

**LAW DEPARTMENT
OUTSIDE COUNSEL SERVICES
REQUEST FOR PROPOSALS (RFP)
RFP 19-LAW-001**

Schedule

| ACTIVITY (All times are local Phoenix time) | DATE |
|--|----------------------|
| Issue RFP | 03/20/19 |
| Submittal of Written Questions by time a.m./p.m. | 03/27/19 @ 3:00 p.m. |
| Responses to Written Questions | 04/03/19 |
| Proposal Submittal by time a.m./p.m. | 04/17/19 @ 3:00 pm |
| Award Recommendation to Phoenix City Council | 06/05/19 |

Submit requests for alternate formats to:

Monica Gonzalez, Procurement Officer
City of Phoenix Law Department
200 West Washington, 13th floor
Phoenix, Arizona 85003
Telephone: (602) 262-6761
Monica.Gonzalez@phoenix.gov

This RFP does not commit the City to award any agreement.
All dates subject to change.

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ATTACHMENT B - Agreement Sample (Collections)

ATTACHMENT C – Questions Form

ATTACHMENT D – Areas of Practice and Rate Schedule

ATTACHMENT E – Business Certification and Other Information

ATTACHMENT F – HUD Required Provisions

ATTACHMENT G - Affidavit

ATTACHMENT H – Solicitation Conflict and Transparency Disclosure Form

1. RFP PROCESS

A. Introduction

The City Attorney of the City of Phoenix requests detailed information concerning the qualifications and hourly rates of law firms or attorneys willing to provide legal services as outside counsel to the City of Phoenix and affiliated entities.

The City Attorney intends to establish a list of qualified attorneys and law firms (“Counsel List”) from which outside counsel will be selected to provide legal services on an as-needed, case-by-case or matter-by-matter basis. The Offer by the qualified attorney or law firm to furnish legal services at the rates provided in **Attachment D-Area of Law/Rates** must remain fixed for the entire term of the offer and acceptance period until accepted by the City Attorney.

The City Attorney may enter into an agreement for legal services with a qualifying attorney or law firm; however, the execution of an agreement does not guarantee that any case or matter, or any minimum number of cases or matters, will be assigned to any particular attorney or law firm.

After the execution of an agreement, the City Attorney will assign a case or matter to an attorney or law firm through a Letter of Engagement (“LOE”). The LOE will set forth the scope of retention, confirm the rates applicable to the specific retention, and may designate the specific attorney(s) to provide the services required.

All documents and information involving this RFP process are available from the City’s RFP Internet site:

<https://www.phoenix.gov/solicitations>

B. Minimum Qualifications

Offeror must be authorized to practice law and be in good standing in the state in which Offeror is authorized to practice law. While the City Attorney encourages Offers from attorneys admitted to jurisdictions outside of Arizona, the City Attorney anticipates most of the legal services involve matters located within Arizona.

Each proposer must demonstrate in its proposal that it meets the minimum qualifications or its proposal will be disqualified as non-responsive.

C. Agreement Term and Contractual Relationship

The City Attorney anticipates the need for many non-exclusive agreements, but the exact number is unknown. The agreement is a period of two (2) years and contains a one (1) year option for renewal. The option to renew an agreement for an additional year is at the discretion of the City Attorney and will be exercised only if it is in the City's best interest to do so.

Offeror is advised to read the representative agreement in Attachments A and B (if applicable) carefully. These agreement terms may be amended at the sole discretion of the City at any time during the RFP process and prior to execution.

Proposers are responsible for reading the draft agreement and submitting any questions about it in accordance with the process listed in **Section D**. By submitting a proposal, each proposer agrees it will be bound by the agreement, which may be modified by the City before it is signed by a recommended proposer.

D. Proposer Questions and Notification

Proposers are advised to read this RFP in its entirety. Failure to read and/or understand any portion of this RFP shall not be cause for waiver of any portion of the RFP or subsequent agreement.

All questions about this RFP must be submitted in writing no later than the deadline listed on page 1 to Monica Gonzalez, Procurement Officer at Monica.Gonzalez@phoenix.gov. All written questions will be responded to in writing and posted at: <https://www.phoenix.gov/solicitations>. Note that questions should only be submitted to the Procurement officer per the City's transparency policy, as stated in general conditions.

E. Notifications and registration requirements

Amendments to this RFP will be in writing. The City shall not be responsible for any oral instructions given by any City employee, consultant, or official regarding RFP instruction, specifications, or documents.

PLEASE NOTE THE REQUIREMENT: Proposers must be registered in the City's e-Procurement Self-Registration System at <https://www.phoenix.gov/financesite/Pages/EProc-help.aspx> in order to receive solicitation notices, respond to solicitations and access procurement information.

