

Please Respond to This RFP

Thoroughly vetting service providers



RETIREMENT plan fiduciaries have many responsibilities, one of which is the identification and selection of a service provider through a formal request for proposals (RFP) process. "Meeting Your Fiduciary Responsibilities," published by the Department of Labor (DOL), states in part: "An employer should establish and follow a formal review process at reasonable intervals to decide if it wants to continue using the current service providers or look for replacements."

In plain English, a fiduciary must test the waters every so often to meet its ongoing monitoring responsibility. An RFP provides the structure for a well-thought-out evaluation and leaves a written document trail as evidence of the fiduciary process.

Who gets the RFP? The plan must determine whom to invite for a bid on services. Certain candidates may be well-known in the industry, while others will surface as a result of a little due diligence or a word-of-mouth referral. Presumably, the existent service provider will remain on the RFP distribution list, as well.

What is a reasonable interval? Generally speaking, a review should be conducted when the plan or plan sponsor has undergone change, such as significant growth in assets or number of participants. Even in the absence of a major change or other event, a periodic review should be conducted as a matter of routine, to see whether the current service provider benchmarks appropriately against the competition.

What does the RFP cover? RFPs follow many different templates and structures, but seem to share the following common categories of requests for information (RFIs):

- A general description of the business structure, including some indication of size, background of key management and financial status of the company;
- A general description of services provided, with specific questions to determine whether the service provider is capable of supporting any unique needs of the plan;
- The provider's history with employee benefit plans in general, as well as explicit examples of work with comparably situated employers that have similar employee benefit plan structures;
- Detailed terms and conditions relating to all fees and expenses the plan would be expected to pay, the provider's fiduciary liability insurance coverage, as well as fidelity bond, if required; and
- Customer references that are available for contact.

Fees and expenses should be explained in a detailed and comprehensive fashion. The type of fee (hourly rate, commission, flat, percentage of assets or per-participant),

source of payment (revenue sharing or 12b-1 fees), and manner of payment (in advance, in arrears or invoice procedure) should be made very clear. In addition, the scope of work should be provided in a way that clearly explains whether any extra fees are imposed for certain activities. Travel expenses and administrative startup costs should also be explained, if applicable. The fee disclosure in the RFP response may mirror, if not serve as, an Employee Retirement Income Security Act (ERISA) Section 408(b)(2) disclosure, so the plan fiduciary must evaluate it carefully.

The RFP may also serve as an executive summary of the formal service agreement or contract that would follow if a new provider were selected. It is not uncommon for an RFP to request information about dispute resolution or basic representations and warranties related to performance levels or guarantees. It would also be typical to identify any subcontractors or other persons outsourced by the provider to render assistance.

Screening the provider. At some point, the plan fiduciary and provider will vet the provider responses and meet with a select group of finalists in person or by telephone. This stage of the process is often about fit. The interview process has a subjective element that allows the plan to elicit targeted responses. It is very important to maintain documentation at this stage in order to supplement the original RFP and response, pursuant to DOL requirements.

The final choice. The final selection should reflect the outcome of a prudent and thorough process. A prudent and well-documented process will usually demonstrate that the provider responses were, in fact, carefully evaluated and considered by the plan fiduciary, as well as that the chosen provider proved to be the most beneficial to the interests of the plan and its participants.

Conclusion. The time frame for a complete RFP, ending with the engagement of a new provider or decision to retain the current provider, may run several months, if not longer, so adequate planning must be done. It often makes sense to look at the ending date of a current service provider relationship and work backward to identify the ideal commencement point for the RFP process.

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