CLIENT DEVELOPMENT TOOLS:
Responding To Requests For Proposals (Part I)

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Historically used by the public sector (governmental and administrative agencies) to select professional service firms, Request for Proposals (RFPs) are also used by the private sector to select legal counsel. The reason is simple enough — business owners and executives have discovered the objectivity and cost-effectiveness that the RFP process provides. Companies no longer have to "try out" a law firm before discovering that the relationship is not a good match and are using RFPs as a way to select law firms for their "preferred provider" list.

RFPs issued by the public sector are very forthright — they are basically forms to fill out. Every submission typically looks the same and the decision is normally based on qualifications and price. However, RFPs in the private sector are often not as concrete or standardized — they may come in the form of a letter or even a telephone call.

This article, the first of a two-part series which will appear in consecutive issues of *IP Today*, will discuss the key elements of preparing a responsive and winning proposal.

CHECK A FEW THINGS OUT FIRST

The first thing to do when asked to respond to a proposal request is to carefully review what the RFP entails. In other words, what exactly are you being asked to submit or describe. Plan to do some intelligence work:

- Do a conflicts check.
- Find out who will be making the selection decision (whether it is an individual or board or committee).
- Investigate whether anyone at your firm knows the decision maker(s).
- Check out whether the RFP is "wired" — has the decision regarding the selection of legal counsel for the RFP already been made and the sending of the RFP is only a formality. This can be a difficult thing to do, but think of it as a discovery project.

By doing some initial research, you can make an intelligent decision as to whether you should spend the time to submit a proposal in the first place. In some cases, your data gathering my lead you to the decision to not submit a proposal which has a slim chance of being awarded to your firm.

If you decide to go ahead and prepare a proposal response, pay special attention to the following:

- What is the prospective client looking for in legal counsel? For example, does the prospect want your firm to serve as regional patent or IP counsel, or does the prospective client want a proposal for a specific piece of litigation, such as a patent infringement case?
- What does the prospective client specifically want to know about your firm? Typically, this includes clients represented in similar matters, attorney qualifications, fee structure, as well as how the firm communicates with clients, meets deadlines and assigns work.

Finally, if you have any questions regarding the RFP, don't hesitate to call the prospective client contact, introduce yourself, and get your questions clarified.

PREPARING THE PROPOSAL

Don't wait until the day before the proposal is due to prepare. Once you have decided to go ahead and submit a response, do some more homework on the prospective client. Research the history of the organization and the prospect's track record in similar legal cases (if applicable). Review press clippings and news stories about the organization, all of which are easily accessible today using online technology. Use references to any relevant information you gathered in your proposal to demonstrate that you have an understanding of the prospective client's business and legal issues.

When writing the proposal, stick to what the prospective client wants to know about the firm. Your ability to tailor the response to meet the prospective client's needs is essential. Organize the proposal to mirror the way the issues were outlined in the RFP.

A typical proposal response contains the following elements:

- **Scope of Work**. Outline what your firm expects to do for the prospective client. Describe the methodology for handling the matter(s) discussed in the RFP and present a plan of action.
- **Attorney Qualifications and Staffing Plan**. This section should include biographies of the attorneys who will be assigned to do the work. Take care to focus the biographical information to correspond with the issues raised in the RFP. A word of caution — don't pull the bait and switch when preparing proposals. The attorneys that you profile in the RFP should be the same attorneys that will actually do the work. Often firms make the mistake of trying to impress a prospective client by profiling their most senior or well-known partner, when in fact, this individual will not be doing any work if the firm is selected.
- **History of the Firm**. Keep this section short. Focus on the clients represented and similar cases your firm has handled in the specific area(s) addressed in the RFP.
- **Fee Structure and Billing**. The fee section is one that the prospective client will be looking at closely. If the prospect wants a budget, prepare one. If the prospect wants a blended rate, offer one. If no specifics are provided, then outline your hourly or alternative billing arrangements, and include a description of your billing frequency (monthly, quarterly, etc.).
- **Conflicts**. Include a statement in the proposal that you have run a conflicts check and have found no impending conflicts. If you do suspect a conflict, disclose it in the proposal.
- **References**. Include a list of references, but make sure that you have checked with each person on your reference list to make sure he/she is willing to serve in this capacity and will respond if contacted. If you have letters from clients thanking you for a job well done, include them in the proposal response.
- **Cover Letter**. For larger proposals (ones that are tabbed and have a table of contents), include a cover letter. A typical cover letter provides a brief (one paragraph) synopsis of the firm's experience and qualifications for the work, as well as your expressed desire to be selected as legal counsel.
- **Packaging**. Lastly, how you package the proposal is important. Whether it is a simple letter or large tabbed document, the way you present the proposal gives the recipient a critical first impression about your firm.

Next month: What to do after the proposal has been submitted.

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