2. SCOPE OF WORK

A. Overview

It is intended that when an attorney or law firm is retained or referred a lawsuit or other legal matter by the City Attorney, the attorney or law firm will provide any necessary legal representation to the City and any of its officers, employees or agents acting within the scope of their employment. The attorney or law firm shall perform all necessary legal services, including but not limited to investigation, legal research, and preparation of legal memoranda, pleadings and briefs and making appearances before administrative tribunals, mediators, arbitrators and courts, in representing the City. These services shall be performed on an as-needed, case-by-case or matter-by-matter basis for the City of Phoenix Law Department and will be more fully defined in the resulting LOE.

B. Good Standing Requirement

In order to have an Offer considered for review, the Law Department requires all Offerors who contract with the City of Phoenix to be in good standing in the state in which they are authorized to practice law at all relevant times including, but not limited to, the Offer and acceptance period and throughout the term of any resulting agreement.

3. PROPOSAL INSTRUCTIONS

A. Delivery of Proposals

PROPOSALS SHOULD BE DELIVERED IN HARD COPY FORM BY U.S. MAIL OR OVERNIGHT COURIER. PROPOSALS DELIVERED IN ELECTRONIC FORM OR BY EMAIL WILL BE REJECTED AS NON-RESPONSIVE. Each proposer must submit the following in a sealed package marked with the proposer's name, the name of this RFP and the category for which it is proposing:

The proposal shall contain one (1) original and one (2) copies, for a total of three (3) copies.

The proposal shall be marked on the outside with "**OFFER, OUTSIDE COUNSEL SERVICES, RFP No. 19-LAW-001**" and contain the submitter's name.

All proposals must be delivered to:

**RFP No. 19-LAW-001
Cris Meyer, City Attorney**

**City of Phoenix Law Department
200 West Washington Avenue, 13th Floor
Phoenix, AZ 85003-1611**

Proposals must be submitted by the deadline listed on page 1 to the address listed on page 1. **Proposals received after the deadline will be disqualified as non-responsive.**

B. Form of Proposals

Proposals shall conform to the following format. Proposals that are incomplete; conditional; obscure; or that contain additions not requested, changes or exceptions to material provisions or requirements of this RFP; or irregularities of any kind, are subject to disqualification as non-responsive.

Each proposal must include all of the following in the following order:

- i. **Document 1** – a Letter of Transmittal as the first page(s) of the Offer including the following:
 - a. Statement indicating the submission of a formal Offer to “**Outside Counsel, RFP No. 19-LAW-001.**”
 - b. General description of areas of specialization
- ii. **Document 2** - a “conflicts letter” setting forth either: (a) the nature of any representation currently adverse to the City of Phoenix or (b) a representation that there is no such legal activity adverse to the City or its interests.
- iii. **Document 3** - identification of the areas of legal service being offered by completing the Areas of Practice Rate Schedule form, **Attachment D-Outside Counsel.**
- iv. **Document 4** - a Certificate of Insurance providing coverage as described in **Attachments A (item 36) and B (item 31)**, Insurance Requirements. The failure to provide a certificate of insurance in conformity with insurance requirements will not disqualify the Offeror from being placed on the list of qualified attorneys and law firms, but will be required prior to any work being assigned to any attorney or law firm. Any alternative insurance requirements must be approved by the City Attorney in his sole discretion.
- v. **Document 5** - general background information with respect to the firm and attorneys/individuals with special focus on the area of activity offered. The Offeror should indicate:

- a. the size and experience of the firm,
- b. the type of firm organization (i.e., partnership, professional corporation), and
- c. the overall areas of practice of the firm, including alternative dispute resolution services.

Specific information with respect to each area of specialization:

- a. the names of the attorneys/individuals who will be assigned to provide legal services for that specific area of law,
 - b. the number of years they have been practicing in that area of law,
 - c. their position in the firm hierarchy for billing purposes (e.g., senior partner, junior partner, senior associate, or junior associate),
 - d. their specialist certification (if any),
 - e. references from current or former clients;
- vi. **Document 6** – the Business Certification and Information form, **Attachment E**, signed by the person with full authority to enter into any future binding agreement(s).
 - vii. **Document 7** – the Affidavit form, **Attachment G**, signed by the person with full authority to enter into any future binding agreement(s).
 - viii. **Document 8** – the Solicitation Conflict and Transparency Disclosure form, **Attachment H**, signed by the person with full authority to enter into any future binding agreement(s).

4. PROPOSAL EVALUATION

Proposals will be reviewed by City staff for responsiveness and documentation of minimum qualifications, completeness, and adherence to the RFP requirements. The City reserves the sole right to determine the sufficiency of qualifications and experience of all proposers.

