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RFP No. FQ15231

SCOPE OF SERVICES FOR OUTSIDE COUNSEL

The Authority intends to award an IDIQ contract with multiple contractors for legal counsel in the following categories: Complex Litigation; Regulated Utilities; Design/Build Procurement; Telecommunications; and Real Estate. It is the intent of the Authority to award a contract to a maximum of five (5) Contractors in each category. Contractors may apply for any combination of categories, including all categories, if they desire.

Outside Counsel is needed to provide all requested legal services in those areas as more fully described below. The Authority is looking for top level expertise in each of the categories and not necessarily lower level associate work. The Authority expects all successful Proposers to be able to work efficiently to minimize costs, based upon the facts of each individual matter.

PRICE SCHEDULE

Proposers shall set forth their price proposal for the one (1) base year and four (4) option years on the attached Unit Price Schedule. There will be no price evaluation for the right to receive an award except as noted in the following sentence. Unit Price – the blended hourly rate provided with your proposal – will be a factor in 1) the decision to award an IDIQ contract; and 2) the decision on which Contractor receives any given task order. The successful proposer(s) shall bill and be paid on the applicable blended rate unless a task order is awarded on an alternative pricing method. Each task order will be awarded as a Best Value award for the Authority. Other Direct Costs (ODCs) as outlined in this RFP will be allowed as reimbursable expenses and included in the proposed firm fixed price for each task order in addition to the legal services provided.

NOTES TO PROPOSERS:

1. The contractor shall certify that the hourly fees and rates proposed are the lowest charged to its most favored customers.
2. In addition to the fees and rates quoted above, the Authority shall reimburse the contractor for ODCs directly related to services provided except as follows: expenses for computerized legal research, facsimile charges, clerical expenses (whether overtime or temporary), business meals including meals during meetings, and general overhead. These excluded costs must be included in the blended hourly rate stated in your proposal. Expenses for computerized legal research, facsimile charges and clerical expenses are considered to be part of general overhead. Where an ODC is not documented as the actual cost incurred, contractor shall certify that the amount charged is the lowest cost charged to its most favored customers.
3. All ODCs over \$100 must be documented by receipts unless not capable of documentation. The receipts should be referenced in, and submitted with, your invoices. If an ODC is not capable of documentation, the required certification shall be substituted for the receipt. Invoices must be detailed showing all tasks performed, the rate per hour charged, necessary out-of-pocket expenses as described above, and the amount charged for such tasks. Invoices shall be submitted on a monthly basis. Unless

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waived in writing by the Contracting Officer, the General Counsel, or her designee, no invoice may contain, and the Authority will not be required to pay, any charge which is more than four (4) months old at the time of invoicing.

4. Invoices shall be detailed showing all tasks performed, the rate per hour charged and the amount charged for such tasks and ODCs. Invoices shall be submitted on a monthly basis and shall cover billings only for a single Task Order.
5. When the Contractor has expended seventy-five percent (75%) of the funds covered by a contract, the Contractor shall give the Contracting Officer's Technical Representative (COTR) written notice of the following:
 - A. that seventy-five percent (75%) of the funds covered by the contract has been expended;
 - B. whether the Contractor believes that the remaining balance of the contract amount will be sufficient to complete the work remaining under the contract; and
 - C. if the remaining funds are insufficient to complete the work, the estimated amount of additional funds that the Contractor reasonably believes will be needed for completion.
 - D. in the event that additional funding is provided through a modification to a Task Order, the requirements of this Section 5 shall apply to the amount of funding added in that modification. For example, in the event that \$100,000 is added to a Task Order the Contractor is expected to notify WMATA when the Contractor has expended \$75,000 of that \$100,000 modification.
6. The Contractor shall not perform any additional work once the contract amount has been fully exhausted without first having received written notice from the COTR that additional funds have been made available under the contract. Absent written authorization from the COTR, WMATA shall have no obligation to pay or reimburse the Contractor for work performed or expenses incurred in excess of the original contract amount.
7. The Authority reserves the right to request changes in personnel assigned if necessary to further its interests.
8. Since the work envisioned under the IDIQ contract is of a high level, the Authority will not pay for the use of associates lower than a fourth (4th) year associate without prior written approval of the Contracting Officer or the Contracting Officer's Technical Representative; provided, however, that the Contractor may use attorneys with at least three (3) years' experience if the Contractor, upon prior written notice to WMATA, demonstrates that such attorney(s) has the three (3) years of experience in the area being covered by the Task Order and that such attorney(s) will be under the direct supervision of the attorney designated as lead counsel or an attorney of equivalent experience.
9. Should the Contractor propose attorneys for isolated tasks within the proposed contract, then the Contractor shall identify that fact and the expected number of hours for those isolated tasks. Otherwise, all listed attorneys will be assumed to be on the Contractor's proposed team for all purposes.

