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MAXIMIZING YOUR RFP
BARGAINING POWER



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by
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Too often companies fail to use the Request For Proposal to their best advantage when procuring technology. Here are some tips to get the most out of your RFP.

The RFP process is a widely employed tool in technology procurement. When properly used by purchasers, it is a highly efficient means of reducing time and effort in coming to contract. Why is it, then, that so many negotiations fail to benefit from the RFP's full potential for maximizing bargaining power?

If your objective is to have more than just a process for discovering vendors' capabilities, then you should use the RFP process in a disciplined way to get maximum benefit. So what should your objectives be? First, of course, you will want to identify those vendors who match your needs for products or services. Second, you must obtain pricing information to enable you to compare your cost of purchase from the various sources. These two objectives are generally realized in most situations.

THE THIRD OBJECTIVE

But a sophisticated technology procurement contract is so much more than just specifications and price. Risks of all kinds must be allocated, and, in the end, each of these allocations represents value. If you choose your vendor only on the basis of specifications and price, you will never know how the vendors compare in terms of the value of risk allocation. Most importantly, you will be letting all of the vendors off the hook with respect to competing for your business on the basis of all of the terms of the contract, including the allocation of performance risks.

So the wise purchaser will have a third objective — one that only a few recognize; that is to maximize one's bargaining power as a buyer, and even more importantly, to reduce time and costs in coming to contract.

THE CRITICAL TIME FACTOR

The "go/no go" decision to proceed with procurement of technology usually takes more time than the affected business unit anticipates. Once the "go" decision is made, there is irresistible pressure to show progress in the procurement process. The issuing of the RFP creates the appearance of progress. The inevitable result is that the RFP contains only the minimum detail to allow it to get out the door. Will this type of RFP assist you in your contract bargaining? The answer is no.

You have to recognize that a minute spent prior to the issue of the RFP can potentially avoid hours of effort in the one-on-one negotiations. Spelling out your requirements precisely and firmly will eliminate the risk of misunderstanding the overall value of the vendor's proposal. Nowhere is this more evident than in the legal section of the RFP.

Spend the time to prepare the contract that you want to achieve and attach it to the RFP. Make the contract document credible. In it, address your functional issues, your expectations with respect to performance, and the consequences of non-performance. Also deal with standard terms such as risk allocation for future taxes, limits of liability, and product and service warranties, all in a way that forces the vendor to seek legal advice in its response process.

Timing also plays a big role when it comes to the contract negotiations stage. At this point pressure is often on the purchaser to complete the deal. Most vendors at this stage discount the possibility of the purchaser going to an alternative vendor because of failure to come to terms on the legal issues. There have been many instances when wholly unreasonable risk allocation has been imposed by the vendor during contract negotiations because the purchaser cannot afford the time required to move to an alternative vendor.

The lesson here is to give yourself ample time to complete your negotiations without undue pressure. Remember, your ultimate objective is to achieve a final contract negotiated in a competitive environment. Once you remove the threat of an alternate supplier, you lose a significant portion of your bargaining leverage.

GETTING WHAT YOU WANT

Most importantly when preparing an RFP, be emphatic in your instructions to recipients that each proposal will be judged on the total response, including modifications to your contract form. In other words, make the vendor's lawyers justify to the vendor's business people every suggested change — in a competitive environment.

It takes upfront effort and a great deal of discipline to maximize the return on your RFP, but in the end not only will you be able to compare "apples to apples" responses, you will also save time and expense in a more efficient contract negotiations process.

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