required in public works

The vendor's approach to RFP World

- **Understand your product and market**
 - Look in the mirror *and* at the windshield
 - SWOT-type evaluations of each
 - Every client is a potential reference; cultivate them wherever they go
- **Embrace the RFP ecosystem**
 - To play the game, keep up on company and industry conferences, get on email distribution lists for updates and RFPs
 - Keep up your own credentialing—ISO 9000 or 14000, ISS ESG, SBA 8(a), whatever is respected in your space; thought leadership
 - Make cost-benefit judgments on further industry roles

Vendor responses and award process

- **Statements of qualifications (SOQ):** explicit, or in any event part of any procurement response—tell your compelling story writ large
- **Indication of interest, response to RFI:** tailored to the client and project, stressing competitive strengths
- **Bid, tender, response:** meet all RFP requirements but highlight the advantages *your* product and team have for *this* client and project
- **Award:** any protest procedures, contract effectiveness with deposit of security or compliance with other requirements

Now for the tough questions

Should you play?

- **Decide whether to respond at all**
 - An RFP response is an investment—for now or the future
 - An RFP response contributes to your reputation—one way or the other
 - If you respond to an RFP for which you are not qualified, it may prejudice you in circumstances where you do play
 - Do you see yourself in the RFP language?
Do you see your competitor in the RFP language?
 - Sometimes we see a vendor's exact website or marketing language in the procurers' own document!

What if we might not check all the RFP boxes?

- **Identify problematic terms early**
 - Can almost always ask questions for clarification, alternatives, or time
 - It's risky to assume or qualify proposals
 - Decide whether to take exception to the clause, or bake it into your price
- **Common issues and suggestions**
 - RFP requires experience in an arena you haven't played
 - RFP requires security (e.g., surety bond) in form you don't have
 - RFP silent on subjects where you have distinctive offerings
 - RFP asks for scalability beyond your track record
 - RFP asks for *less* generous terms than you usually offer ...

What should be in our RFP response?

- Have a template or a precedent, but be prepared to bust it
- Use your team—allocate each piece to expert but cross-check
- Keep the focus on the client and you—name-checking footers/headers, appropriate photos
- Read the RFP terms carefully—have an outsider *re-read* both the RFP and your response (it's amazing what insiders overlook)
- Numbers shout, verbal passages whisper? Quantitative case studies are nice
- Focus on substance, not graphics; but response should look and feel consistent

Who comes to the pitch?

- “Be a team, but have a leader”
 - Showcase your culture, bring just the right-sized team
 - You never know who on your team might have chemistry with counterpart!
 - Have defined roles—and hand signals? Again, you can always ask questions
 - Navigating the video or audio presentation
- Convey passion for your mission and attention to client’s needs
 - Name-check the client, bring everything home to this procurement
 - Build trust, say “I don’t know but I will let you know by X”
- Follow up
 - Can always ask for feedback about your proposal and presentation
 - Keep in touch with old and new friends

“Is that really the best you can do?”

- Do you put your best price and other terms in your opening response?
- Or leave room for a response to a request for a “best and final offer”?

Other questions and discussion

Thanks—and best of luck!

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