

**CONFIDENTIAL AND ATTORNEY-CLIENT
PRIVILEGED MEMORANDUM FOR
POTENTIAL ENGAGEMENT OF COUNSEL**

TO: PROSPECTIVE COUNSEL

FROM: LOS ANGELES CITY ATTORNEY'S OFFICE

DATE: January 7, 2019

RE: REQUEST FOR PROPOSALS "RFP" FOR COUNSEL SPECIALIZING IN HEALTH LAW AND DATA PRIVACY

1.0 PROPOSAL

The Retirement Benefits Division of the City Attorney's Office is general counsel to the City's three independent pension plans: the Los Angeles City Employees' Retirement System (LACERS), the Los Angeles Fire and Police Pensions plan (LAFPP), and the Water and Power Employees' Retirement Plan (WPERP), (together, the Plans).

Collectively, the Plans' boards serve as trustees for over \$50 billion in trust fund assets and administer retirement benefits, including service and disability pensions, for tens of thousands of Los Angeles City retirees and their beneficiaries. LAFPP also administers group healthcare programs for Los Angeles City sworn retirees and their beneficiaries. LACERS also administers group healthcare programs for Los Angeles City civilian retirees and their beneficiaries. And WPERP administers a death and disability benefit program for employees of the Los Angeles Department of Water and Power.

The City Attorney's Office is soliciting proposals from qualified law firms to assist the City Attorney's Office in providing legal services to the Plans in the area of health law and data privacy laws, with an emphasis on advice concerning data ownership, data protection, cybersecurity, and data privacy best practices, including conducting compliance audits, responding to data breaches, and adopting prudent policies that strike the appropriate balance between transparency and data security.

Counsel must have expertise in state, federal, and international data privacy laws, rules and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), California's Confidentiality of Medical Information Act (CMIA), the California Information Practices Act (CIPA), the California Consumer Privacy Act of 2018 (CCPA), the Health Information Technology for Economic and Clinical Health Act (HITECH Act), China's Cybersecurity Law (CSL), and the General Data Protection Regulation (GDPR). Counsel must have significant familiarity and extensive interaction with the federal and state agencies charged with enforcing these data privacy laws. Familiarity with cyber liability insurance agreements is also desirable.

Counsel must be able to provide said legal services on a time-sensitive basis. Counsel must also have experience in advising government agencies and in representing government agencies in state and federal court.

Both small and large firms with competitive rates are encouraged to apply. Firms may also submit proposals jointly. Firms may submit proposals to serve LACERS, LAFPP, WPERP, two of the Plans, or all three of the Plans. Firms should state clearly in the cover letter which Plan(s) they are seeking to represent.

Only written proposals will be considered. All submitted materials shall become part of the proposal, and may be incorporated in a subsequent contract between the selected proposer and the City of Los Angeles (City), a municipal corporation, acting through the Office of the City Attorney (City Attorney), and by order and through the Board of Administration of the LACERS, the Board of Fire and Police Pension Commissioners, and/or the Board of Administration of the WPERP, as applicable.

Please submit your proposals electronically, in one pdf, by e-mail, to all of the following:

- (1) anne.haley@lacity.org
- (2) anya.freedman@lacity.org
- (3) joshua.geller@lacity.org
- (4) miguel.bahamon@lacity.org

In addition, please submit 6 hard copies of your written proposal as instructed below.

The proposal shall be submitted in a sealed package. The front of the package shall be marked with:

“RFP FOR LEGAL SERVICES REGARDING HEALTH LAW AND DATA PRIVACY”

The proposals shall be addressed to:

Anne Haley
Assistant City Attorney
Los Angeles City Attorney’s Office
200 North Main Street
8th Floor CHE
Los Angeles, California 90012

Proposals must be received no later than 4:00 p.m. on January 28, 2019.

It is the proposer’s sole responsibility to ensure that the proposal is submitted in a timely manner.

All forms referred to in this RFP are available at www.labavn.org. Please go to www.labavn.org to register your firm and to complete the necessary forms for

replying to this RFP. Register as a prime contractor and a subcontractor to avail your business of the greatest number of opportunities to perform City work.

2.0 QUESTIONS

Questions regarding content of this RFP shall be submitted by e-mail and directed only to Assistant City Attorney Anya Freedman via e-mail at anya.freedman@lacity.org. The subject line must read: **“RFP for Legal Services Regarding Health Law and Data Privacy.”** All questions must be sent before January 21, 2019.

