

An Effective RFP Process For Non-Qualified Benefit Plans

EXECUTIVE SUMMARY

Finding the right executive benefits firm to administer your non-qualified plan is important for its long-term success. An effective Request For Proposal (RFP) process can help you accomplish this and ensure compliance with 409A and corporate governance standards such as Sarbanes-Oxley. While companies putting their first non-qualified deferred compensation plan in place should absolutely issue an RFP, this process can also benefit those that are reevaluating a current plan or looking for a new provider.

Your RFP committee should consist of 4-6 executive decision makers and additional support personnel, and be led by one individual who can dedicate sufficient time and expertise to the effort. The committee should be multidisciplinary — as this team will be responsible for defining the key objectives of the plan — and you may elect to have functional experts draft questions for their specific area.

The first step in the RFP process is to develop an outline that will guide question development. The outline will then be populated with specific questions for each topic area. It is important to build your RFP from the ground up, as the complexity of non-qualified benefit programs merits a thorough development process. Plan to allow 2-3 weeks for vendors to respond to your RFP and always include an explanation of how and when the final decision will be made. Senior management and the Compensation Committee to the Board of Directors should be kept apprised throughout the effort.

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WHY CREATE AN RFP?

The RFP process can help you meet specific objectives that directly influence the success of your program:

- Efficiently investigate a select number of eligible executive benefit providers
- Document what your company needs from the provider
- Standardize proposal format and allow objective comparison
- Reduce the potential for misunderstanding between your company and your provider

An RFP is part of the due diligence process that ensures vendor selection was made on the merits of a firm's capabilities, not the undue influence of charismatic salespeople. You may choose to invite competing companies to present their proposals in person or only meet with select finalists. Regardless, the objectivity of the RFP process can help you choose the right service provider for your needs and demonstrate compliance with 409A rules and corporate governance standards such as the Sarbanes-Oxley Act of 2002.

WHEN TO ISSUE AN RFP

If you are considering offering a non-qualified deferred compensation plan for the first time, absolutely issue an RFP. These plans are extremely flexible in design, funding mechanisms, and the approach to communications and administration. This flexibility requires thorough investigation and research of all the options to find the right fit for your situation.

If your company already has a non-qualified deferred compensation program in place, there may be several reasons for issuing an RFP:

- You are unhappy with your current plan administrator.
- You reassess your plan at predetermined intervals (e.g., every three years) as part of a due diligence exercise and to avoid complacency.
- You have not reviewed executive

benefits providers for more than three years. In today's rapidly changing business environment, vendors are constantly updating their offerings to stay competitive and keep up with the latest technologies.

- Your company's financial objectives have changed over time. Perhaps your original plan was structured to optimize recruiting effectiveness. Today, you may be looking to expand what it does to include a "golden handcuffs" provision for retention. Or, perhaps your company's tax position has shifted, or the number of participants in your plan has increased or decreased significantly. Any of these types of changes warrants reviewing and updating how you informally fund your plan.
- Recently heightened standards and scrutiny of corporate governance necessitate assurance to your shareholders and Board that you have eliminated perceived conflicts and deployed the most cost-effective informal funding solution available today.

Whatever your specific reason for an RFP, and even if the process reveals that your incumbent provider is still the best choice, the confidence that you gain from conducting a thorough review is still worth your time and effort.

OPTIMIZING YOUR QUESTIONNAIRE AND REVIEW PROCESS

Your RFP committee should consist of executive decision makers and additional support personnel. Together, these individuals will develop the RFP and review the submitted proposals. The process usually takes 2-4 months, and one person should be elected to lead the development of the RFP document. That individual should have:

- Sufficient knowledge of the non-qualified deferred compensation benefit program and its objectives
- Strong communication skills and the ability to gather input from multiple departments – finance (usually the

CFO, VP Finance or even the external auditors), payroll, information technology, human resources, and legal – as well as the executives eligible to participate in the plan.

- Adequate time to devote to the process. Though not a full-time job, the RFP process should be a high priority. As a rule of thumb, expect the process leader to spend 20-30 hours a week managing RFP development.

Once you have selected the RFP development process leader, you will need to create a small, 4-6 person committee made up of various functional experts to support the process. For example, a committee member from the IT department is best suited to draft the questions pertaining to the technological aspects of effective plan administration. You will want to include people from the following areas:

- Finance and Accounting
- Human Resources/Executive Compensation
- Corporate/Legal Counsel/Member of Compensation Committee
- Corporate Communications

Once in place, this team will define the company's specific objectives for the plan. Being exempt from most ERISA regulations, these plans are very flexible in structure. In the absence of a clear roadmap of corporate objectives guiding the process, there are simply too many design paths to explore. A successful plan aligns with corporate objectives and individual participant goals. In clarifying these objectives, the committee may explore issues such as:

- Is the plan being used primarily to enhance recruiting effectiveness or provide a "golden handcuffs" for retention?
- Is the plan being offered simply to make up for the limitations imposed under the company's 401(k) retirement savings plan, or does the company want to provide executives with a vehicle that allows for wealth accumulation and retirement security?