A. Evaluation Panel

The City will appoint an evaluation panel to review the proposals and recommend proposers to be awarded the contract resulting from this RFP.

B. Evaluation Criteria

- i. Determining Responsiveness and Responsibility

- a.** Offers will be reviewed for documentation of minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.
- b.** Responsiveness: Nonresponsive proposals will not be considered in the evaluation process. The RFP states criteria that determine responsiveness, and the RFP includes terms and conditions that if included or excluded from proposals will render a proposal nonresponsive.

Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and a Proposal that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Proposer remove the conditions, exceptions, reservations or understandings. If the Proposer fails to do so in writing, the City may determine the Proposal to be nonresponsive.

- c.** Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the contractor, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the proposer be a responsible contractor. Responsibility includes the Proposer's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.
- d.** The Procurement Officer will review each Proposal to determine if the Proposer is responsible. The City's determination as to whether a Proposer is responsible will be based on the information furnished by the Proposer, interviews (if any), any information at the City's request, information in any best and final offer, and information received from Proposer's references, including information about Proposer's past history and any other sources the City deems appropriate. Award of the Contract resulting from the Solicitation will not be made until any necessary investigation, which each Proposer agrees to permit by submitting its Offer, is made by the City as it deems necessary.
- e.** A review of responsibility may occur up to contract award.
- f.** The Proposer's unreasonable failure to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such Proposer.

C. Offer and Acceptance Period

Once an Offeror has been placed on the Counsel List the Offeror must maintain and shall not increase the hourly rates set forth in the Offer for the particular billing designation and specialty. The hourly rates in an Offer must remain fixed throughout the offer and acceptance period, which begins July 1, 2019 and runs through June 30, 2021, until accepted by the City Attorney or City Manager as appropriate. The rates must remain fixed throughout the term of any resulting agreement and any extensions of the agreement.

D. Late Offers May Not Be Considered

Offers received after the stipulated deadline date and time may not be considered.

5. GENERAL TERMS AND CONDITIONS OF PROPOSAL

A. Transparency Policy

Commencing on the date and time a solicitation is published, potential or actual proposers or respondents(including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated Procurement Officer) at a public meeting, posted under Arizona Statutes, until the resulting contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.

As long as the solicitation is not discussed, Proposers may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff who is not involved in the selection process. Proposers may not discuss the solicitation with any City employees or evaluation panel members.

Proposers may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the **Procurement Officer** and are posted as open meetings with the City Clerk at least twenty-four (24) hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

With respect to the selection of the successful Proposers, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective proposers.

This policy is intended to create a level playing field for all Proposers, assure that contracts are awarded in public, and protect the integrity of the selection process.

PROPOSERS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED. After official disqualification Notice is received, the Proposer may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

“To discuss” means any contact by the proposer, regardless of whether the City responds to the contact. Proposers that violate this policy shall be disqualified until the resulting contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

B. Award Recommendations

Award recommendations will be posted at: <https://www.phoenix.gov/finance/business-opportunities/bid-awards-and-recommendations>. On the day the City posts the award recommendation, the procurement file for this RFP will be available for proposers and the public to review. The procurement file constitutes all proposals, the RFP and all addenda, advertising documents, agendas, meeting minutes, presentations (if any), signed conflict of interest statements by evaluation panel members, and evaluation panel consensus scoring.

C. Disclosure of Confidential and Proprietary Information

All materials submitted by proposers shall become the property of the City and become a matter of public record available for review pursuant to Arizona law. Each proposer shall mark any information submitted as part of its proposal that the proposer deems confidential or proprietary (collectively Confidential Information).

If the City receives a request to review or disclose such Confidential Information,

the City will provide the proposer written notice of the request to allow the proposer the opportunity to obtain a court order to prevent the disclosure or review of such Confidential Information. The proposer must obtain and deliver to the Procurement Officer a court order within the time specified in the City's written notice. If no court order is issued and received by the Procurement Officer within the time specified, the City may disclose or allow the review of such Confidential Information. If a proposer intends to seek a Court Order to shield its Confidential Information, the protest period will be extended the same number of days to allow for this process.

D. City's Reservation of Rights

The City reserves the right to take any course of action the City deems appropriate at the City's sole and absolute discretion, which may include:

- i. Waiving any defects or informalities in any proposal or proposing procedure;
- ii. Accepting or rejecting any or all proposals or any part of any or all proposals;
- iii. Canceling the RFP in part or in its entirety;
- iv. Reissuing the RFP with or without modification;
- v. Negotiating with any qualified proposer;
- vi. Extending the deadline for proposals; and/or
- vii. Requesting additional information from any or all proposers.

