



Winston-Salem

Request for Proposals

Workers Compensation Defense Counsel

Proposals will be received by

12:00 Noon, Tuesday, March 12, 2019

IN

Purchasing Department, City Hall Building

101 North Main Street, Suite 324 Winston-Salem, NC 27101

ADVERTISEMENT FOR PROPOSALS

Sealed proposals endorsed **Workers Compensation Defense Counsel** for the City of Winston-Salem will be received by the City/County Purchasing Department in Suite 324, City Hall Building, 101 North Main Street, Winston-Salem, NC **until 12:00 Noon, Tuesday, March 12, 2019**. Instructions for submitting proposals and/or receiving the complete RFP document specifications may be obtained during regular office hours at the same location, or by contacting Jerry Bates via email jerryjb@cityofws.org (Email is preferred) or phone 336-747-6939. The City reserves the right to reject any or all proposals.

Jerry Bates
Purchasing Director

This document IS NOT the complete proposal. To obtain the completed proposal specifications contact Jerry Bates via email jerryjb@cityofws.org, by phone 336-747-6939, or visit the Purchasing Department, City Hall Building, Suite 324, 101 North Main Street, Winston-Salem, NC during regular office hours.

INSTRUCTIONS TO PROPOSERS

INTRODUCTION:

This entire set of documents constitutes the RFP. The proposer must return the RFP with all information necessary to properly analyze the proposer's response in full, in the same numerical order in which it was issued. Proposer's notes, exceptions, and comments may be rendered on an attachment, provided the same format of this RFP text is followed.

Proposer Questions and Inquiries

Proposer Questions and Inquiries relative to this RFP must be submitted **in writing only by 12:00 Noon, Tuesday, March 5, 2019**, to Jerry Bates, City/County Purchasing Director, 101 North Main Street, Winston-Salem, NC 27101 or e-mail: jerryjb@cityofws.org (**Email is preferred**), Fax: (336) 727-2443. The City will provide written responses to all inquiries received by this date, and responses will be made available to all recipients of this RFP. Any oral responses made by any representative of the City may not be relied upon. Any supplements or amendments to this RFP will be in writing and furnished to potential bidders.

RFP Response Submission

All proposals shall be returned in a sealed container or envelope containing one original proposal (please mark document as original) showing original signatures and seals and one (1) copy of the complete proposal marked Workers Compensation Defense Counsel. In addition to the two (2) paper copies, **please include one (1) electronic copy of your proposal in PDF format** on flash drive, CD, or other electronic media containing only the information included in the hard copy version of the proposal and clearly labeled with the Company Name and RFP name. Proposals must be submitted to the City/County Purchasing Department in Suite 324, City Hall Building, 101 North Main Street, Winston-Salem, NC, no later than **12:00 Noon, Tuesday, March 12, 2019. Late proposals will not be considered. Submittals will not be accepted by fax or electronic mail.**

The City will not be obligated for the expenses of any provider arising out of preparation and/or submittal of responses to this RFP. Any and all proposals to this RFP are to be prepared at the cost and expense of the respondents, with the express understanding that there may be no claims whatsoever for the reimbursement of any costs, damages, or expenses relating to this procurement from the City or any other party for any reason (including the cancellation of this RFP).

Proposals must be made in the official name of the individual, firm, or corporation under which the business is conducted (showing official business address) and must be signed in ink by a person duly authorized to legally bind the business entity submitting the proposal.

All proposals should be complete and carefully worded and must convey all of the information requested by the City. If errors or exceptions are found in the proposal, or if the proposal fails to conform to the requirements of the RFP, the City will be the sole judge as to whether that variance is significant enough to reject the proposal.

Proposals should be prepared simply and economically. All data, materials, and documentation shall be available in a clear, concise form. The City reserves the right to reproduce proposals for internal use in the evaluation process.

Proposers are expressly forbidden from contacting any other city employee or city of Winston-Salem elected official regarding this Request for Proposals. Any such outside contact may result in disqualification from the request for proposal process.