3.0 SCOPE OF WORK

Provide legal advice and represent the Plans, as needed, in matters and litigation relating to health law and data privacy and security.

4.0 EVALUATION CRITERIA

The retention by the City Attorney’s Office of any firm submitting a proposal shall be based upon certain general criteria, including experience with:

- a) Providing the services discussed above under Scope of Work;
- b) The healthcare industry;
- c) Statutory and regulatory requirements of governmental pension plans;
- d) Conducting compliance audits and assisting clients to develop policies to ensure best practices in the area of health and data privacy and security;
- e) Statutory and regulatory framework governing health and data privacy and security;
- f) Advising and representing government agencies, including governmental pension plans; and
- g) Demonstrated experience and interaction with the state and federal regulators charged with administering applicable health and data privacy laws.

The appropriate City Attorney staff will review and evaluate all submitted proposals. Thereafter, City Attorney staff may schedule interviews with higher scoring firms. Interviews, if any, are typically conducted in person at our offices.

5.0 CONFIDENTIALITY

The information in this RFP is intended to be and shall be regarded as an attorney-client privileged communication. The City Attorney's Office contemplates that this communication will be received in confidence and will be securely maintained by the recipient in full conformance with attorney-client privilege and the holding in Benge v. Superior Court (1982) which states as follows:

“...there is no requirement that the attorney actually be employed in order to create an attorney client relationship. Evidence Code section 951 states that prevailing view that a person may discuss a potential legal problem with an attorney for purposes of obtaining advice or representation and statements made are privileged whether or not actual employment ensues.” (citations omitted) Benge v. Superior Court (1982) 131 Cal.App.3d 336, 345; 182 Cal.Rptr. 275 at 280.]

The information set forth in this RFP is confidential and is intended only for use by the prospective firm to assist in the selection process by the City Attorney's Office in connection with the firm's proposal for the potential formation of a legal services contract between the prospective firm and the City Attorney's Office. Should a firm receiving this information determine that it represents a party which is adverse to the City of Los Angeles or any of its departments, either proprietary or non-proprietary, or should any receiving firm determine that it otherwise possesses any actual or potential conflict of interest, it is requested that the confidentiality of this memorandum be strictly maintained and that all copies of the RFP in the possession of any such firm be immediately returned to the address set forth at the conclusion of this RFP.

Should any attorney or firm receiving this RFP reasonably believe that a waiveable potential conflict may exist by reason of its representation of some other entity, the Los Angeles City Attorney's Office requests that this RFP not be shared with any other represented entity, and if question exists regarding potential conflict of interest pursuant to Rule 3-310 of the California Rules of Professional Conduct, that the firm scrupulously observe the requirements of Section 6068(e) of the California Business and Professions Code and uncompromisingly maintain fully confidentiality of this document. Any questions in connection with issues of conflicts of interest should be addressed to Anne Haley at anne.haley@lacity.org.

6.0 CONTENT OF RESPONSE

6.1 Cover Letter

Each response to this RFP must be accompanied by a cover letter that contains a general statement of the purposes for submission and include the following information:

- a) Name, address, telephone number, and legal business status (individual, limited liability partnership, corporation, etc.) of the proposer.

- b) Name, title, address and telephone number of the person or persons authorized to represent the proposer in order to enter into negotiations with the City Attorney's Office with respect to the RFP and any subsequently awarded contract. The cover letter shall also indicate any limitation of authority for the person named.
- c) A representative or officer of the proposer must sign the cover letter. That representative shall have been authorized to bind the firm to all provisions of the RFP, any subsequent changes and to the contract if an award is made.
- d) If the respondent is a partnership, the response must be signed by a general partner in the name of the partnership. If the respondent is a corporation, the response must be signed on behalf of the corporation by two authorized officers (a Chairman of the Board, President or Vice President, and a Secretary, Treasurer or Chief Financial Officer) or an officer authorized by the Board of Directors to execute such documents on behalf of the corporation.
- e) The Proposer's California Public Records Act acknowledgement set forth in Section 10.0(m) below.
- f) All of the signatures referenced above must be submitted as originals and signed in black or blue ink.

