

**REQUEST
FOR
PROPOSAL
17-COUN-021
May 25, 2017**

**LEGAL SERVICES
Labor and Employment**

WMATA OFFICE OF GENERAL COUNSEL

SECTION A
NOTICE TO PROPOSERS

The Washington Metropolitan Area Transit Authority (WMATA) hereby requests your proposal for legal services associated Labor and Employment law matters. These matters may arise in any jurisdiction in which WMATA provides transit services. **WMATA seeks multiple experienced professional firms to provide legal services on all manner of claims arising in this broad practice area, including legal advice and guidance; negotiations; pre-trial; trial; and appeal.**

Proposals must be received no later than 1:00 PM, (local time, Washington, DC) on Thursday June 15, 2017, via email response to me at rowens@wmata.com. WMATA's email system will accept transmissions up to 10MB. If your proposal will exceed this limitation, please make arrangements for three electronic copies of the proposal to be delivered to my attention at 600 Fifth Street, NW, Washington, DC, 20001.

Any questions concerning this Request for Proposals should be directed to my attention via email or via phone at (202) 962-1412.

Sincerely,



Richard Owens
Contracting Officer

SECTION B
INSTRUCTIONS TO PROPOSERS

- (1) **General** - This procurement will be conducted utilizing full and open competition and competitive negotiations of proposals. Under these procedures, an evaluation will be performed on every proposal received.
- (2) **Preparation of Proposals** - Proposals shall be submitted in any form desired and must be signed.
- (3) **Questions** -- Written questions may be submitted to the undersigned by email, and will be answered and shared with all offerors if received 72 hours prior to the deadline for proposals. Questions received with less than 72 hours to the deadline will be deferred until after determination of the competitive range. Verbal clarifications are non-binding. Only written responses from the Authority will be incorporated into the agreement.
- (4) **Submission of Proposal** - Proposals must be submitted via email, unless they exceed 10MB, in which case three copies, each on separate electronic media, must be delivered to the Contracting Officer.
- (5) **Receipt of Proposals** - Proposals must be received by the time set for receipt of proposals. WMATA shall provide all reasonable precautions to ensure that proprietary, technical and pricing information remains within the review process.
- (6) **Late Proposal** - Any proposal received by the Contracting Officer after the date and exact time specified is "late" and will not be considered unless received before award is made and WMATA has determined in its sole discretion that review and evaluation of the proposal is in WMATA's best interest.
- (7) **Negotiations** - Contract award may be made upon evaluation of proposals as submitted without discussion. Written or oral discussions may, however, be conducted with responsible offerors considered competitive. When negotiations are conducted with more than one offeror, the relative price positions shall not be revealed. Each proposer within the competitive range (if a determination is made) will be offered an equal opportunity to submit revisions as required.
- (8) **Best and Final Offer** - If negotiations are conducted, the Plan will inform all offerors included in negotiations of the time and date by which to submit their Best and Final Offer. This shall be the contractor's most favorable price proposal for the technical proposal clarified and agreed to during negotiations.
- (9) **Proposal Evaluation** - WMATA's award decision shall be based on the best value combination of technical score and total price, where technical score will be of higher weight.
- (10) **Basis for Award** - The contract shall be awarded to that proposer submitting the most favorable proposal based on a combination of technical evaluation and price, with the technical criteria

carrying greater weight than the price. Award will be based on all requirements shown in this request.

- (11) Award of Contract - WMATA reserves the right to reject any or all proposals at any time prior to award; to negotiate with any or all proposers; to award a contract to that responsive, responsible proposer whose proposal conforming to this Request for Proposals is most advantageous to WMATA, all factors considered. WMATA will carefully evaluate technical proposals to determine the proposer's capability to perform this contract. Proposers are advised that award may be made without discussion or any contact with proposers concerning the proposal received. Therefore, proposals should be submitted initially on the most favorable terms that the proposer can submit to the Plan.
- (12) Proposal Format – Please see Section D.
- (13) Vendor Registration -- Please be advised that all vendors and contractors who do business with the Washington Metropolitan Area Transit Authority (WMATA) must register in the WMATA Vendor Registration System (VRS). Registration is located at <http://www.wmata.com> New Vendor Registration. Questions regarding registration may be addressed to Vendor Relations at (202) 962-1408 or procurement@wmata.com. Please be aware that it is the vendor's responsibility to register and update all information in VRS.
- (14) Conflicts -- Any potential conflicts of interest must be disclosed in the proposal. Should a conflict of interest be identified, the proposal must include a proposed path towards clearing that conflict of interest.
- (15) Insurance -- Whether you carry professional liability insurance and, if so, the amount of coverage and the identity of your insurance carrier. Your proposal should affirmatively state that any work performed for WMATA shall be covered by any available professional liability insurance.

SECTION C

Background Information and Scope of Work

The Washington Metropolitan Area Transit Authority (WMATA) requests a proposal from your firm to represent WMATA in Labor and Employment Law.

