

Getting the green light

by Jan Mattingly

Risk info speeds legal review and approval

PROCURMENT PROFESSIONALS will tell you as they plan or execute their procurement, that legal review and sign-off of the procurement prior to posting can be a wild card in the effort to meet procurement timelines. Depending on the number and type of legal resources available to the procurement, some amount of time needs to be factored in for their involvement as part of the procurement timeline.

This article will help you understand an alternate means of working with your legal counsel, using risk information to accelerate the procurement process.

The mandate of most legal teams, in fundamental terms, is to ensure the procurement is lawful and supportable for your organizational context. Legal reviewers may very well enhance the services they provide to your organization beyond this. In some cases, for example, legal review will also cover ethical considerations in procurement and purchasing policy compliance.

However, we all know that for most organizations, legal review is the executive's key point of reliance on your work as a procurement professional. It is often 'legal' who answers the executive's ques-

tion, "Prior to sign-off, what level of confidence can I have that you have helped me to manage my risks?"

Specifically, legal review is intended to provide assurance to management that risks associated with the procurement have been identified and managed. As a risk practitioner, I must state that the typical procurement professional places a great weight on the shoulders of the lawyer – someone who likely has not had the opportunity to be as close to the team as you might be. No wonder there is a variety of reactions from valued legal professionals when the document is brought to them for final review and sign-off. This anxiety is often the key cause for delay in the procurement cycle.

Now consider a different point of view: you are in a procurement environment where you and/or your procurement team have been regularly identifying new risks and addressing them through bid evaluation weighting or RFP design.

As you prepare to meet with legal and/or quality review, you need to be able to:

- demonstrate what the procurement risks are: those that you (and your team) have identified that could impact procurement objectives;

- show how you have defined risk levels: how you characterize 'high, moderate and low' impact risk is key and should be reviewed with your executive early in the procurement effort;
- summarize priority risk: the summarized results of your risk analysis;
- respond to priority risks: demonstrates how you and your team have structured the contract to deal with priority risks (i.e. through bid evaluation or clause design);
- show that your risk assessment efforts have been externally validated: to demonstrate independence in risk assessment and integrity in risk data;
- demonstrate understanding of your own/your client's role in managing risk post-award: how you have made yourselves and your client aware of their responsibilities to manage certain specific priority risks as part of ongoing contract management, post-award.

The table below, summarizing procurement risks, helps illustrate these principles.

Legal counsel is then in a much stronger position because of better quality information provided by you and your team on

Procurement for XX Services

Identified Priority Risks (ratings not shown)	Procurement Objectives Impacted			Mitigation Strategy												
	Objective #1 Maintain and improve service	Objective #2 Manage legacy licences	Objective #3 Provide continued legacy main-frame services	Mandatory Criteria								Rated Criteria				
				Experience	References	Technical resources	Transition approach and plan	Service level commitments	Rates and/or costs	Written capabilities	Organization and leadership	Other vendor relationships	Corporate values	Stakeholder-engaged evaluation	Change management	
Supplier may "nickel and dime" service charges resulting in increased costs	X									X						
The vendor may lack requisite insight and expertise resulting in a poor e-strategy	X	X	X	X	X	X		X		X						
A bidder's e-strategy may not be implementable	X			X	X		X	X		X					X	X

procurement risks, to more quickly review the document and provide higher quality feedback or validation of your procurement approach.

With the right tools and training, procurement risk assessment occurs *concurrently* as you develop procurement options, establish a procurement roadmap, create bid evaluation criteria, and assemble the RFP. Procurement professionals identify risk as a natural course of events but, too often, the risks you've identified and how you've assessed or addressed them may not be explicitly or consistently captured. So, to answer the question, a procurement risk assessment will take nominal additional effort with the right capture tools.

Independent verification of the risk assessment may take an additional few days or a few weeks depending on the complexity of the procurement itself. The investment to actively manage procurement risk at all phases pays off with better quality information provided to legal review and improved comfort level with how your team has identified, assessed and addressed major risk factors. Early in the procurement – and once you have outlined an approach for when and how you will develop risk information and a summary report format – meet with Legal to acquaint them with your new, more explicit and consistent approach that you plan to use to help manage risk. Invite comment and input; then get on with the job of active risk management. The net effect is an accelerated legal and quality review sign off. *mm*

Jan Mattingly is President of RiskResults Consulting Inc. (www.riskresults.ca). As a risk management specialist, she has 18 years experience in helping major Canadian organizations and all levels of government manage risk.

Communications strategy	Customer satisfaction	Performance audit	Security audit	Risk and issue management	Service option flexibility
		X			X
		X			
	X			X	