- If there is an existing plan, what areas work well and what areas need improvement?
- Is participation in the plan over 50%, or is increasing participation a goal?

In parallel with these discussions, the committee should develop an outline for the RFP to ensure that the process effectively focuses on the company's critical objectives. The major areas might include:

- Company background
 - Description of your company's existing qualified and non-qualified plans
 - Objectives for the plan
- RFP specifics
 - Proposal formats and important dates
 - Service provider requirements
- Proposed plan design
- Plan administration details
- Approach to informal funding analysis
- Communications and enrollment support References
- Estimate of costs and fees

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Once the committee has reached consensus on the outline, it can start filling in specific topic area content. For example, under "Plan Administration," you may want to ask about:

- Technological capabilities
- System security
- Online access by participants
- Reporting requirements
- 409A compliance
- Asset/liability matching procedure and timing

Communication topics may include:

- Enrollment materials creation
- Open enrollment meetings
- Ongoing support programs and advice
- Web-based tools
- Call center capabilities

After expanding your outline, you can develop the specific questions for prospective vendors within each section. One approach for developing an effective first draft is to assign the department

representative to be the "writer" of questions pertaining to that functional expertise, and then assign a different committee member to be the "reader" for editing those questions. For example, the tech savvy member of the team would draft questions about the vendor's technological capabilities and someone in HR or Finance would be the "reader" to review and edit those questions. Once the "writer" and "reader" are satisfied with their work, the questions are provided to the committee's leader for approval and integration into the final questionnaire.

This approach produces a solid and comprehensive draft because it efficiently uses individual time and expertise. The iterative approach also forces progress, as the author can't hold onto the questions until they are perfect. And, because the "reader" and "writer" possess different skill sets, the questions will have been vetted from more than one perspective.

Another approach is to assign only one or two "writers" to draft the entire RFP questionnaire and use the rest of the committee as "readers." This approach can be effective depending on the committee members, as some people work better in groups than others.

WARNING: Do not allow the committee to modify an existing RFP document to develop the new RFP. Non-qualified deferred compensation is a highly specialized program. While it is perfectly acceptable for the committee leader to refer to past RFP questionnaires, the committee should not be allowed to short-cut an organic, thoughtful development process by editing an old RFP document. Thoughtful question development will foster thoughtful responses from candidates. Though it appears to speed up the development process, in the final analysis, editing an old RFP almost never results in the kind of robust effort that will help maximize your success.

While the RFP is being developed, compile your list of eligible prospective vendors, and identify each vendor's point person to receive the RFP. Contact those individuals in advance to let them know when they can expect to receive the questionnaire.

Once the RFP is drafted, you will want to give vendor candidates 2-3 weeks to respond to the questionnaire. You want them to have plenty of time to put together a thoughtful response. Remember, you are looking for proposals that best represent the candidate. You should also consider allowing candidates to submit questions regarding the RFP document by a certain date. If you elect to do this, you should share your answers to each vendor's questions with all of the prospective firms participating in the process to create a level playing field.

Always include in the RFP document an explanation of how and when the final decision will be made. For example, if you do not plan to engage any firm for six months, let the candidates know of your timing.

A FEW OTHER THINGS TO CONSIDER...

- Before launching the development process, the RFP committee leader should brief the senior management team on process structure, committee members and development timeline. If the CEO or other corporate officers want to review the final RFP prior to its release, be sure to inform the committee and allow for extra time in the schedule.
- The company's Compensation Committee to the Board of Directors should be brought in early to contribute to the development and proposal review process.
- Timeframes must be reasonably set, respected and enforced for the process to work for everyone involved.
- Engage your constituent employee base throughout the development process. If a plan is currently in place, spend time talking to plan participants. If you will be offering a plan for the first time, talk to those who would be eligible.
- Keep senior management, especially the CFO, informed throughout the RFP process. Communicate progress, invite feedback, and involve those necessary in key decision making.
- If the RFP process seems like an overwhelming chore for your internal resources, engaging an outside consultant to manage may be desirable.

IN CONCLUSION

Having the discipline to run an effective RFP process is critical to finding the right partners and maintaining good vendor relationships. Prepare your RFP carefully, purposely and professionally. Read all proposals submitted in response thoroughly. Thank all the participating vendors. Responding to your questionnaire is a lot of work and you never know when you might need the firm that came in second. Engage the firm that best demonstrates they can meet your stated needs. With an effective RFP process in place, you can be confident you have done the due diligence necessary to make the right decision for your company.