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10. WMATA is contracting with the law firm and not with individual attorneys. Therefore, in the event that an attorney assigned to the project team leaves the Contractor's firm, WMATA will not pay any time or charges for the time necessary to get a new attorney up to speed.
11. WMATA encourages the participation of Disadvantaged Business Enterprises ("DBE") wherever feasible and particularly if the proposed estimated amount to perform the work covered in a particular Task Order exceeds \$100,000 and is funded with federal funds. Whether or not the estimate exceeds \$100,000, however, the Contractor shall submit a statement of whether it intends to use a DBE. If the Contractor intends to use a DBE, or if the Contractor's estimated amount to perform the work covered by the Task Order exceeds \$100,000 and is funded with federal funds, then the Contractor shall submit an acceptable plan for complying with the DBE requirement.
12. All documents and correspondence related to the work covered by the proposed contract(s) may be transmitted via electronic mail, unless otherwise specifically requested by WMATA.
13. Any work to be undertaken by third parties in connection with the proposed contract(s) shall be approved in writing in advance by the COTR. Invoices issued by any approved third party contractor(s) shall be billed directly to and paid by the Contractor, and, in turn, submitted with the Contractor's regular invoices to WMATA for payment.
14. The IDIQ contract shall be for a period of one (1) year with four (4) one-year options. Adjustments to the applicable blended hourly rate shall be permitted only upon the contract anniversary date and only as specified in the contract.

Qualification Requirements

To qualify, and continue to qualify:

1. The firm must certify at the time of its proposal and then yearly upon each renewal of the contract that each attorney who will work on a Task Order covered by this contract will be a member, in good standing, of the Bar of any state or the District of Columbia and shall never have had his/her license to practice law suspended or revoked.
2. Each attorney who will work on a Task Order covered by this contract will not have any conflicts of interest within the meaning of the canons of ethics governing the bar(s) for which the attorney is admitted.
3. The attorney designated in the Unit Price Schedule to be the lead counsel shall have at least ten (10) years' experience in the category for which the Contractor is proposing.
4. Each attorney who will work on a Task Order covered by this contract will be admitted to practice in all courts and administrative tribunals necessary to perform the work required under the Task Order. The firm shall have attorneys who, collectively, are admitted to practice law in the District of Columbia, State of Maryland, Commonwealth of Virginia, the federal courts in those jurisdictions, and all specialized courts and administrative tribunals necessary to practice law in the category for which the Contractor is proposing.

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5. The proposer shall submit an acceptable plan for complying with the Disadvantaged Business Enterprise requirement should the proposer receive a Task Order with a projected value of \$100,000 or more funded with federal funds.
6. The Proposer is willing to accept one or more of the alternative fee arrangements described below and all other contract terms applicable to this contract described in this RFP.

Forms of Alternative Fee Arrangements that may be requested by WMATA for a Task Order.

Fixed Fees:

1. WMATA will entertain proposals which call for payment of a Fixed Fee. Under this arrangement, the Contractor will agree to provide all services required to complete the described tasks, including, without limitation, the completion of transaction documents in execution form, on a not-to-exceed basis. The amount of the Fixed Fee will be negotiated by WMATA and the Contractor.
2. Payments shall be made in installments based upon a mutually acceptable installment schedule; however, installments shall not in the aggregate exceed the amount of the Fixed Fee.
3. The Fixed Fee shall include all costs and expenses of completing the described tasks, including, without limitation, third-party costs and Reimbursable Expenses (as defined above).

Other Alternative Fee Arrangements:

1. WMATA reserves the right to request or entertain other alternatives to traditional hourly fee-based pricing on a Task Order as may be requested by WMATA or proposed by a Contractor for a particular task order.
2. Each Proposal should include a statement regarding whether the proposer would consider Alternative Fee Arrangements for task orders where requested by WMATA. It is anticipated that a task order which includes an alternative fee arrangement shall clearly describe such arrangements, including a description of the value thereof over traditional fee arrangements at the time that the task order is solicited.

PROPOSERS SHOULD NOTE THAT WMATA RESERVES THE RIGHT, IN ITS SOLE, NONREVIEWABLE DISCRETION, TO ISSUE TASK ORDERS UNDER THE IDIQ CONTRACT UTILIZING ANY ONE OR MORE OF THE FOREGOING ALTERNATIVE FEE ARRANGEMENTS.

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Categories of Legal Services

Outside Counsel are needed to research, analyze, litigate, negotiate, and provide advice to the Authority in the categories identified below:

I. Complex Real Estate Transactions

Retained Counsel will be expected to:

- A. Have recent and extensive experience in commercial real estate transactions. Experience in transit-oriented joint development is desired but not required.
- B. Render opinions as requested concerning a variety of real estate issues, including but not limited to questions of title, valuation and various development concerns. The listed items are merely examples and do not limit the possible areas for which opinions may be requested.
- C. Negotiate or assist in the negotiation of real estate sales, purchases, leases, easements, rights of entry, and joint development agreements (the “Primary Transaction Documents”).
- D. Review for form and legal sufficiency documents submitted to the Authority as a part of the services provided under this section of the Scope of Services.
- E. Draft legal documents necessary for the consummation of any transaction covered in this section of the Scope of Services as requested.
- F. Where a Delivery Order is for a joint development project, provide the following items unless not requested in the Delivery Order:
 - i. Review of relevant background documents, including the relevant Joint Development Solicitation, station planning documents, and, if applicable, the Term Sheet.
 - ii. Meet with WMATA to clarify any questions concerning background of project or matter for which task has been assigned.
 - iii. Render advice and opinions as requested concerning any of a variety of complex real estate issues in such areas as conveyances of air rights, title, performance, payment and completion bonds, guaranties, lender’s rights, indemnification and environmental liability. The foregoing items are merely examples and do not limit the possible areas for which advice and opinions may be requested.
 - iv. Render such other opinions as requested and which are necessary or useful for the performance of the task assigned.
 - v. Draft and negotiate Primary Transaction Documents utilizing WMATA’s model

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real estate agreements (“Model Agreements”). Outside Counsel would be expected to modify the Model Agreements only to the extent reasonably necessary to fit the subject transaction.