Retained Counsel will be expected to:

- A. Have a broad range of experience and subject matter expertise on various Labor and Employment Law topics, for example: Title VI, Title VII, ADA, ADEA, EPA, GINA, FMLA, retaliation claims, EEOC sub-regulatory guidance and commission decisions, and applicable FTA guidance.
- B. Have experience in Board of Directors and Employee Ethics and nepotism, Personnel Actions and Practices, Employment Handbook development, Wage & Hour matters (e.g. Fair Labor Standards Act), NTSSA whistleblower retaliation matters, and Workplace Data and Other Security matters.
- C. Have experience with, and be able to advise on and litigate matters raised under Federal Transit Act §13(c) agreements with labor unions, the Federal Transit Administration, and related documents.
- D. Have broad range of experience in defending and advising on all types of whistleblower matters.
- E. Have a broad range of experience and subject matter expertise in training employees on specific provisions within equal employment opportunity statutes and regulations (e.g. anti-retaliation provisions of Title VII).
- F. Have a broad range of experience and subject matter expertise in drafting policies and procedures related to Labor and Employment Law, such as those related to FLSA and Title VII.
- G. Render opinions as requested concerning a variety of labor law issues, for example: Fair Labor Standards Act and pay equity.
- H. Render opinions on and defend represented employee grievances and provide support for appeals in administrative and judicial forums pursuant to WMATA's Collective Bargaining Agreements and other applicable labor laws.
- I. Render opinions as requested concerning a variety of human resources matters, for example: hiring, background checks, leave and absenteeism, severance, at-will employment standards, reduction in force, abolishment of positions and department realignment, position evaluation, categories of employment, and employee compensation and benefits.
- J. Render opinions as requested concerning a variety of immigration matters, for example: the recruitment and sponsorship of foreign nationals requiring H-1B or

permanent sponsorship.

- K. Review for form and legal sufficiency documents submitted to the WMATA Board of Directors as a part of the services provided under this section of the Scope of Services. Documents submitted to the WMATA Board of Directors include, for example, Board resolutions and motions, and WMATA Office of Inspector General reports and audits.
- L. Have experience in litigating labor, employment, or immigration matters and, where litigation as already commenced or is being handled by WMATA staff, provide advice as to the appropriate resolution of any such litigation.
- M. Be aware that WMATA is also soliciting, through a separate process, vendors who specialize in Complex Litigation, Appeals, and Governmental Litigation. WMATA understands that there is some degree of overlap in these two solicitations and reserves the right to select (or compete) our needs across either or both panels depending on the merits of the particular case.
- N. Perform such other tasks within the employment law area as may be requested by the Contracting Officer or the Contracting Officer's Technical Representative.

Scope of Work Summary

All legal services needed to supplement WMATA's Office of General Counsel in providing advice and counsel on compliance, enforcement, negotiation, and the prosecution and defense of Labor and Employment law matters described above on a task order basis. It should be noted that there may be overlap between WMATA's Complex Litigation panel and this Labor and Employment law panel. WMATA reserves the right to choose the firm/panel requested for the work in its sole discretion.

Anticipated Award/Contract Management

WMATA intends to make awards to multiple proposers and to establish, as funding may allow, small purchase orders with each firm. **A funded purchase order does not guarantee any work being awarded to a particular firm.** Funding in the purchase order shall be earned, if at all, upon work performed. WMATA may reduce the purchase order amount at its sole discretion and shall be obliged to pay for Tasks only upon the issuance of a separate purchase order for that task.

Tasks will be assigned or competed at the discretion and direction of the Office of General Counsel on a case-by-case basis.

SECTION D

PROPOSAL FORMAT

Your proposal should contain two types of information: information addressing technical requirements and information addressing price considerations. To the greatest extent possible, please follow the outlines provided below for each section.

Technical Qualifications & Firm Requirements

A. Team members –

Provide a list of team members available for the work. Please describe their experience and practice areas and how it is relevant to this engagement. In particular, each team member must have a minimum of 4 years' experience.

Please describe whether you intend to use paralegal or administrative support for the work being performed or whether all work will be performed by a licensed attorney.

Your response should include the identity of all persons who will actually be doing the work covered by the above scope of work and their experience with similar tasks.

Please remember that no attorney with less than four years of experience, or such lesser experience as deemed appropriate by the proposer, should be identified without WMATA's prior written approval. Should you be proposing attorneys for isolated tasks within this Delivery Order, please identify that fact and the expected number of hours for those isolated tasks. Otherwise, all listed attorneys will be assumed to be on your proposed team for all purposes.

B. Experience –

Provide an overview of relevant experience in applicable law.

Price Proposal Requirements

WMATA will make an award based on a best value determination weighing technical skill against a blended hourly rate. WMATA seeks hourly rate pricing for each year beginning July 1, 2017 through and including services rendered on or after July 1, 2020.