The City reserves the right to hold proposals open for a period of sixty days (60) days after due date before making awards.

City of Winston-Salem Scope of Work

Introduction

The City of Winston-Salem is soliciting bids from prospective vendors for Workers Compensation Defense Counsel to provide legal defense in workers' compensation cases, and related matters. The winning firm must abide by the City of Winston-Salem's Workers' Compensation Defense Handling Requirements described below. We are looking for a partner with significant experience in handling workers' compensation cases in North Carolina, and who will be proactive in resolving the City's workers' compensation litigation.

Workers' Compensation Defense Handling Requirements

A. GENERAL REQUIREMENTS

1. Defense counsel shall have been regularly and continuously engaged in the business of providing public entity workers' compensation legal defense representation for at least five (5) years in the State of North Carolina before this RFP.
2. Partners of the defense firm and each attorney assigned to assist the City shall be licensed to practice law in the State of North Carolina.
3. Defense counsel shall possess all permits, licenses and professional credentials necessary to perform services as specified under this RFP. Professional liability or legal malpractice limits of no less than \$1 million per attorney is required.
4. The City has the right, at its discretion, to terminate the services by an attorney who does not meet the interests of the City.

B. SPECIFIC REQUIREMENTS

1. LEGAL DEFENSE REQUIREMENTS

- a. Defense counsel must be qualified to defend the City, as required by law, in all workers' compensation claims or related actions filed against the City.
- b. Defense counsel shall fulfill all responsibilities associated with case assignment and must adhere to the City's policies, procedures and defense guidelines.
- c. Defense counsel shall report any cases referred by the City in which the firm has a conflict-of-interest, per the North Carolina State Bar Association Rules of Professional Conduct. The firm may not represent the City in such a case without a waiver from the City Attorney.
- d. The defense firm shall appoint a partner who will serve as the primary contact for the City in all case-related matters.

2. LEGAL WORK BY RETAINED LEGAL FIRM

- a. Defense counsel is expected to attend all hearings, conferences, quarterly claims reviews, legal file reviews, depositions, meetings and other activities associated with the assigned case. Substitution is not allowed without prior approval by the City.
- b. Defense counsel may not transfer City files to another firm without approval from the City Attorney, Risk Manager, or Assistant Risk Manager. The City will not be responsible for any costs incurred as a result of a law firm's reorganization or staff changes.
- c. When approved law firms or attorneys are unwilling or unable to comply with City guidelines, or when they fail to perform to expected standards, the City may terminate the relationship after providing 30 days' notice.
- d. Preliminary Case Evaluation Plan
 - (1) Upon referral, after reviewing the claim file, and within thirty (30) calendar days of file transmittal, the attorney shall outline, in writing, a plan of action and summary of the claim issues and provide the plan to the Workers' Compensation

Analyst and Assistant Risk Manager.

- (2) The plan should include recommendations for legal strategy and steps necessary to move the claim to resolution in an expedient and cost-effective manner, any necessary claim-handling advice, and an analysis of the City's liability regarding the issues assigned.
- (3) The evaluation plan must include the following elements:
 - a) Statement of facts;
 - b) Statement of the issues including identification of any unusual or potentially precedent-setting issues;
 - c) Additional recommended investigations;
 - d) Alleged injuries and damages claimed;
 - e) Plaintiff's contentions;
 - f) List of defenses to be raised and an analysis of the likelihood of success for each defense;
 - g) Discovery requirements;
 - h) Anticipated litigation strategies
 - i) Anticipated expert witnesses needed. (Expert witnesses must be authorized by the City);
 - j) Costs for each of these items as they pertain to the legal strategy.
- e. Defense counsel is expected to attend quarterly legal file reviews with the Risk Management division and City Attorney. Counsel shall complete a status report for each case using a City-approved document, and shall provide copies to the City no later than one (1) week before the scheduled review.
- f. Defense counsel shall obtain authorization from the Assistant Risk Manager, Risk Manager, or City Attorney for all settlement offers before they are submitted to the plaintiff or plaintiff's counsel. Defense counsel must communicate all settlement offers made by the plaintiff or plaintiff's counsel to the City immediately upon receipt.
- g. At least two weeks before any mediation or hearing, defense counsel must provide the Workers' Compensation Analyst and Assistant Risk Manager with a claim summary outlining the case, settlement recommendations, and the City's chances at prevailing at the hearing.

