



Vendor Management

Responsibilities, Requirements, and Strategies

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Today's topics

- Who is managing and monitoring vendor performance
- Tips and traps in the RFP process
- Contractual provisions you cannot ignore

Who typically manages and monitors vendor performance

Retirement Plans

- Board of Directors – delegates authority to a committee
- Committee selects and monitors investment consultant as a co-fiduciary
- Committee and investment consultant (as co-fiduciary) monitor investment providers
- Committee and investment consultant (as non-fiduciary) monitor recordkeeper, auditor, etc.

Health and Welfare Plans

- Board of Directors – does not formally delegate to anyone
- Informal committee of one or two people select and monitor consultant
- Informal committee and consultant (as non-fiduciary) monitor network, TPA, PBM, etc.

Who is actually responsible?

- The fiduciaries
 - A. Fiduciary by name
 - B. Fiduciary by function

Who is actually responsible? *(cont'd)*

1. Anyone who exercises any discretionary authority or discretionary control regarding the management of a plan;
2. Anyone who exercises any authority or control regarding management or disposition of plan assets;
3. Anyone who renders investment advice for a fee or other compensation, direct or indirect, with respect to plan money or property; or
4. Anyone who has any discretionary authority or discretionary responsibility in the administration of the plan

What are the fiduciaries' duties?

- **Exclusive Purpose Rule** ("Duty of Loyalty") – solely in the interest of the plan's participants and beneficiaries (don't forget – and for exclusive purpose ...)
- **Prudent Person Standard** ("Duty of Care") – discharge your duties in the manner of a prudent person with the care, skill, prudence and diligence of a person acting in a like capacity and familiar with such matters (Prudent Expert Rule)

What are the fiduciaries' duties? *(cont'd)*

- **Diversify the Plan's Investments** – to minimize the risk of large investment losses
- **Follow the Plan's Written Rules** – act in accordance with the provisions of the plan documents that govern the plan (i.e. the master plan, adoption and trust agreements, investment policy statement, loan policy, etc.)

Vendor Management for Retirement Plans

Tips and Traps in the RFP Process

1. Know who is responsible for what
2. Don't do the process backwards - select your investment consultant first and then let them help you find your recordkeeper
3. Use template RFP (next few slides identify potential example questions)

Example Template RFP Provisions

- Describe the ownership structure of your firm
- List your firm's lines of business
- How many years has your firm been servicing retirement plan clients?
- What is the total number of employees in your firm?
- Please identify which individuals will be committed to our account. Include the length of experience in retirement plans and investment consulting services, and any credentials they hold.

Example Template RFP Provisions *(cont'd)*

- Retirement plan assets under advisement: \$_. Total number of retirement plans served:___.
- Total number of clients with a defined contribution plan under your advisement?
- Number of retirement plan clients added over the last 24 months
- Number of retirement plan clients lost over the last 24 months and why
- Describe your service model. (staff, responsibilities, interactions with our plan, frequency of in-person meetings, frequency of conference calls, team dynamics)

Example Template RFP Provisions *(cont'd)*

- What tools does your firm use to evaluate investment funds and managers?
- Please provide a sample investment due diligence report.
- Describe your vendor benchmark service and process.
- In the past 36 months, how many TPA / Recordkeeper searches have you conducted for the DC plans your firm supports?
- Describe your fiduciary responsibility under our plan, including your ability to serve in an ERISA 3 (21) or 3 (38) capacity. Will you serve as a fiduciary for our plan?

Example Template RFP Provisions *(cont'd)*

- Please provide a sample investment policy statement.
- How is your firm compensated for services?
- Does your firm work with clients on a commission basis?
- What is your firm's position on revenue sharing such as 12b-1 fees, shareholder servicing fees, and sub-TA fees?
- Have any individuals from your firm ever been disciplined by any government regulator for unethical or improper conduct or been sued by a client who was not happy with the work performed by the firm?

Example Template RFP Provisions *(cont'd)*

- What fee would you propose to act as a 3(21) advisor?
- What fee would you propose to act as a 3(38) advisor?
- Please provide a current list of representative clients
- Please list four reference clients similar to our organization in terms of size
- How is your firm different than other firms?
- Why should we pick you over other firms?

Tips and Traps in the RFP Process *(cont'd)*

4. Allow questions to go through a third party
5. Identify questions and answers to all RFP candidates
6. Use some sort of a scoring matrix to narrow them down to three(ish) finalists – develop a custom matrix based on your needs/wants (see next slide example)

Sample scoring matrix

Score Report				
No.	Criteria	Available Score	Actual Score	Comments
1	Investment Analysis and Quality Assurance	30		
2	Expenses	15		
3	Level and Type of Admin Services Available	15		
4	Reporting	10		
5	Communication Skills	10		
6	Conversion / Vendor RFP	10		
7	References	5		
8	Organization & History	5		
	Total	100	0	

Sample scoring matrix *(cont'd)*

Investment Analysis: These values should consider the expertise of the provider in the analysis of investment options, and how the impact of global and domestic economic conditions effect the investment options. The provider must be highly skilled in analyzing the global economies and communicating to the committee how these conditions impact the selection of investments.

