

Legal Panels and their Pre-Appointment Process – Laying the Foundation

By Ignaz Fuesgen



Successful legal panels are all about building deep and trusted relationships that achieve win-win situations for all parties involved.

The panel structure as such constitutes only the governance and incentive framework that is meant guide the actual daily interactions between in-house legal departments and external counsel.

From the outset, clearly defined objectives for establishing the panel; detailed planning and execution of the selection process ahead of the appointments; and the engagement of all internal stakeholders as well as the implementation of the panel approach, lay the cornerstones of a platform to nurture mutually beneficial relationships.

In general, one needs to differentiate between the pre-appointment phase, addressed by this article, and the post implementation phases.

1. Framing the Process

Some of the elements to bear in mind include:

Defining your objectives: Are you looking to drive efficiency and value, reduce legal spend, improve decision-making and/or service quality, or embed a partnership approach? Be as specific as possible in terms of expressing your expectations and the type, scope and length of responses you are looking for. Do not forget to illustrate the benefits and incentives for the participating firms should they be appointed. Share contextual information regarding your in-house department (such as mission statements, organograms, portfolio descriptions, etc.) that may provide guidance to the candidates. Consider scheduling a structured Q&A session either via a conference call or a physical meeting.

Knowing what work you want to outsource: Be very specific about the type of work you will outsource, be it speciality work or routine transactional work. Ultimately, this decision has to be taken before going out to tender. It will depend on the size and expertise of your in-house team and the volume of specialist and routine work available. Decide how many law firms should make up your panel and understand what internal resources will be required to supervise them. Finally, use common terminology to describe the scope of work that is familiar and relevant to external legal counsel.

Taking cultural elements into consideration: Make sure that the Request for Proposal (RFP) provides space for applicants to demonstrate cultural alignment, shared working practices and values in addition to financial and technical criteria. Comparing initial statements from the RFP response with the actual way respondents contribute to the selection process is one way to find out whether there is a good cultural fit.

Establishing a robust assessment matrix: Make sure you are specific about the format of response in your RFP document (such as numerical data, case studies, etc.). This will assist you to process the data efficiently later on. Involve your colleagues from the Procurement Department as they can help you to plan the process and create objective evaluation criteria. Assure yourself that your questions are mutually exclusive and at the same time collectively exhaustive to avoid redundant, overlapping and occasionally contradictory responses that may best case skew your evaluation outcome.

Assembling a balanced assessment team led by the legal department: Ideally, the function should be leading the process and decision-making. However, establishing a team comprising experts from legal, procurement and even business may provide a balanced view that covers all angles. In my experience, procurement-led panel processes are sometimes over-complicated and too heavily focussed on costs and contractual obligations at the expense of expertise and compatibility.

Gaining internal buy-in: Panel selection processes often fail or are significantly delayed due to a lack of support from relevant internal stakeholders. Ensure your objectives, and the chosen selection approach, have the full support of the key stakeholders in the business (e.g. executives/ board members who already have established relationships, business teams instructing external counsel directly, members of the legal and procurement team).

Being realistic about timelines: Implementing a legal panel will take time. Due to the many stakeholders on both sides, a panel selection process may easily last for four months and, sometimes, as much as nine months. Bear in mind that each additional detailed piece of information you may ask for increases the duration of the process. Good project planning and management and a strong focus on priorities will assist to ensure a smooth process.

Consulting your incumbent law firms: Use existing relationships with lawyers and firms to identify potential value-adds, such as in-house training, use of meeting rooms, etc., and other non-billable offerings. Test your perceptions and ideas with them to streamline and focus your approach.

Avoiding over-engineering the process: Too many law firms, too many layers of complexity, and a variety of forms and requests for too much information can overwhelm all participants in the process, delay the evaluation of all submissions and incur additional costs. Remain relevant when it comes to financial figures, pricing details, headcount breakdowns and so forth. In many cases, RFPs tend to collect information for information's sake that will neither enrich the quality of the assessments nor allow decision-makers to draw additional conclusions. Moreover, it has become quite popular to use online platforms for data gathering and information collection. However, these means should serve a purpose and not further complicate handling of documents. Although an effective tool to aid data comparison by standardised data entry structures, it should include space for each law firm to differentiate itself. Always bear in mind what your main objectives are and which responses you require to come to a meaningful decision.

Establishing clear communications: Communication plays a major role in managing the RFP process. Internal and external communications need to be established before the RFP is sent out to potential respondents. Stakeholder groups and their needs require analysis. The timing of communication, as well as agreed messages, are crucial elements.

Transparency amongst all responding law firms is compulsory to achieve an optimal outcome.

2. The RFP Document – The Lighthouse

The RFP document frames the entire process. All aspects listed above should be reflected in the document.

To develop a good RFP document:

- Outline your objectives for the panel and the benefits for the law firm
- Allow firms to differentiate themselves
- Make comparing hard data (financials, pricing, headcount, etc.) easy
- Force respondents to be concise and sharp (avoid long documents)
- Avoid jargon and unclear terminology
- Provide a logical and streamlined questionnaire
- Include evaluation criteria
- Ensure the process is transparent

3. The Final Mile

Hopefully, your chosen selection criteria will highlight key differentiators among the applicants. Your earlier effort and investment in drafting the questions should now pay off. It is probably one of the more difficult parts of the process, but it is worth investing the time to get it right.

Often shortlisted firms will be invited to present their credentials. Depending on your firm's culture, the presentation/ interview stage may vary in terms of formality, number of meetings/presentations, focus areas and composition of internal audience. You may also want to consider a fast-track process for established relationships where the process is focussed much more on value propositions and fees rather than a general company profile.

4. Conclusion

Hopefully you will agree that planning and executing a pre-appointment phase is not a task that can be accomplished overnight. Every minute invested in the process will yield a significant return as major cornerstones of the future relationship are agreed.

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