3. AUDITING

- a. The City has the right to audit defense counsel's books and records related to all matters referred by, handled for, or on behalf of the City.
- b. The City reserves the right to seek reimbursement for services or costs for invoices inappropriately billed and paid.

4. APPEALS, CONTINUANCES, WAIVERS

- a. Defense Counsel must obtain authority from the City Attorney before appealing a case to the North Carolina Court of Appeals or the North Carolina Supreme Court.
- b. Defense counsel must obtain approval from the Assistant Risk Manager, Risk Manager, or City Attorney before waiving any rights of the City, such as third-party recovery, causes of action against a third party, restitution, settlement of liens and collateral benefits, such as City health, dental, and leave benefits.

5. SUBROGATION

- a. Defense counsel shall initially attempt to recover the entirety of any subrogation lien.
- b. Defense counsel should consider the following factors in determining if subrogation

should be pursued and if so, the strategy to be employed:

- (1) In consultation with the City, an assessment of whether there are other business reasons or relationships which might affect a decision to subrogate,
 - (2) What the expected recovery amount is compared to the legal costs to effect such recovery,
 - (3) The effect on the potential recovery of third party liability and comparative fault by employee and employer,
 - (4) Legal action available to or taken by the injured party,
 - (5) The possibility of a statute of limitations defense, and,
 - (6) The status and potential value of the WC case.
- c. Settlement of third-party cases falls within the same authorization guidelines as all other WC settlements.

6. BILLING REQUIREMENTS

1. Where correspondence or phone conversations are charged, the specific identity of the other party shall be included with the time entry. Likewise, if a conference is held with the City, the bill shall identify all participants or attendees.
2. Charges for activities such as file creation, internal conferences, or training of the defense counsel's personnel are considered overhead items and shall not be billed to the file.
3. When standardized pleadings or forms are used, actual time needed by an attorney or paralegal to prepare the pleadings or form for typing shall be billed, not the time originally used to draft the standardized documents or the time needed to type the form or pleading.
4. Defense counsel shall not bill for bill preparation tasks, bill explanations, bill disputes, and bill corrections.
5. Defense counsel shall not bill for more than an occasional brief in-house conference between senior and junior attorneys. The City will pay only for the senior attorney's time for such conferences. The conferences shall be demonstrably necessary, i.e., to further the prompt resolution of the case.
6. The initial review, as well as subsequent reviews, requires documentation of the senior partner's input. If no value is added by the initial or subsequent review beyond maintaining general quality, defense counsel shall not bill the City.
7. Defense counsel shall not bill for more than one attorney to attend depositions, hearings, witness interviews, document production, trials, etc. Defense counsel shall absorb the cost of sending an extra attorney or paralegal unless previously authorized by the City.
8. Defense counsel shall not bill for an associate's apprenticeship time. Apprenticeship time is that which does not contribute to the defense or disposition of the file. For example, attending motions argued by more experienced lawyers in the firm, or more than one redraft of a motion, letter or memo.
9. Defense counsel may bill for reasonable time to prepare for a deposition, but not for a comprehensive case review.
10. Defense counsel shall not bill for word processing time. Defense counsel shall bill only

for the attorney's time, not the secretarial or word processing time. Defense counsel shall not bill for multiple redrafts of memos, pleadings, interrogatories, etc.

