

**Oregon State Bar
Sustainable Future Section**

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The Long View

RFPs for Legal Services Adopt Sustainability Criteria

By Jennifer Gates

Law firms responding to requests for proposals for legal services (“RFPs”) are encountering a new area of inquiry by potential clients: the law firms' commitment to sustainability. The following is a report from a subcommittee of the Sustainable Future Section that was created to research and study this development.

Over the last five years, and particularly in the last two years, law firms responding to requests for proposals must provide information concerning their sustainability policies, practices and experience. In some cases, the subject matter of the representation sought is unrelated to any type of sustainability considerations; rather, it appears that the sustainability questions seek to identify firms with a culture in common with the potential client.

Based on a survey of Portland area firms, the RFP issuers most likely to include sustainability criteria are large corporations and small companies whose business concerns or relates to energy, the environment or sustainability. RFPs issued by public entities also sometimes include sustainability questions, although the State of Oregon and the City of Portland generally do not (though both the State and the City employ sustainability-related vendor policies for other goods and services).

Topics traditionally seen in RFPs for legal services include:

- a description of the firm and the key attorneys who would be responsible for the client,

- a description of the firm's and key attorneys' experience in the subject matter of the representation
- the proposed fee structure,
- potential conflicts of interest,
- unique features of the firm that bear on the representation, and
- the firm's efforts to create diversity.

Sustainability-related questions now being seen in RFPs for legal services seek descriptions of:

- firm practices that show a commitment to sustainable operations or environmental stewardship,
- any sustainability policy and what topics it covers,
- support or services the key attorneys have provided to organizations whose mission involves or relates to sustainability, climate change or environmental protection,
- the firm's core values and how they are consistent with the potential client's core value of environmental protection/sustainability/resource conservation, etc.,
- the firm's supply chain policies and practices intended to insure environmentally conscious purchasing,
- paper and energy use policies and practices,
- efforts taken to reduce greenhouse gases associated with firm travel and transportation,
- any audit of resource use the firm has conducted, and
awards or recognition received.

While these questions are diverse, the RFPs typically fall into two categories: those that seek to identify common values and evidence of a legitimate commitment to sustainability, and those that seek detailed information about specific actions in key areas of resource conservation. The latter perhaps is more typical of

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companies with strict supplier/vendor guidelines of their own, while the former looks for a shared culture or shared values. Some RFP issuers and proposers analogize the growing desire to obtain information about and thus encourage sustainability commitments through the use of RFPs to the use of diversity-policy questions that became commonplace in RFPs in the 1980s and 1990s.

Evaluation of Law Firm Responses

Companies using sustainability criteria in evaluating proposals for legal services are reluctant to comment in detail on how the information obtained is included or weighed in the context of the overall evaluation of proposals and the ultimate selection of legal representation. To some extent, the responses (or lack thereof) to the sustainability questions are used either as a first cut (to exclude those proposals with little or no sustainability commitments from all others) or as a tie-breaker among the finalists. One issuer specified that the sustainability information would be worth 10% of the total score when the proposals were evaluated (for comparison, the categories of experience/expertise and cost were weighted at 20% each by this company).

Law firms generally were unable to comment on how their responses were viewed, because in most cases the only feedback on a proposal a firm receives is the retention (or not) of the firm. Several lawyers indicated that, after being retained and becoming familiar with the client, the client's sustainability interests and goals became a subject of discussion even if that was not the subject matter of the representation. This suggests that the identification of common core values or cultures through the use of RFPs may allow the lawyer and client to broaden their relationship beyond the initial legal needs that prompted the RFP.

Companies indicated that they do not view green washing in law firm proposals as a problem at this time. Those consulted for this article did not find it

difficult to segregate substantive commitments to sustainable operations from superficial efforts. Most law firms committed to sustainability tout their efforts on their websites and in other marketing materials, so to some extent potential clients are able to supplement information contained in proposals with their own research.

Are small firms at a disadvantage in responding to these RFPs? Large firms may have sustainability infrastructure where small firms do not, meaning that not only have some firms adopted sustainable office practices, but they also have policies in place to guide numerous aspects of their operations as well as attorneys and staff specifically identified to lead the effort. Two smaller companies that have issued RFPs with sustainability questions indicated that while the scope of the efforts of some large firms are impressive, the evaluation of the proposals takes into account the bigger picture, such as whether the key lawyers have performed significant pro bono work related to sustainability or environmental protection and whether a firm has made a commitment and is making progress toward goals.

Do These RFPs Prompt Change?

In addition to the primary goal of finding legal counsel with common values, the secondary goal of including sustainability questions in RFPs for legal services is to signal the marketplace of lawyers and firms that their commitment to sustainable operations is valuable to clients, and thus encourage more and deeper commitments to sustainability. It is unclear whether this goal is being met – the use of sustainability criteria is relatively new, is not occurring broadly across industries or practice areas, and rarely is occurring with sufficient regularity to impact any given firm.

For smaller companies whose business relates to sustainability, energy or environmental matters, law-

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yers and firms that work in those practice areas and would respond to an RFP often already are committed to sustainable operations and green or sustainability-related pro bono.

Change may be more likely for firms competing for clients who have detailed vendor/supply policies and seek the same from their lawyers. In this circumstance a sustainability policy and even initial steps toward more sustainable operations may not be sufficient. As some of the questions noted above indicate, detailed policies on paper use, energy, transportation and waste, and a way to measure improvements, may be necessary to satisfy the client's vendor requirements, let alone stand out among other proposals.

As sustainability criteria in all types of legal service RFPs become more common, change should follow as more practice areas and thus more firms will be responding. Perhaps the biggest impact lawyers can make in the short term is by advising their clients to include these types of questions in the client's RFPs and/or to adopt and apply sustainable vendor policies to law firms where no RFP will be issued.

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