- vi. Review and provide advice and comments to WMATA regarding draft ancillary documents.
 - vii. Review, revise and provide advice and comments to WMATA regarding documents submitted to WMATA.
 - viii. Participate in meetings and conference calls with WMATA and/or developer’s counsel as necessary to negotiate Primary Transaction Documents.
- G. As requested, litigate complex real estate matters and provide advice as to the appropriate resolution of any such litigation.
- H. Perform such other tasks within the real estate area as may be requested by the Contracting Officer or the Contracting Officer’s Technical Representative.

II. Complex Litigation

Retained Counsel will be expected to:

- A. Have recent and extensive experience in litigating complex matters, including but not limited to counseling and litigation of a variety of employment and civil rights actions.
- B. Review for form and legal sufficiency documents submitted to the Authority as a part of the services provided under this section of the Scope of Services.
- C. Draft legal documents necessary for the consummation of any transaction covered in this section of the Scope of Services as requested.
- D. As requested, litigate complex matters from complaint/answer through final appeal, including all forms of civil rights actions, and provide advice as to the appropriate resolution of any such litigation.
- E. Perform such other tasks within the litigation area as may be requested by the Contracting Officer or the Contracting Officer’s Technical Representative.

III. Design/Build Construction and Procurement

Retained Counsel will be expected to:

- A. Have recent and extensive experience in all phases of the design/build construction process, including the procurement of such services, with an emphasis on public sector

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projects.

- B. Review for form and legal sufficiency documents submitted to the Authority as a part of the services provided under this section of the Scope of Services.
- C. Negotiate or assist in the negotiation of design/build contracts, change orders, and other documents used in the design/build process.
- D. Draft legal documents necessary for the consummation of any transaction covered in this section of the Scope of Services as requested.
- E. As requested, litigate design/build construction and/or procurement issues before courts and administrative bodies and provide advice as to the appropriate resolution of any such litigation.
- F. Render opinions as requested concerning a variety of concerns relating to the procurement and construction of projects using the design/build process.
- G. As requested, assist with training, staff augmentation, advice and counsel regarding compliance with WMATA's procurement procedures; federally imposed procurement rules and regulations; and WMATA's implementation and compliance with all such rules and regulations.
- H. Perform such other tasks involving design/build process or procurement management as may be requested by the Contracting Officer or the Contracting Officer's Technical Representative.

IV. Telecommunications

Retained Counsel will be expected to:

- A. Have recent and extensive experience in the area of telecommunications law, including but not limited to, knowledge of the various regulatory regimes that govern the provision of broadcast radio and television, cable television, wireline telephone, broadband Internet, wireless, satellite and all other types of telecommunications service.
- B. Render opinions as requested concerning a variety of telecommunications-related commercial, transactional, regulatory and infrastructural matters. The listed items are merely examples and do not limit the possible areas for which opinions may be requested.
- C. Negotiate or assist in the negotiation of various forms of telecommunications agreements, which may include various types of service agreements.
- D. Review for form and legal sufficiency documents submitted to the Authority as a part of the services provided under this section of the Scope of Services.
- E. Draft legal documents necessary for the consummation of any transaction covered in this

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section of the Scope of Services as requested.

- F. Render such other opinions as requested and which are necessary or useful for the performance of the task assigned.
- G. As requested, litigate telecommunications matters and provide advice as to the appropriate resolution of any such litigation.
- H. Perform such other tasks within the telecommunications law area as may be requested by the Contracting Officer or the Contracting Officer's Technical Representative.

V. Regulated Utilities

- A. Have recent and extensive experience in the area of regulated utilities.
- B. Render opinions as requested concerning a variety of issues, including but not limited to utility rates and tariffs.
- C. Negotiate or assist in the negotiation of various forms of utility agreements, including but not limited to, master agreements, service agreements and access agreements.
- D. Review for form and legal sufficiency documents submitted to the Authority as a part of the services provided under this section of the Scope of Services.
- E. Draft legal documents necessary for the consummation of any transaction covered in this section of the Scope of Services as requested.
- F. Render such other opinions as requested and which are necessary or useful for the performance of the task assigned.
- G. As requested, litigate regulated utilities matters and provide advice as to the appropriate resolution of any such litigation.
- H. Perform such other tasks within the regulated utilities law area as may be requested by the Contracting Officer or the Contracting Officer's Technical Representative.

END OF SCOPE OF SERVICES