

FMC Technologies Value Challenge: A Painless RFP Process Using 3 Pieces of Paper

By Mark D. Wolf

As a legal team, we constantly seek new and better ways to procure and deliver legal services to our internal clients. One of the team's key tenets is to add value - by providing cost-effective legal services aligned with company objectives. Over the last decade, this value-added initiative has delivered remarkable results – we have resolved more lawsuits, reduced cycle times, resolution costs and legal spend as a percentage of revenue while other costs have continued to sharply rise.

Admittedly, delivering cost-effective legal services to a \$4B Fortune 500 Company with a lean team of lawyers and staff can be a challenge, but, through innovation and creativity, we have persevered. Our business has grown more than 50% since 2001. External legal costs have increased an average of nearly 10% yearly. In spite of this trend, the team has essentially kept total legal expense to the company flat. We've done this by throwing out the playbook of conventional wisdom still used by many in-house legal departments, turning some old processes on their ear. In keeping with our vision, we thought, why not do the same with the RFP process?

And so we created the Litigation Value Challenge – a process designed to streamline our preferred service provider network. We ignored the traditional RFP process, starting from a blank slate. We tossed the idea of using an outdated, 30-page RFP with questions and answers which rarely factor into the ultimate decision-making. Requiring a firm to provide (and the legal team to read and digest) unnecessary information is no value to us or the law firm.

RFP GOALS & EXPECTED OUTCOMES

Our first step was to identify our objective - how could we further converge an already streamlined group of preferred law firm providers, strengthen and deepen our law firm bench, "walk our talk" when it comes to providing value, and, as our company grows, have the right law firm resources at our fingertips when and if the need arose in the future.

In terms of outcome, the possibilities were many: (1) our panel of law firms would remain intact, with no changes, (2) our panel of law firms would change drastically or turnover substantially, (3) certain law firms would be selected by case type specialty (e.g., plaintiff contract, defendant contract, mass tort, plaintiff intellectual property, defendant intellectual property, personal injury), (4) one law firm would do it all for us, or – and this was the most innovative – (5) we would create a non-equity joint venture among the law firms selected and outsource the entire portfolio to that joint venture for handling.

RFP PROCESS

The second step was to determine how the FMC Technologies Value Challenge might differ from other RFP processes that have been conducted. We knew we wanted

to drastically reduce the amount of paper required, but never dreamed we could distill the process to 3, core bits of information.

To hone in on “right-thinking” law firms, Phase I evolved into a simple, 1-page questionnaire containing 14 questions, each requiring a yes or no answer. One question addressed the firm’s willingness to use our Covenant with Counsel - a 1-page, mutually-balanced engagement letter in substitution for the typical, 8-page, over-reaching law firm engagement letter. Another question confirmed the firm’s agreement to use our ACES™ (Alliance Counsel Engagement System) model - our homegrown, performance-based pay, alternative billing system which aligns our desire for cost-effective litigation resolution with fair compensation to the law firm.

Other questions addressed the efficient use of technology such as:

- Serengeti Tracker - an ASP delivered, matter management software system used as our information and collaboration platform for all internal and external matters,
- Decision tree software or analysis – a tool we use to discuss matters with our internal clients – most of whom are MBA’s – and how we set reserves for FAS 5 purposes,
- Visa P-Cards to process and pay all invoices - a 4 to 15 day process as compared to the typical 30 to 60 day time frame for paper invoices, and
- Electronic submission of invoices – to eliminate paper shuffling and human interaction to reduce processing steps and time.

Still other questions addressed fundamental, value-driven ideas such as providing budgets (if this is not part of your law firm’s DNA, run away as fast as you can), participation in lessons learned or after action processes (to reduce future risk and improve performance since a “holistic” approach with an overall goal of managing risks to avoid disputes is a core competency of our legal department), and the firm’s agreement to accept structured, customer feedback on performance.

Fifty-two law firms from across the country – including some of the AmLaw100 / AmLaw Second 100 - submitted responses to our Phase I questionnaire. Thirty-two of those firms moved on to Phase II.

With respect to Phase II, we wanted to be as clear as possible regarding what was at stake for the law firms moving into this phase. Phase II, once again, consisted of a 1-page document – a case category summary of our external legal spend as well as budgets for the last 5 years. In exchange, we asked the law firms to rank their experiences by case category, provide indicative budgets to handle each of these case categories, and send us a Tweet explaining why they wanted to be a preferred provider to FMC Technologies, Inc.

Of the 32 law firms invited to Phase II, 16 firms moved into Phase III.

Phase III consisted of a 2-hour, in-person, discussion between law firm representatives and the FMC Technologies legal team. The communication materials to kick off this Phase were, you guessed it, a 1-page email setting out our meeting goals.

The firms were expected to bring their proposed relationship manager with the philosophy in our Covenant with Counsel of a B2B (business) relationship, not a B2A (individual attorney) relationship. Beyond the proposed relationship manager, the firm was free to bring anyone else to the meeting.

They were expected to be prepared to answer any question we may have about each element of their responses to each phase (the 1 page questionnaire, the 1 page spreadsheet, and the Tweet). We wanted them to tell us how they would conduct the initial intake planning meeting regarding resources, communication, focus, schedule, project management, etc.

In addition, we wanted to know how the firm performed early case assessments in the first 90 days of a matter, how they train their associates and give them experience - without imposing undue cost or risk on us – and how they would participate in after actions and continuous improvements.

Finally and perhaps most importantly, we *really* wanted to know what truly innovative ideas the firm had deployed and their thoughts for improving performance and delivering value to us as their future client.

These meetings were not about marketing (e.g., regurgitation of law firm brochures or promotional materials or capabilities), but about providing a context for law firm value, a true-up of financial submissions from Phase I and Phase II, and, most importantly, robust, round-table discussions to answer the question - where does your firm stand on the topic of change to a system that desperately needs fixing?

THE OUTCOME

We decided to take the most innovative route with the 8 law firms we selected, to form a cooperative, non-equity joint venture to handle all of FMC Technologies litigation. Key aspects of the arrangement - still being worked through - include:

- A general Serengeti Tracker matter for joint venture administration purposes (all JV members will have access to this matter and case status reports and financial performance metrics will be posted to this matter for review by all members),
- A team for a particular matter will be formed reflecting the collective expertise, experience, and location of the JV members,
- The FMC Technologies responsible attorney, as well as all law firm team members, will provide self and peer evaluations,
- ACES bonuses generated by successful resolution of the case will be distributed based on contribution and the evaluations, and

- Annual savings sharing between FMC Technologies and all joint venture firm members based on annual target / metric budget savings and reflective of evaluation results

What is important to note with this structure is that even if a firm contributes no attorneys to a case during the year, they will share in the bonus distribution based upon their content and process contributions, ideas and innovation for the improvement of the overall team performance.

In summary, we feel this innovative structure will unleash the respective and collective capabilities of the entire team in the best interests of FMC Technologies as well as the law firm venture partners. Furthermore, our approach to streamline our preferred law firm provider network is proof that you can conduct a painless and successful RFP using three pieces of paper.

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