THE NEW ELLIS GROUP

Monday Monday

Connecting the Dots with Karen Kaplowitz

Helping you create and reinforce the habits of successful career building, gleaned from my work as a business development strategist, trainer and coach

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Competing for Single Source Flat Fee Agreements. Clients are increasingly consolidating their work with fewer firms, often using RFPs to select a single provider for certain work, geographical areas, or business units. Many single provider RFPs require or encourage flat fee bids. The risks to law firms --and clients-- of single source, flat fee agreements are significant. Law firms can lose money from unprofitable winning low bids which may result from the firms' failing to track their own or the company's historical experience or unexpected changes in the volume or complexity of the work covered by the bid. Clients can end up with poor quality service if a single source provider pushes its work to the most junior people or takes short cuts to improve profit margins. If a significant client invites your firm to bid on a single source, flat fee book of business, consider these options:

- Tactfully inquire why the client is considering the change.
- Identify any work, especially more complex work your firm has handled, that does not lend itself to a flat fee bid and discuss whether the client would consider carving out that work.
- Obtain sufficient historical cost data from the company, especially on work you have not handled, to avoid flying blind on your bid.
- If allowed under the RFP, consider teaming up with another firm to spread the risk.
- Propose provisions in your bid to protect against change of circumstances in the volume or complexity of the work.

Example: A law firm had an excellent track record for a client when the client decided to consolidate its work with some larger law firms. The client told the firm that it would not be invited to bid solely because of its size and the company's belief that it needed the capacity of larger firms. Because the firm had a long track record of success, the general counsel agreed to meet with the firm's leadership. The firm shared with the general counsel some risks to consider, including the tendency of firms with flat fee arrangements to push the work down to the most junior lawyers and the risk that some research or preparation might be less thorough because of the slim profit margins in the flat fee. The firm proposed that the company carve out of the RFP certain high stakes work in which the firm was expert. The firm also offered to help the client design quality control systems to help insure the results. As a result of the meeting, the company carved out a category of high stakes litigation that would not be subject to the flat fee agreement and also shortened the duration of the initial flat fee agreement which was awarded to a larger firm.

When confronted with single source, flat fee RFPs, are you so eager to be the winning bidder that you are avoiding candid discussions with your clients of the risks to them in such arrangements? Can you do a service to your clients and your firm by raising these issues before the client completes the selection process?

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