E. City's Right to Disqualify for Conflict of Interest

The City reserves the right to disqualify any respondent who fails to provide information or data requested herein or who provides materially inaccurate or misleading information or data. The City reserves the right to disqualify any respondent on the basis of any real or apparent conflict of interest that is disclosed by the submittals submitted or any other data available to the City. This disqualification is at the sole discretion of the City. The Proposer, by submittal of a proposal, waives any right to object now or at any future time, before any body or agency, including but not limited to, the City Council, or any court.

Additionally, any respondent or any member or affiliate of a responding team that currently contracts with the City must be in good standing for its submittal to be considered responsive. For the purpose of this RFQ, good standing refers to compliance with all contractual provisions, including payment of financial obligations.

F. Preparation Costs

Under no circumstance will the City be responsible for any costs incurred by anyone in: 1) responding to this RFP; 2) in any subsequent follow up to the proposal; or 3) in any subsequent negotiations of a contract.

G. Modification or Withdrawal of Offer

Offers may be withdrawn by requesting such withdrawal in writing at any time prior to 3:00 p.m. MST on the Offer due date. Notice of withdrawal of Offer prior to Offer Date must be in writing and must be signed by the Offeror. This does not preclude the submission of a substitute Offer by such Offeror prior to 3:00 p.m. MST on the Offer Date.

After 3:00 p.m. MST on the Offer Date, Offers shall be binding without modification or amendment. After this time, no Offeror will be permitted to withdraw its Offer without penalty, and the submission of the Offer will constitute a valid offer subject to acceptance by the City Attorney.

H. Proposer Certification and Affidavit

By submitting a proposal, each proposer certifies it has not paid or agreed to pay any fee or commission, or any other item of value contingent on the award of a contract to any employee, official or current contracting consultant of the City. Any proposer unable to comply with any required certifications may be disqualified.

In compliance with A.R.S. §§ 1-501 and -502, the City shall require any successful proposer that submits its proposal as a sole proprietorship or as an individual to complete the Affidavit of Lawful Presence prior to the award of any contract resulting from this process.

I. Covenant Against Contingent Fees Paid to Proposer

By submitting a proposal, the proposer certifies it has not employed or retained any person or company, other than a member of its proposed team or a bona fide employee working solely for the proposer, to solicit or secure the contract described in this RFP, and that no agreement has been made to pay the proposer or any member of its team any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or execution of such contract. For breach or violation of this certification, the City shall have the right to annul any contract entered into with a proposer as result of this RFP without liability, or in its discretion to deduct the contract price or consideration,

or otherwise, recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

J. No Gratuities

Proposers shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City nor its advisors for the purposes of influencing this selection. Any attempt to influence the selection process by any means, other than disclosure of qualifications and credentials through the proper channels, shall be grounds for exclusion from the selection process.

K. Execution of Agreement(s)

The City will send the final agreement to the recommended proposer. Within 30 calendar days from the date the agreement was sent, the recommended proposer must sign and submit the final agreement to the City. If the City does not receive the signed agreement and all other required documentation from the recommended proposer within calendar 30 days, the City may consider not awarding the agreement to the proposer.

Until such time as the City executes an agreement with a recommended proposer, no contractual relationship exists. If the recommended proposer is subject to regulation by the Arizona Corporation Commission (ACC), it must be authorized to transact business in Arizona and be in good standing with the ACC at the time it signs the agreement.

7. PROTEST PROCESS

Bidder(s)/Proposer(s) may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation, or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City's best interests to set new deadlines, amend the solicitation, cancel or re-bid. **Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.**

Bidder(s)/Proposer(s) may protest an adverse determination issued by the City, regarding whether the Bidder(s)/Proposer(s) is responsible or its offer or response is responsive, within seven days of the date the Bidder(s)/Proposer(s) was notified of the adverse determination.

Bidder(s)/Proposer(s) may protest an award recommendation if the Bidder(s)/Proposer(s) can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. Staff

recommendations to award the contract(s) to a particular Bidder(s)/Proposer(s) shall be posted on the City's website. An unsuccessful Bidder(s)/Proposer(s) may file a protest no later than 7 calendar days after the recommendation is posted on the website.

- A.** All protests shall be in writing, filed with the Procurement Officer identified in the solicitation and include the following:
- B.** Identification of the solicitation number;
- C.** The name, address and telephone number of the protester;
- D.** A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
- E.** The form of relief requested; and
- F.** The signature of the protester or its authorized representative.

The Procurement Officer will render a written decision within a reasonable period of time after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is completed. All protests and appeals must be submitted in accordance with the Procurement Code (Phoenix City Code, Section 43) and Administrative Regulation 3.10 and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.