



Employee Benefits Counsel Services

RFP 13-2134

Office of Metro Attorney

600 NE Grand Ave.
Portland, OR 97232
(503) 797-1700

Project Manager

Lisa Cohen Greenfield
lisa.greenfield@oregonmetro.gov
(503) 797-1531

Department Staff

Jodi Wacenske
jodi.wacenske@oregonmetro.gov
(503) 797-1529

Notice is hereby given that proposals for RFP 13-2134 for Employee Benefits Legal Counsel shall be received by Office of Metro Attorney, 600 NE Grand Avenue, Portland OR 97232 until 3 pm on August 15, 2012. It is the sole responsibility of the proposer to ensure that Metro receives the Proposal by the specified date and time.

The contract period will be from approximately October 1, 2012 through October 31, 2015. It may be renewed for an additional three year period at Metro's sole discretion.

Each proposal must be submitted in a form as described in this proposal document. As individual matters are identified and authorized, a specific dollar amount will be agreed to as the Project Budget for Employee Benefits Services. Proposals may be mailed, hand-delivered or emailed. Proposers shall review all instructions and contract terms and conditions.

Request for Proposals - Informal (RFP 13-2134)

I. INTRODUCTION

The Office of Metro Attorney, a department of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals for Employee Benefits' Legal Services to be utilized on an as-needed basis to act as Counsel for Metro's benefit plans, including the Metro 401(k) and 457 Plans.

II. BACKGROUND/HISTORY OF PROJECT

Metro is a regional government with approximately 700 benefit-eligible employees. Employees are a combination of represented and non-represented staff. Metro offers various employee benefits, fringe benefits and retirement savings plans, including fully insured medical, dental and vision packages which include a retiree health plan, FSA, commute options, PERS, and 401(k) and 457 Plans to its employees, and utilizes outside counsel to assist with a variety of legal issues that arise with these plans. Metro retains an Employee Benefit Consultant and Deferred Compensation Consultant to provide day-to-day guidance on these plans and anticipates that outside counsel will provide review of consultant recommendations on an "as needed" basis.

III. PROPOSED SCOPE OF WORK/SCHEDULE

The rules covering deferred compensation and employee benefit plans are complex and change frequently. Contractor shall provide as-needed Employee Benefit counsel and compliance assistance to Metro on a wide range of employee benefits, fringe benefits and deferred compensation topics. Areas of work may include, but are not limited to, plan administration, audits and corrections, health care reform compliance, COBRA and retiree health plans, fiduciary duties, taxation and reporting requirements and HIPAA compliance with a specialty in Public Sector employee benefits plans.

The term of the contract is anticipated to be October 1, 2012 through October 31, 2015. It may be renewed for an additional three year period at Metro's sole discretion.

IV. QUALIFICATIONS/EXPERIENCE

Proposers shall have the following experience:

- (1) Licensed to practice law in the state of Oregon; and
- (2) An attorney or firm of attorneys of recognized statewide standing in the field of law relating to employee benefit plans, including 401(k) and 457 retirement plans, procedures and filings with the IRS, and fiduciary liability law.

V. PROJECT ADMINISTRATION

Metro Assistant Attorney Lisa Cohen Greenfield will administer the project. Proposer shall identify one point of contact for the resulting contract.

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VI. PROPOSAL INSTRUCTIONS

A. Submission of Proposals

Two (2) copies of the proposal shall be mailed or hand-delivered to Metro AND one electronic copy sent by email or included on disk addressed to:

Office of Metro Attorney
Attention: Jodi Wacenske - RFP 13-2134
600 NE Grand Avenue
Portland, OR 97232-2736
jodi.wacenske@oregonmetro.gov

B. Deadline

Proposals will not be considered if received after the date and time indicated on the RFP cover page.

C. RFP as Basis for Proposals:

This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any verbal information which is not addressed in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be addressed to Jodi Wacenske, jodi.wacenske@oregonmetro.gov. Any questions which in the opinion of Metro warrant a written reply or RFP addendum will be furnished to all parties receiving this RFP. Metro may not respond to questions received after 3:00 p.m. on August 8, 2012.

D. Information Release

All Proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a proposal, all Proposers agree to such activity and release Metro from all claims arising from such activity. In Accordance with Oregon Public Records Law (ORS 192), proposals submitted will be considered part of the public record, except to the extent they are exempted from disclosure.

E. Minority, Women and Emerging Small Business Program

In the event that any subcontracts are to be utilized in the performance of this agreement, the Proposer's attention is directed to Metro Code provisions 2.04.100, which encourages the use of minority, women and emerging small businesses (MWESB) to the maximum extent practical. Copies of these MWESB requirements are available from the Metro Procurement Office, 600 NE Grand Avenue Portland, OR 97232, and (503) 797-1648.

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F. Conflict of Interest

A Proposer filing a proposal certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in the proposal or has participated in Contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.

VII. GENERAL PROPOSAL AND CONTRACT CONDITIONS

Limitation and Award - This Request for Proposals does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of Proposals in anticipation of a contract. Metro reserves the right to accept or reject any or all Proposals received as the result of this request, to negotiate with all qualified sources, and/or to cancel all or part of this Request for Proposals.

