How To Select An eDiscovery Service Provider

Writing An RFI With The eDJ Matrix Services Framework

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Introduction

A serious vendor selection process, not a one-off, emergency purchase, should include a Request for Information (RFI). An RFI is a useful way to focus on vendor profiles to narrow the field of candidates and eliminate confusion about differing methods, offerings and pricing models before the more price-specific Request for Proposal (RFP) document.

The courts have recognized that eDiscovery vendor management is a serious matter and should not be undertaken lightly. This increased scrutiny and higher standards puts pressure on consumers to participate in an eDiscovery marketplace that has become increasingly complicated, and requires hitting a moving target of evolving technologies, hard-to-compare offerings and escalating data volumes/costs. The stakes have never been higher with greater risk to outcomes and reputations.

Peerless Indus., Inc. v. Crimson AV, LLC, No. 1:11-cv-1768, 2013 WL 85378 (N.D. Ill. Jan. 8, 2013)

"Defendants cannot place the burden of compliance on an outside vendor and have no knowledge, or claim no control, over the process."

Bench slaps such as this one help to focus the consumer's responsibility to not only manage outside vendors, but to also effectively select the right vendor as the first step in the management process. This report and the accompanying spreadsheet will help consumers develop comprehensive RFIs and frameworks for evaluating eDiscovery service providers – a crowded market where differentiation can be hard to glean.

There are various purposes for an RFI: hardware selection; software selection; cloud service provider; coLo service; staffing service; managed service; anything that can be purchased can be specified in an RFI. eDiscovery services procurement is one kind of RFI with a very specific focus. This is not to say that consumers cannot request information about technology offerings and services, but it is helpful to create separate RFIs or sections of an RFI to target eDiscovery services, specifically.

Preparation: Needs Assessment for Service Provider Selection

It is important to remember that there are many perspectives and levels of participation in discovery provider selection and management such as: corporate eDiscovery; law firm eDiscovery; and matter specific selection. Including the various stakeholders such as Law Department members, retained counsel litigators, eDiscovery and IT professionals, assures that everyone is on the same page, so to speak; that each participant and/or their organization understands the requirements of the services being researched and procured, and their responsibilities in the process and in use and management of the ultimately selected solution.

To put it plainly, finger pointing is no defense if something goes wrong. Excuses such as "I let outside counsel make that decision," or "We just used whatever GC told us to use" will only show lack of experience, sophistication and commitment.

The eDJ Framework detailed in this report should be customized to reflect information gathered during the selection process' needs assessment phase.

General Needs Assessment:

- Determine procurement scope. To what extent does your organization want to perform eDiscovery tasks in-house vs. outsourced? What is the strategy related to how much the participation in selection and vendor management the corporate client wishes to maintain as opposed to eDiscovery counsel.
- Determine preferred software and/or infrastructure. Make sure you have decided how you want to buy and use eDiscovery services so that you can ask RFI respondents how they fit in with your scenario
  - Do you want a software package that is available in multiple platforms?
  - How do you want to interact with the software and your data?
    - Do it yourself (DIY) entire projects through SaaS offering?
    - Host some projects internally behind your firewall and then easily port them to vendor servers if needs/volumes change?
    - Hand everything over to a vendor and interact w/data through browser?
  - If a specific eDiscovery software has been selected, make sure the RFI is clear about the expectation that the provider can provide or interact with that software.
- What other characteristics are important? Make sure you understand the organization's priorities related to service provider characteristics in order to include them in RFI, cull inessentials and prioritize features. These characteristics might include:
  - Physical location of provider offices
  - Global Experience
  - Experience with TAR or other analytical methods
  - Internal technology customization strength and/or proprietary offerings
  - End-to-End service offerings or strength in specific areas
  - Pricing methods

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When To Use An RFI Versus An RFP

In a best practices procurement project, the RFI is the next stage in the process that occurs after the various preparation tasks. In this suggested method, the RFI is a completely separate stage from the RFP and lays the groundwork for the RFP's specific pricing questions. When drafting an RFI it is important to understand the difference between the two documents and their procurement phases:

- An RFI is usually sent to a group of providers larger than the number of service providers that receive the RFP.
    - The RFI culls the vendor candidates
    - Relates to breath of services and their characteristics
    - Should ask about pricing methods available, not actual prices
    - Must be clear about expectations related to subcontracting
    - Should make the RFP drafting easier by informing the process
        - Makes Apples to Apples pricing comparison easier by understanding the vendor's available pricing models
        - Helps the consumer understand what is really important to ask in the RFP

What Makes an Effective Services RFI

The biggest complaint about eDiscovery services proposals is that each service provider prices differently, describes services differently and combines service differently in varying types of offering bundles. Asking detailed questions in the RFI can make drafting the RFP document much easier and make comparing proposals a far less confusing task. We can narrow down the services RFI as having two primary purposes:

- Determining if the provider is a stable organization and offers the services required by a client in a way that fits the client's needs.
- Understanding the service provider's offerings as differentiated from other vendors and understanding how offerings are priced, bundled and unitized.

The eDJ Matrix Services Framework

At eDJ Group, we have worked with many clients who struggle with the selection process and our eDJ Matrix at www.eDJGroupInc.com is an industry resource with detailed information about technology and services options. The eDJ Matrix Services Framework is intended as a resource when crafting an RFI and as a step in the evolution of the eDJ Matrix in its coverage of service provider offerings. As eDJ analysts use the framework in conversations with service providers, that information will be categorized in the eDJ Matrix. Publishing the framework at this time allows us to share our RFI ideas and also gather feedback that will enhance the eDJ Matrix.