Services & Quality Assurance: This category centers around the overall quality of service. Responses to the RFP should be considered. Providers should be valued based on their degree of accessibility to the committee, communication frequency and written procedures.

Expenses: The total cost of the plan is important to gauge as most of the plan's cost is borne by the participants (proportionately based upon the account size). Understanding what the costs are and how they are determined is critical. Pricing visibility and full disclosure should be top priorities for a plan sponsor.

Level & Type of Admin Services Available (including but not limited to employee education): This is scored based on the level and technical requirements that fit the individual needs of each sponsor. Some sponsors may not want to utilize all technical features and some may want to be completely paperless. Other clients may feel it is important to have human contact and others may want to conduct all transactions via internet.

Reporting: It is important to be able to gather and review information about the various aspects of the plan in order to make proper evaluations and management decisions. Timely and convenient access to this data is both insightful and necessary.

Communication Skills: The communication between the provider and the committee are extremely important. The provider must work with the committee in developing clear lines of communication in the selection, retention, and removal of investment options.

Conversion/Vendor RFP: The systems and methods used to manage this process is very important as many issues can surface and will need to be addressed correctly. Experience and proactive approaches are essential. A strong team can help facilitate the process and keep the provider on task, but you want the consultant to have a good track record for seamless conversions in the event a conversion may occur in the future. Values here are based on past experience as well as referral insights.

References: References are part of the fiduciary responsibility to do a complete background check of all finalists including but not limited to, lawsuits, loss of clients, and criminal charges.

Organization & History: The total size of an organization's retirement plan business can be very insightful into their commitment and available resources. The age, reputation, and financial strength of the firm is also important and should be considered accordingly, especially in light of recent economic events.

Tips and Traps in the RFP Process *(cont'd)*

7. Interview the finalists (give limited but enough presentation time)
8. Review proposed contract and then select finalist

Tips and Traps in the RFP Process *(cont'd)*

- Use similar process for recordkeeper, but let your investment consultant help you with that process
- Beware of conflicts of interest – ask why we are starting with our starting list of potential vendors – understand recommendations
- Ask your consultant about their experience with the recordkeeper when the recordkeeper makes a mistake
- Make sure you can monitor all of the investments – nothing weird

Tips and Traps in the RFP Process *(cont'd)*

- You can use a similar process (RFP, scoring, finalists, interviews, selection) to select an auditor or other vendors for your retirement plan

Contractual Provisions Can't Ignore

You

- Termination provisions – how can you get out of it, how much notice do you have to give?
- Liability provisions – require them to be held accountable (because they will mess up)
- Do not accept gross negligence, willfulness
- Do not accept limited damages provisions
- Do not agree to be subject to the laws of the state of wherever they are from
- Be careful about “fiduciary” v. “non-fiduciary” distinction in contract

Contractual Provisions You Can't Ignore *(cont'd)*

- Fees –understand every single way every single vendor gets paid
- Recordkeeper – understand how their fees are allocated (make educated decision about per capita or pro rata allocation or something in between)
- Recordkeeper – revenue sharing provisions (consider rev share carefully) (consider fee leveling if you have rev share)

Revenue sharing

- Edison lawsuit - August 16, 2017
- U.S. District Court of the Central District of California
- Plaintiffs contended that Edison fiduciaries failed to switch to low-cost share classes because the revenue sharing from the funds reduced the plan's recordkeeping costs
- Plaintiffs contended this was "a clear conflict of interest and breach of the duties of loyalty and prudence."

Revenue sharing *(cont'd)*

- Plan fiduciaries should have switched “immediately” to lower-fee share classes once they knew such share classes were available to the plan

Duty to Monitor

- Monitoring your investment consultant: What criteria are they using? Why do they recommend what they recommend? Is their fee still competitive? Don't use boiler plate minutes. Periodic RFP? What value are they providing?
- Monitoring your investments: Regular meetings, use benchmarks, use an IPS, document decisions, periodic review of share classes, regular evaluation of all investments especially default fund

Duty to monitor *(cont'd)*

- Monitoring your recordkeeper: Pay attention to their communications to your participants. Is their fee still reasonable as your plan grows? Periodic RFP?
- Monitoring your other vendors (including your lawyer): Are their fees reasonable?