VIII. PROPOSAL CONTENTS

The proposal should contain no more than ten (10) pages of written material (excluding biographies and brochures, which may be included in an appendix), describing the ability of the consultant to perform the work requested, as outlined below. The proposal should be submitted on recyclable, double-sided recycled paper (post consumer content). No waxed page dividers or non-recyclable materials should be included in the proposal.

- A. Transmittal Letter: Indicate who will be assigned to the project, who will be project manager, and that the proposal will be valid for ninety (90) days.
- B. Approach/Project Work Plan: Describe how the work will be done within the given timeframe and budget. Include a proposed work plan and schedule.
- C. Staffing/Project Manager Designation: Identify specific personnel assigned to major project tasks, their roles in relation to the work required, percent of their time on the project and special qualifications they may bring to the project. Include resumes of individuals proposed for this contract.

Proposals must identify a single person as project manager to work with Metro. The consultant must assure responsibility for any subconsultant work and shall be responsible for the day-to-day direction and internal management of the consultant effort.

- D. Experience: Describe the experience and professional credentials of the staff who would be assigned to perform the work for Metro, or attach resumes of individuals proposed for this contract. Indicate how your firm meets the experience requirements listed in section IV of this RFP. List projects conducted over the past five years which involved services similar to the services required here. For each of these other projects include the name of the customer contact person, his/her title, role on the project, and telephone number. Identify persons on the proposed project team who worked on each of the other projects listed, and their respective roles. Indicate experience with public employers and interactions with the IRS on retirement savings plans.

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- E. Cost/Budget: Describe your proposed fee structure and arrangements, including hourly billing rates for attorneys and other staff as applicable, and other proposed alternative fee structures if any are to be considered. Requested expenses should also be listed.
- F. Diversity in Employment and Contracting:
- Work Force Diversity – Describe your work force demographics (number of employees, race and gender) and the measurable steps taken to ensure a diverse work force, including company policies and practices that promote the hiring and retention of women and ethnic minorities.
 - Diversity in Contracting – Describe your history of working with diverse firms, including any MWESB-certified firms. Describe a project for which you worked with minorities, women or emerging small businesses. Please provide the project name, method used to achieve participation – for example, joint ventures, subcontracts or purchase of equipment or supplies from a certified firm – and the dollar amount or percentage of the project budget expended on such participation.
 - Diversity of Firm – Describe the ownership of your firm and whether or not your firm is certified by the State of Oregon as an MBE, WBE or ESB. Provide certification number, if applicable.
- G. Exceptions to Standard Agreement and RFP: Carefully review the Standard Agreement attached hereto as Exhibit A and incorporated herein. This is the standard agreement that successful respondents to this RFP will be required to execute. RFP respondents wishing to propose any exceptions or alternative clauses to the agreement or to any specified criteria within this RFP must propose those exceptions or alternative clauses in their Proposal; Metro shall not be required to consider contract revisions proposed during contract negotiation and award. Proposed exceptions or alternative clauses should be accompanied by explanatory comments that are succinct, thorough and clear.

IX. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.
- B. Billing Procedures: Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. Contractor's invoices shall include the Metro contract number, an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Payment shall be made by Metro on a Net 30 day basis upon approval of Contractor invoice.
- C. Validity Period and Authority: The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the

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name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.

- D. Conflict of Interest: A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.
- E. Equal Employment and Nondiscrimination Clause: Metro and its contractors will not discriminate against any person(s), employee or applicant for employment based on race, color, religion, sex, national origin, age, marital status, familial status, gender identity, sexual orientation, disability for which a reasonable accommodation can be made, or any other status protected by law. Metro fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. For more information, or to obtain a Title VI Complaint Form, see www.oregonmetro.gov.

X. EVALUATION OF PROPOSALS

- A. Evaluation Procedure: Proposals received that conform to the proposal instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. Interviews may be requested prior to final selection of one firm. Award shall be made to the highest ranked Proposer based on the stated evaluation criteria. In the event negotiations are unsuccessful, Metro reserves the right to negotiate with the next highest ranked firms.
- B. Evaluation Criteria: This section provides a description of the criteria which will be used in the evaluation of the proposals submitted to accomplish the work defined in the RFP.

Percentage of Total Score

Experience

- | | |
|---|-----|
| 1. Experience with employee benefit plans noted in the scope of work, particularly those utilized by Oregon public entities | 20% |
| 2. Years of experience, training and qualifications of attorney or team | 20% |
| 3. Experience with fiduciary duty responsibilities, taxation and reporting requirements | 20% |
| 4. References and number of public agencies represented | 10% |

Budget/Cost Proposal

- | | |
|--|-----|
| 1. Projected cost/benefit of proposed work plan/approach | 15% |
|--|-----|

Diversity in Employment and Contracting

- | | |
|--|-----|
| 1. Work Force Diversity, Diversity in Contracting, Diversity of Firm | 15% |
|--|-----|

100%

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XI. NOTICE TO ALL PROPOSERS -- STANDARD AGREEMENT

The attached agreement included herein reflects preliminary, draft contract language and selected, proposed contract terms for this procurement. Proposers should be aware that such language terms and provisions are for illustrative purposes only and that Metro reserves the right, following submission and ranking of all proposals submitted in response to this procurement, to amend, modify or negotiate over any and all such contract language, terms and provisions regarding the agreement arising from this procurement. By submitting a proposal in response to this procurement, proposers acknowledge that they are aware of and do not object to any later, potential amendment and modification of such preliminary, draft language and terms. In addition, by responding to this procurement, proposers acknowledge that they are aware of their ability to offer alternatives to any of the preliminary, draft contract language and proposed contract terms set forth herein.