6.2 Additional Information

- a) Briefly describe your firm's background, size and history pertinent to the services requested in this RFP for which your firm is seeking the assignment.
- b) List the attorneys, paralegals or other personnel you expect to be assigned to this relationship and describe the area(s) of specialization of each and his/her relevant experience. Identify the key attorney who will be the primary contact and lead counsel in providing services under this assignment.
- c) Describe the relevant special services your firm provides, particularly those that may not be offered by other law firms.
- d) Within the past three years, have there been any significant developments in your firm, such as changes in ownership or restructuring? Do you anticipate any significant changes in the future? Please describe.

- e) Has your firm provided services similar to those for which you are seeking assignment in your response to this RFP to any other public sector client? If so, list the full name of each such entity, and the name, telephone number and e-mail address of the chief counsel.
- f) Identify all public sector clients who have terminated their working relationship with your firm in the past three years and a brief statement of your understanding of their reasons for doing so. Provide each such client's in-house counsel's (or, if none, CEO's) name, address, telephone number, and e-mail address.
- g) Will you subcontract or outsource any part of the services you are seeking to provide? If so, please explain in detail.
- h) Within the past five years, has your firm, or a partner or attorney in your firm, been involved in litigation or other legal proceedings relating to provision of legal services? If so, provide an explanation and indicate the current status or disposition.
- i) Does your firm have a sexual harassment policy? Please describe the policy and summarize any pending or anticipated litigation against the firm, its employees, or partners, involving allegations of sexual harassment or sexual misconduct.

7.0 QUALIFICATIONS AND HOURLY RATES

Please also submit a statement listing the proposed hourly rates for each attorney, paralegal, and other personnel referenced in your firm's response to this RFP.

8.0 CONFLICTS OF INTEREST

Provide information on whether your firm represents any interests which may constitute a conflict of interest in the representation of the City of Los Angeles.

9.0 MANDATORY CITY REQUIREMENTS

Please access detailed information regarding City contracting requirements and forms which must be completed by you in order to be responsive to this RFP at LABAVN.org.

10.0 GENERAL CITY RESERVATIONS

- a) City reserves the right to verify the information in the response.
- b) If a firm knowingly and willfully submits false information or other data, the City reserves the right to reject that response. If a contract was awarded

as a result of false statements or other data submitted in response to this RFP, the City reserves the right to terminate that contract.

- c) Submission of a response to this RFP shall constitute acknowledgment and acceptance of the terms and conditions set forth herein. Responses and the offers contained therein shall remain valid for a period of one hundred and twenty (120) days from the date set for receipt of responses. Firms awarded a contract pursuant to this RFP will be required to enter into a written contract with the City approved as to form by the City Attorney. This RFP and response, or any parts thereof, may be incorporated into and made a part of the final contract. The City reserves the right to further negotiate the terms and conditions of the contract. The final contract offer of the City may contain additional terms or terms different from those set forth herein.
- d) Late responses will not be considered. The City, in its sole discretion, reserves the right to determine the timeliness of all responses submitted.
- e) The City reserves the right to waive any informality in the process when to do so is in the best interest of the City.
- f) The City reserves the right to withdraw this RFP at any time without prior notice and the right to reject any and all Responses. The City makes no representation that any contract will be awarded to any firm responding to this RFP. The City reserves the right to extend the deadline for submission. Firms will have the right to revise their response in the event the deadline is extended. Each proposer must send an e-mail address to anne.haley@lacity.org as soon as possible, so that the City Attorney may contact proposer if necessary to amend this RFP or for any other reason. Failure to provide such an e-mail address will preclude City Attorney's ability to contact the proposer, but will not excuse the proposer from being required to comply with any amendments. The City would not, in that case, be liable for the proposer's failure to receive such notice and any resultant non-responsiveness or noncompliance on your part. If a proposer does not have an E-mail address, please provide a postal address for this purpose.
- g) A proposer may withdraw its response prior to the specified due date and time. A written request to withdraw, signed by an authorized representative of the proposer, must be submitted to the City Attorney's Office at the address specified herein for submittal of proposal. After withdrawing a previously submitted proposal, the proposer may submit another proposal at any time prior to the specified submission deadline.
- h) All costs of response preparation shall be borne by the proposer. The City shall not, in any event, be liable for any pre-contractual expenses

incurred by the proposer in the preparation and/or submission of the response.