Vendor Management for Health & Welfare Plans

Tips and Traps in the RFP Process

1. Be better – pay more attention to this side
2. Know who is responsible for what
3. Think about how much all of these vendors make and think about whether what they are doing for you is worth it - seriously
4. Beware of conflicts of interest – e.g., bonus retention payments on the back end that you never see – align their interests with yours

Tips and Traps in the RFP Process *(cont'd)*

5. Don't do the process backwards - select your consultant first and then let them help you find your other vendors
6. Use a template RFP to select your consultant (next few slides identify potential example questions)

Example Template RFP Provisions

(Identify what plans you offer, how they are funded, and which ones you do and don't need help with)

- Describe the ownership structure of your firm
- List your firm's lines of business
- How many years has your firm been servicing employee benefit plan clients?
- What is the total number of employees in your firm?
- Please identify which individuals will be committed to our account. Include the length of experience in this industry, and any credentials they hold.

Example Template RFP Provisions *(cont'd)*

- Please list the federal, state, and other regulatory agencies with which your firm is licensed or registered, and the type of license held
- Total number of employee benefit plan clients?
- Number of employee benefit plan clients added over the last 24 months
- Number of employee benefit plan clients lost over the last 24 months and why

Example Template RFP Provisions *(cont'd)*

- Please provide a sample annual report to a benefit plan committee
- Describe your vendor benchmark service and process
- In the past 36 months, how many vendor searches have you conducted for the employee benefit plans your firm supports?
- How is your firm compensated for services?
- Does your firm work with clients on a commission basis?

Example Template RFP Provisions *(cont'd)*

- Describe your service model. (staff, responsibilities, interactions with our plan, frequency of in-person meetings, frequency of conference calls, team dynamics)
- Describe your ability to provide bilingual enrollers to assist with open enrollment and other related matters
- What fee would you propose? Please identify this specifically, including what your flat fee would be + any commissions + any other source of compensation of any kind (including company retention or producer book of business payments)

Example Template RFP Provisions *(cont'd)*

- Please provide a current list of representative clients
- Please list three reference clients similar to our organization in terms of size – who we may contact
- How is your firm different than other firms?
- Why should we pick you over other firms?

Tips and Traps in the RFP Process *(cont'd)*

7. Allow questions to go through a third party
8. Identify questions and answers to all RFP candidates
9. Use some sort of a scoring matrix to narrow them down to three(ish) finalists – develop a custom matrix based on your needs/wants (see next slide example)

Sample scoring matrix

No.	Criteria	Weight (Total 100)	Value Scale (0-5)	Points (Weight Value) x	Comments
1	Organization & History	5	5	25	The total size of an organization's employee benefit business can be very insightful into their commitment and available resources. The age and reputation of the firm is also important and should be considered accordingly.
2	Services and Quality Assurance	20	4	80	This category centers around the overall quality of service. Responses to the RFP should be considered. Providers should be valued based on their degree of accessibility, communication frequency and written procedures.
3	Reporting	10	4	40	It is important to be able to gather, analyze, and review information about the various aspects of the plan in order to make proper evaluations and management decisions. Timely and convenient access to this data is both insightful and necessary.
4	Level and Type of Admin Services Available (including, but not limited to employee education.)	25	4	100	This is scored based on the level and technical requirements that fit the individual needs of each sponsor. Some sponsors may not want to utilize all technical features and some may want to be completely paperless. Other clients may feel it is important to have human contact and others may want to conduct all transactions via internet.
5	Fees	15	2	30	The total fees are important and shall be reasonable and appropriated for the services provided.
6	Communication Skills	15	5	75	The communication between the provider and client is extremely important. The provider must work with client in developing clear lines of communication in the establishment of benefit programs.
7	References	5	5	25	References are part of the fiduciary responsibility to do a complete background check of all finalists including but not limited to, lawsuits, loss of clients, and criminal charges.
8	General	5	3	15	This section is scored based on client member's overall comments or concerns not covered elsewhere.
TOTAL SCORE				390	
POSSIBLE SCORE				500	

Tips and Traps in the RFP Process *(cont'd)*

10. Interview the finalists (give limited but enough presentation time)
11. Review proposed contract and then select finalist

Tips and Traps in the RFP Process *(cont'd)*

- Use similar process for other vendors, but let your consultant help you with that process
- Beware of conflicts of interest – ask why we are starting with our starting list of potential vendors – understand recommendations
- Ask your consultant about their experience with the vendor when the vendor makes a mistake

Contractual Provisions You Can't Ignore

- Termination provisions – how can you get out of it, how much notice do you have to give?
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- Do not accept gross negligence, willfulness
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- Be careful about “fiduciary” v. “non-fiduciary” distinction in contract

Contractual Provisions You Can't Ignore *(cont'd)*

- Fees –understand every single way every single vendor gets paid
- Why is their fee justified/reasonable?
- What are they doing for you that is worth that much money?
- Are they moving the needle?
- Hold us accountable
- Beware of conflicts!

Duty to monitor

- Monitoring your consultant: What value are they providing? Are they moving the needle? New ideas? Old ideas? How do they get paid? Is their fee still reasonable?
- Monitoring your network, TPA, and other vendors: Ongoing, regular review of their offering and fees relative to the market. Ongoing, regular review of your plan's performance.

Questions?