Personal Services Agreement

Metro Contract No.

Personal Services less than \$45,000

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, and Company Name, referred to herein as “Contractor,” located at address, City, State Zip.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. **Duration.** This personal services agreement shall be effective October 1, 2012 and shall remain in effect until and including October 31, 2015, unless terminated or extended as provided in this Agreement. This agreement may be renewed or extended for an additional three year period at Metro’s sole discretion. In addition, assignment of a litigation matter to contractor shall extend this Agreement for the duration of the litigation, subject to the provisions of Section 14 Termination.
2. **Scope of Work.** Contractor shall provide necessary Employee Benefits’ Legal Work, including work on the structure and administration of Metro’s various benefits plans, advising on Metro’s fiduciary duties, and providing litigation services to Metro on an “as needed” basis during the three-year period. All services must be requested and approved by the Office of Metro Attorney. The attached “Outside Counsel Coordination and Billing Protocols” are incorporated into this Scope of Work. All services and materials shall be provided by Contractor in accordance with the Scope of Work in a competent and professional manner.
3. **Payment.** Metro shall pay Contractor for services performed in accordance with the rates established in Contractor’s proposal dated _____, for a maximum sum not to exceed FORTY-FIVE THOUSAND DOLLARS AND 00/100 (\$45,000.00). The maximum price includes all fees, costs and expenses of whatever nature. Each of Metro's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing invoices shall include the Metro contract number, an itemized statement of work done and expenses incurred during the billing period, shall not be submitted more frequently than once a month, and sent to Metro Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736 or metroaccountspayable@oregonmetro.gov. Contractor’s billing invoices for services through June 30 shall be submitted to Metro by July 15. Payment shall be made by Metro on a Net 30-day basis upon approval of Contractor invoice.
4. **Insurance.** Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (a) The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. Contractor’s coverage will be primary as respects Metro;
 - (b) Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 per occurrence;
 - (c) Workers’ Compensation insurance meeting Oregon statutory requirements including Employer’s Liability with limits not less than \$500,000 per accident or disease; and

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(d) Professional Liability Insurance, with limits of not less than \$1,000,000 per occurrence, covering personal injury and property damage arising from errors, omissions or malpractice.

Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS on Commercial General Liability policies.

Contractor shall provide 30 days notice to Metro of any material change or policy cancellation.

Upon return of the Contractor signed agreement to Metro, Contractor shall provide Metro with a Certificate of Insurance complying with this article. The Certificate of Insurance shall identify the Metro contract number.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising directly out of its negligent acts, errors or omission in the performance of professional services under this agreement.

As respects all acts, errors or omission which do not arise directly out of the performance of professional services [including but not limited to those acts, errors or omissions typically covered by commercial general liability insurance or automobile liability insurance], Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for six years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of

Personal Services Agreement

Metro Contract No.

any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapters 279A, 279B, and 279C and the recycling provisions of ORS 279B.025, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party without Metro's written consent.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor seven (7) days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section. Upon termination, Contractor shall work to efficiently and effectively transition any pending matters to the appropriate individuals at Metro's direction.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties. Metro may approve changes and modifications to the original contract, including deletions of work and additional services reasonably related to the original work scope. Contractor may propose changes in the work that Contractor believes are necessary, will result in higher quality work, decrease the amount of the contract, or otherwise result in a better or more efficient work product. If such changes are approved by Metro, they shall be executed by written contract amendment signed by both parties. Such changes shall not relieve Contractor of any obligation or warranty under the contract. No oral statements by either party shall modify or affect the terms of the contract.

Personal Services Agreement

Metro Contract No.

17. Severability. The parties agree that any provision of this Contract that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Contract shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of them and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid and enforceable shall be automatically added to this Contract in lieu of the illegal, invalid, or unenforceable provision. Any failure by METRO to enforce a provision of the Contract is not to be construed as a waiver by METRO of this right to do so.

18. Counterparts. This Contract may be executed in counterparts or multiples, any one of which will have the full force of an original.

19. Delivery of Notices. Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail or fax as follows:

To METRO: Lisa Cohen Greenfield
Office of Metro Attorney
600 NE Grand Ave.
Portland, OR 97232
(503) 797-1792 fax

To CONTRACTOR: XXXXXX
Contractor Name
address
City State Zip
(XXX) XXX-XXXX fax

CONTRACTOR

METRO

By _____

By _____

Print Name _____

Print Name _____

Date _____

Date _____

Attachment: Billing Protocol