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How to use the eDJ Matrix Services Framework

The framework contains proposed questions with a method for rationalizing the answers.

- The framework has been provided as a <u>MS Excel™ download companion to this report</u>. Use the spreadsheet only as a resource when drafting an RFI and include only the framework questions and options that fit your needs as codified during the needs assessment process.
- Add a column to the spreadsheet for the priority ranking of each answer if you want to grade the answers on a scale. Determine the priority of each answer before sending out the RFI to vendors and do not include the priority column in the version sent to vendors.
- Be clear about partnerships in a vendor's answers. If a provider must "own" a service, meaning the service must be delivered by Full Time Employees (FTE) of the organization, as opposed to a channel partner, make that clear in the RFI.
- Don't be afraid to duplicate sections of an RFI to ask about different delivery methods such as Software as a Service (SaaS) and local installations.
- Note that the current Provider 1 answers are only exemplars to assist in understanding the framework and the framework should not be considered the only questions that should be asked of vendors. Consumers should feel free to include any and all additional questions that support their selection process.
- You can ask respondents to provide additional information in an MS Word™ or Adobe PDF™ document that accompanies the completed MS Excel™ framework or insist that answers appear only in the spreadsheet – and even limit the number of characters that can be entered in individual cells.

Summary of Framework areas

General Organizational Questions

Company History

The Request for Information (RFI) is the perfect vehicle to establish a service provider's bona fides to make sure they are the kind of organization you want to work with. Ask about years in business and also years in the eDiscovery or legal services arena, specifically. You may want to include questions about the ownership of the company (something government procurement professionals ask) and any pending litigation, etc.

Locations

Ask for a list of all eDiscovery-related locations. You can ask how long each has been in operation and how many on-site employees they have in eDiscovery as well.

Security and Disaster Recovery

Inquire about physical and data security philosophies, certifications, penetration testing and other audits. The answers can be answered generally or related to each eDiscovery location. Include questions related to backup, disaster recovery/prevention, co-locations and service level agreements (SLAs). Make sure that you know where all your data will be ultimately hosted and by whom.

Discovery Services

Ask questions about which Discovery services the vendor offers, remembering to be specific about ownership of each service. You can ask about what tools are used for each phase, pricing models and whether or not the tool is proprietary or off-the-shelf. Separate the phases into distinct tasks so as to understand how and in what order the

provider performs each task and how it is bundled or separate from other tasks for the purposes of workflow and pricing. This is one of the areas that most confuses buyers during the RFP pricing comparison phase, so understanding exactly what each vendor does and how they describe it is one of the primary jobs of the RFI in order to ask for apples-to-apples pricing in the RFP.

Project Management

Project management is the most important and one of the most misunderstood aspects of eDiscovery services. If you ask an eDiscovery services provider what differentiates them from their competitors, almost every last one will say, "Project Management". Therefore; it is important to understand during the selection process, what are the aspects of a respondent's PM program. Ask about project management specific applications. Some organizations don't have actual workflow tools for PM and other functions. They rely on email and spreadsheets. Include questions about numbers and seniority levels of PMs. You can also ask for information as to how they recruit their eDiscovery professionals and number of years in the business. You may want to differentiate between different types of PM such as general project management and review specific personnel. Be sure to ask about pricing models that include all or some PM hours/tasks and understand how much PM is included in each model.

Consulting Services

Obviously, there are many different types of consulting related to Discovery tasks. You may want to ask about consulting during each phase of discovery or you may want to ask about consultants in general, their locations and areas of expertise. Make sure your questions are specific.

Additional Questions

Because the RFI is the time and place to ask more open-ended questions than an RFP, it may be a good idea to include topics or questions that were either not asked in the previous sections or were asked in another way. The method for gathering information about Discovery tasks is heavily normalized in a kind of database format. Asking about pricing models or differentiators, in general, may also be helpful in choosing the RFP vendor candidates and in drafting the RFP, itself.

Conclusion

Organizing the selection process to create distinct RFI and RFP phases of inquiry gives added "power" to the RFI effort and makes drafting the RFP and conducting the RFP segment of the process much easier. Taking time to prepare the organization to the point where it can quantify its needs in an RFI spreadsheet is an extremely useful undertaking whose benefits to the organization outweigh the effort of framing it. An RFI that successfully captures the vendor candidates' strengths, differentiators and various pricing models will help to eliminate much of the confusion that comes when trying to make selection comparisons.

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About The eDJ Group

eDJ Group is a new kind of research firm – our analysts are "working analysts" that cycle between consulting engagements and research projects in order to keep a real-world perspective. eDJ's analysts all have 10-25 years of experience in detailed eDiscovery and information governance projects. Our analysts research, analyze, and write based on a combined one hundred (100) years in the legal technology community.

We operate with the utmost integrity and commitment to our clients on these guiding principles:

- Independence – All research, reports, advice and services are agnostic and conducted independently without influence by solution providers.
- Highest Ethical standards – All content is honest perspective based on real experience and interactions with thousands of practitioners; detailing both successes and failures without favoritism.
- Pragmatic, Experienced Expertise – All services are conducted by industry experts with decades of experience and strictly vetted by the eDJ Group founders.

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