- i) Unnecessarily elaborate or lengthy responses or other presentations beyond those needed to give sufficient and clear response to all of the RFP requirements are not desired.
- j) The response must set forth accurate and complete information as required in this RFP. Unclear, incomplete, and/or inaccurate documentation may not be considered for contract award.
- k) Responses shall be reviewed and rated by the City as submitted. Firms may make no changes or additions after the deadline for receipt.
- l) A firm will not be recommended for a contract award, regardless of the merits of the response submitted, if it has a history of contract noncompliance with the City or other funding source or poor past or current performance with the City or other funding source.
- m) The City reserves the right to retain all responses submitted and the responses shall become the property of the City. Any department or agency of the City has the right to use any of the ideas presented in the responses submitted in response to this RFP. All responses received by the City will be considered public records subject to disclosure under the Public Records Act. (California Government Code Section 6250 et seq.) Because the material is intended to be and shall be regarded as an attorney-client privileged communication, it is exempt from disclosure under the Public Records Act. In the event that the City is required to claim such an exemption in response to a CPRA demand, the proposer must state in the proposal that the proposer will defend any action brought against the City for its refusal to disclose such material, trade secret, or other proprietary information to any party making such a request. **The proposer is required to state in the proposal that: “The proposer will indemnify the City or Agency and hold it harmless from any claim or liability and defend any action brought against the City of Los Angeles for its refusal to disclose copyrighted material, trade secrets, or other proprietary information to any persons making a request therefore.”** Proposer’s obligations herein include, but are not limited to, all attorney’s fees (both in house and outside counsel), costs of litigation incurred by the City or its attorneys (including all actual costs incurred by the City, not merely those costs recoverable by a prevailing party, and specifically including costs of experts and consultants) as well as all damages or liability or any nature whatsoever arising out of any such suits, claims, and causes of action brought against the City, through and including any appellate proceedings. Proposer’s obligations to the City under this indemnification provision shall be due and payable on a monthly, on-going

basis within thirty (30) days after each submission to Proposer of the City's invoices for all fees and costs incurred by the City, as well as all damages or liability of any nature.

- n) Upon completion of all work under this contract, ownership and title of all reports, documents, plans, drawings, specifications, and estimates produced as part of this contract will automatically be vested in the City of Los Angeles, and no further agreement will be necessary to transfer ownership to any City agency. Copies made for the contractor's records shall not be furnished to others without written authorization from the City Attorney.
- o) Any contract awarded pursuant to this RFP is subject to the Contractor Evaluation Ordinance, Los Angeles Administrative Code Section 10.39, which requires awarding authorities to evaluate contractor's performance and retain such evaluative information in a data bank for future reference.
- p) The contract awarded from this RFP is expected to begin in early 2019 and last up to three years.
- q) The City may award a contract on the basis of proposals submitted, without discussions, or may negotiate further with those proposers within a competitive range. **Proposals should be submitted on the most favorable terms the proposer can provide.**

11.0 CLARIFICATION

If additional information is needed to interpret this RFP, written questions shall be submitted to Assistant City Attorney Anne Haley at anne.haley@lacity.org. All respondents shall have and provide an active e-mail address to receive responses to the questions.

12.0 SIGNATURES AND DECLARATIONS

Each proposal must be signed on behalf of the proposer by an officer authorized to bind the proposer, and must include the following declaration:

"This proposal is genuine, and not sham or collusive, nor made in the interest or on behalf of any person not named therein; the proposer has not directly or indirectly induced or solicited any other proposer to put in a sham bid, or any other person, firm or corporation to refrain from submitting a proposal, and the proposer has not in any manner sought by collusion to secure for themselves an advantage over any other proposer."

13.0 BIDDER CONTRIBUTIONS – CITY CHARTER SECTION 470(c)(12)

Persons who submit a response to this solicitation (bidders) are subject to Charter section 470(c)(12) and related ordinances. As a result, bidders may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the time they submit the response until either the contract is approved or, for successful bidders, 12 months after the contract is signed. The bidder's principals and subcontractors performing \$100,000 or more in work on the contract, as well as the principals of those subcontractors, are also subject to the same limitations on campaign contributions and fundraising.

Bidders must submit CEC Form 50 and CEC Form 55 (available on LABAVN.org) to the awarding authority at the same time the response is submitted. The form requires bidders to identify their principals, their subcontractors performing \$100,000 or more in work on the contract, and the principals of those subcontractors. Bidders must also notify their principals and subcontractors in writing of the restrictions and include the notice in contracts with subcontractors. Responses submitted without a completed CEC Form 55 shall be deemed nonresponsive. Bidders who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960 or ethics.lacity.org.