11. Expenses and Costs

Defense counsel shall not bill for the following expense items at more than the specified guidelines:

- (1) Photocopying: Large copying jobs shall be sent to a capable but economical outside copy service. In- house photocopying costs should not be billed.
- (2) Telephone: Actual charges only for long distance calls.
- (3) Fax Machines: Actual cost, without markup, for outgoing facsimile transmissions, will be billed only when an outside service is utilized. In-house fax costs should not be billed.
- (4) Computerized legal research is considered an overhead cost and will not be paid by the City.
- (5) Postage: Actual cost of postage for mailing will be billed when an outside service is utilized. In-house postage will not be paid. Messenger and Delivery: For an outside messenger, the City will pay actual costs without markup. For defense counsel's messenger service (between defense counsel offices in other cities), the charges will be no more than for an outside service.
- (6) Travel: Defense counsel shall describe, in detail on the bill, any travel expenses incurred by counsel, including time, distance and rate.

12. Billing – Miscellaneous

- (1) Defense counsel shall bill only at approved rates.
- (2) Defense counsel shall not charge for overhead items such as costs of seminars, books, association dues, etc.
 - (a) Defense counsel shall invoice the City only following the provision of legal services.
 - (b) Payment will be made within sixty (60) days following receipt of invoice and upon the complete satisfactory performance of services.
- (3) Invoices shall include, but not be limited to:
 - (a) Invoice date;
 - (b) Claimant name, claim number, DOI, and department;
 - (c) An entry for each legal task performed, including a brief description of the task and time billed. "Block billing" for all tasks performed in one day, without designation of time for each task, will not be accepted by the City;
 - (d) Date of each legal task and total actual time for each task performed;
 - (e) Name or initials for each attorney/paralegal performing the task and hourly rate of the person performing each legal task;
 - (f) Fees billed for each legal task may be listed under each attorney performing said tasks by the day, broken out as outlined in this RFP.
 - (g) Individually itemized disbursements for costs must be illustrated on the bill.

- (h) A summary of fees, including the total time and fees per billing rate per invoice.
 - (4) A separate bill for each case must be provided. Bill should indicate the total fees, and costs billed to date and credits paid by the City to date.
 - (5) On all fee bills or billing statements, actual time in units of one-tenth (1/10th) of an hour shall be charged.
 - (6) Billing should be monthly or quarterly.
 - (7) If a person is designated as a paralegal, the City retains the right to audit the work performed and determine whether such work was performed by a paralegal and doing paralegal activities, e.g., a paralegal should not customarily do clerical work which is an overhead expense. The same rule will apply to partners versus associates. If a person's position is incorrectly designated (in the opinion of the City's auditors), the bills will be reduced accordingly.
13. Defense counsel shall send its final bill no more than thirty (30) days after execution of the settlement agreement and/or dismissals unless the City provides written authorization to the contrary.

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Additional Requirements

Vendor Profile: Responding vendors shall provide a company profile that will assist the City in accessing the vendor's qualifications, expertise, and competence, including the names and curriculum vitae of the attorneys who will be representing the City.

Experience: Responding vendors shall provide a list of customers, preferably public entities, with whom they are currently doing business, or have done business with in the past.

Failure of any firm to submit information requested may result in the elimination of the proposal from further evaluation.

Proposed Fee Structure

Fee Quotes Should be submitted in a separate envelope. The City desires the most effective combination of price, performance, and quality possible within the constraints of its budget. **All price quotes must be firm and valid for 60 days following the proposal due date during the proposal evaluation process and the successful proposal remain fixed throughout the initial two year contract period.** Proposers should review the requirements of this RFP and address all services in this fee schedule that might reasonably be expected to support the project. Pricing must be inclusive of all expenses, including travel related expenses for recurring services. **Include a total cost to provide services, based on the consultant's fee schedule and the scope of work as outlined in this RFP for the initial two year term AND fees for any possible extension.** Indicate how the City will be invoiced for services. Proposers should endeavor to provide a comprehensive, fee schedule, as the City will not include compensation in the contract for items not addressed.

SELECTION PROCESS AND EVALUATION CRITERIA

A. SELECTION PROCESS

The City reserves the right to act as sole judge of the content of the proposals submitted for the City's evaluation/selection.