Year Beginning	Blended Hourly Rate
July 1, 2017	
July 1, 2018	
July 1, 2019	
July 1, 2020	

On occasion and as may be appropriate, WMATA will seek alternative fee arrangements including flat fee for deliverable. Your proposal should include a statement to that your firm will consider flat fee and alternative fee arrangements as may be appropriate and negotiated on a task order basis.

SECTION E
CONTRACT PROVISIONS

WMATA considers the combination of this solicitation, your response, and the ultimate award, if any, issued by WMATA to be the binding contract between WMATA and the vendor. Should you require additional documentation regarding the relationship, please identify those needs in your proposal and provide form documents for WMATA's use with your submission.

1. **DEFINITION OF THE TERMS "CONTRACTING OFFICER" AND "AUTHORIZED REPRESENTATIVE OF THE CONTRACTING OFFICER"**

- a. The term "Contracting Officer" means the person executing this Contract for the Plan, and any other employee who is a properly designated Contracting Officer by the Trustees, and the term includes, except as otherwise provided in this Contract, the authorized representative of a Contracting Officer acting within the limits of his authority.
- b. The term "Authorized Representative of the Contracting Officer" means any person possessing a written designation as the authorized representative which was signed by the Contracting Officer.

2. **PERIOD OF PERFORMANCE**

The period of performance (commencement and completion) shall be included in the Notice of Award or Notice to Proceed

- a. WMATA and the Contractor may mutually agree that work under the contract is to commence at any time after execution of the contract.
- b. WMATA anticipates an 18 month period of performance with three (3) extensions of one (1) year each at WMATA's discretion.

3. **DISCREPANCIES**

Should any discrepancies exist between the provisions of the Scope of Services and the proposal the provisions of the Scope of Services shall prevail.

4. **CONFIDENTIALITY**

The work involved is confidential. The vendor performing the services will make every reasonable effort to maintain confidentiality regarding the work, both during and subsequent to performance. Coordination with WMATA will be through the Contracting Officer, the Authorized Representative or their designee.

5. TERMINATION

This contract may be terminated by WMATA at any time for any reason upon notice to the vendor. WMATA's only obligation upon such termination shall be to pay the reasonable costs and fees incurred by the consultant until the time of the notice.

6. OFFICIALS NOT TO BENEFIT

No employee or member of the Board of Directors of WMATA shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

7. CHANGES

The Contracting Officer may at any time, by a written order, make changes within the general scope of this Contract. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Contract, whether charged or not charged by any such order, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and accordingly the Contract shall be modified in writing. The Contractor must assert any claim for adjustment under this clause within 30 days from the date of receipt of the notification of change. However, nothing in this article shall excuse the Contractor from proceeding with the Contract as changed.

8. PAYMENT/DISBURSEMENTS

WMATA shall pay the specified amount due upon receipt of an itemized invoice from the Contractor which has been certified as being correct and does not duplicate any previous billing. The Contractor shall bill for its services on a monthly basis. The Contractor shall notify WMATA when 75% of the awarded funding has been expended and shall provide an estimate of additional anticipated expenses.

Disbursements will be reimbursed to the firm at your actual cost without any markup. We expect that you will obtain the lowest rates available for these expenditures. All disbursements and expenses shall be itemized by category and must be clearly reflected to include actual unit cost. Unless otherwise approved in advance by the General Counsel or her designee, the Authority shall not pay for the following, which costs shall be deemed elements of general overhead and encompassed within the hourly blended rate or other agreed upon fee arrangement:

- Computerized Legal Research;
- Internal discussions, conferences, or meetings, among counsel of your firm;
- Case, file, or document management reasonably considered as administrative overhead costs;
- Facsimile, Copying or Document Reproduction Charges

- Secretarial or other clerical expenses (normal, temporary or overtime).
- Taxis or private cars, except for travel after 9:00 p.m. when the partner in charge of the matter determines that it is necessary to perform work after normal business hours, (ii) where public transportation is not reasonably available or (iii) where heavy or bulky material must also be transported.
- Meal charges.
- Time spent by attorneys or others in preparing or discussing bills.
- All reimbursable expenses above \$100 must be documented by receipts.
- Audit Letter opinions/responses from contracted counsel.

All statements shall be itemized by assignment and provide: (a) the name and position of each individual whose time is billed; (b) the approved billing rate for each individual; (c) the number of hours expended on behalf of the Authority on each activity that the individual performed as services for the Authority; (d) a brief description of the task(s) performed each day for which time is billed; and (e) the total number of hours billed for services rendered to the Authority by each individual during the billing period.

9. INVOICES

Invoices, including receipts to document expenses, must be submitted to WMATA via email to apinvoice@wmata.com. A courtesy copy should be sent to the Office of General Counsel via email to sserrian@wmata.com.