B. EVALUATION PROCESS

Proposals will be evaluated for quality, completeness, and price value to the City of Winston-Salem by an Evaluation Panel. Selection shall be made from all offers deemed to be fully qualified and best suited among those submitting proposals based on the evaluation of factors included in the RFP, including price. Price shall be considered, but need not be the sole determining factor. The Evaluation Panel may cancel this RFP or reject proposals at any time prior to an award and is not required to furnish a statement of the reason why a particular proposal was not deemed the most advantageous.

The City reserves the right, as part of the selection process, to request on-site (or virtual) demonstrations and/or presentations. In the event that such demonstrations or presentations take place, proposers will be selected for this process based on scores derived from the scoring matrix, which includes M/WBE participation, local availability, and all other applicable criteria. The scoring of the demonstration or presentation must be based upon the criteria from one or more of the original evaluation factors. After the demonstrations or presentations, each proposer will then be re-graded on the same criteria. The number of proposers chosen to take place in the demonstration/presentation process is subject to administrative discretion. The recommendation for award will be submitted to the City Council for contract approval.

B. EVALUATION CRITERIA

Below is a description of the evaluation criteria that will be used to evaluate the proposals. To be deemed responsive, it is important for the firm's proposal to contain appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP. The proposal will be the primary source of information used in the evaluation process. Proposal must contain information specifically related to the proposed services requested in this RFP. Failure of any firm to submit information requested may result in the elimination of the proposal from further evaluation.

- **M/WBE Commitment:** Proposer's efforts to comply with all the terms and conditions of the City of Winston-Salem's Minority and Women Business Enterprise (M/WBE) Program through award of subcontracts to minority and women-owned business enterprises and utilization of minority and women owned business enterprise suppliers to the fullest extent consistent with the efficient performance of this contract. **Please refer to pages 14 through 26**
- **Location of Business:** "Location of Business: (A) Presence in Winston-Salem: Proposer must have a physical office within the corporate limits Winston-Salem (PO Box does not qualify). For proposals submitted to a City/County joint department, a physical office within Forsyth County is acceptable. (B) Presence in North Carolina: In order to determine a proposer's presence or presence/location within the State of North Carolina, the proposer or at least one of the proposer's employees must have a physical office location in North Carolina and the proposer must submit under confidential cover with his/her proposal, evidence that as the employer, the proposer has paid payroll taxes in North Carolina for at least one employee, (i.e. North Carolina Income Tax Withholding Form). Said employee(s) must work in an office, which may be an office physically located within the employee's home in North Carolina. If it is a home office in North Carolina, then the proposer must also submit with his/her proposal, evidence of a valid home occupation permit for said office, or evidence that said home office is not in violation of any zoning requirements in the event the applicable city does not require a home occupation permit."
- **Price Value:** The price value for the vendor based on the total value achieved compared to the hourly billing rate.

- **Qualifications and Experience in North Carolina Workers' Compensation:** Experience of the attorneys who will be assigned to the City's files. Please feel free to include information regarding key cases litigated by the firm.
- **Reference List of Governmental Clients:** The number of governmental clients, as well as the consideration of clients similar to the City of Winston-Salem in terms of size and operations, for whom the vendor serves as workers compensation defense counsel.
- **Price Value:** Reasonableness/competitiveness of proposed fee and/or benefits to the City of Winston-Salem, although the Evaluation Panel is not bound to select the respondent who proposes the lowest fees or most benefits for services. The Evaluation Panel reserves the right to negotiate fees and/or benefits to the City of Winston-Salem with the selected respondent(s).

The following weighted scale will be utilized by the Evaluation Panel to evaluate and score each proposal:

Evaluation Criteria	Weight
MWBE Commitment	20.00
Distance from the City of Winston Salem	20.00
Price Value	20.00
Qualifications and Experience	20.00
Reference List Of Governmental Clients	20.00

Contract Period

The successful bidder to the RFP can expect an initial contract for a term of 2 years, with the options for the City to extend this Agreement for as many as one (1) additional twelve (12) month period, provided that both parties are in agreement and funds are made available for this purpose.

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