



METRO

**REQUEST FOR PROPOSALS
TORT COUNSEL SERVICES
RFP #11-1742-OMA**

INTRODUCTION

Metro, an Oregon regional government, is soliciting written proposals for Tort Counsel Services to be utilized on an as needed basis for future litigation. Possible future litigation includes defense of any claims which are subject to the Oregon Tort Claims Act, including labor and employment matters, personal injury, and property damage. It is possible that future litigation will not be referred to outside counsel.

PROPOSAL INFORMATION

Proposals will be received at the business office of Office of Metro Attorney, 600 NE Grand Avenue, Portland, Oregon 97232-2736, to the attention of Lisa M. Hefty, until 4:00 PM PDT, October 12, 2010. Proposals submitted prior to that date should be delivered to the Office of Metro Attorney marked "Proposal – Tort Counsel Services."

The contract period will be from approximately November 1, 2010 through October 31, 2015. It may be renewed for an additional 3-year period by mutual agreement.

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 Tort Counsel Services.

SCOPE OF WORK

Provide necessary Tort Counsel Services including claims evaluation and litigation services on an "as-needed" basis for Metro during the five-year period.

MINIMUM REQUIREMENTS

Proposers must meet the following minimum requirements in order to be considered a Proposer:

1. Be licensed to practice law in the state of Oregon; and
2. Be an attorney or firm of attorneys of recognized statewide standing in the fields of law relating to torts, labor and employment practice, and general civil litigation.

PROPOSAL INSTRUCTIONS

1. Deadline and Submission of Proposals

Three copies of the Proposal shall be furnished to Metro addressed to:

Lisa M. Hefty
Office of Metro Attorney
600 NE Grand Avenue
Portland, Oregon 97232-2736
Phone: 503-797-1530
lisa.hefty@oregonmetro.gov

and clearly marked "Proposal – Tort Counsel Services." Proposals may not be considered if received after 4:00 PM PDT, October 12, 2010.

2. 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 Request for Proposals will not be considered by Metro in evaluating the Proposal. All questions relating to the Request for Proposals should be addressed to Lisa Hefty at the address above on or before October 1, 2010. Any questions which, in the opinion of Metro, warrant a written reply or Request for Proposals amendment will be furnished to all parties receiving this Request for Proposals.

3. 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.

4. Contract Type

Metro intends to award Outside Counsel Services Agreements to the selected attorney(s) for this representation. A copy of the required standard Outside Counsel Services Agreement form is attached.

5. Validity Period and Authority

The Proposal shall be considered valid for a period of at least 90 days and shall contain a statement to that effect. The Proposal shall contain the name, title, address and telephone

number of an individual or individuals with authority to bind any firm contacted during the period in which Metro is evaluating the Proposal.

6. 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 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.

TERMS OF AGREEMENT

The initial term of this contract shall be from approximately November 1, 2010 through and including October 31, 2015, or completion of representation.

PROPOSAL CONTENT

Submissions that do not address all questions posed or are otherwise incomplete may be deemed non-responsive and not considered as part of this competitive process.

INFORMATION REQUIRED

1. Provide name, address of provider, date established and brief description of attorney(s) and/or firm's background.
2. State the personnel in your firm assigned to this contract or who will contribute to this contract, and their general duties.
3. Describe the experience and professional credentials of the staff who would be assigned to perform the work for Metro. Resumes of individuals proposed for this contract may be attached. Please address ability to communicate with Metro staff through e-mail and file transfer mechanisms.
4. Provide a copy of your firm's Affirmative Action Plan, if any, or any hiring policy or action taken to increase diversity in your firm.
5. Describe the attorney's area of specialty or expertise, if any. Responses should be organized in a fashion that addresses the following areas:
 - a. Experience with public entity tort practice and litigation, and specific areas of specialty.
 - b. Experience with alternative dispute resolution.
 - c. Legal community references.
 - d. Client references, preferably public entity clients.

6. 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 that are to be considered. Fees may not be increased during the contract period except as described in the proposal.
7. Whether you are an OMWESB Certified Firm.

Attachment: Sample Outside Counsel Services Agreement, and Outside Counsel – Office of Metro Attorney Coordination and Billing Protocols.



M E T R O
600 NE Grand Avenue
Portland, OR 97232-2736
(503) 797-1700

Outside Counsel Services Agreement

Contract No. _____

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, Oregon 97232-2736, and _____ referred to herein as “Contractor,” located at _____.

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 November 1, 2010 and shall remain in effect until and including October 31, 2015, unless terminated or extended as provided in this Agreement. This Agreement may be extended for one additional three-year period by mutual agreement of the parties. 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 13 Termination.

2. Scope of Work.

Provide necessary Tort Counsel Services, including claims evaluation and litigation services on an “as needed” basis for Metro during the five-year period. All services must be requested and approved by Metro’s 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 NINE THOUSAND NINE HUNDRED NINETY-NINE DOLLARS AND 99/100 (\$49,999.99).

4. Insurance.

- a. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers’ Compensation Law shall comply with ORS 656.017, which requires them to provide Workers’ Compensation coverage for all their subject workers. Contractor shall provide

Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

- b. Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$300,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.
- c. Contractor shall provide Metro with a certificate of insurance complying with this article and naming Metro as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

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 out of or in any way connected with its performance of this Agreement.

6. 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.

7. 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.

8. 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 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.

9. 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.

10. State and Federal Law Constraints.

Both parties shall comply with the public contracting provisions of ORS chapter 279, the recycling provisions of ORS 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.

11. 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.

12. 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.

13. Termination.

This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor seven days written notice of termination, 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.

14. 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.

15. 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

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

OUTSIDE COUNSEL - OFFICE OF METRO ATTORNEY COORDINATION AND BILLING PROTOCOLS

A. Coordination.

The Office of Metro Attorney (“OMA”) has ultimate responsibility and authority for decisions made in handling all legal matters. As soon as possible after outside counsel is retained, the Metro attorney working on the matter (“the Metro Attorney”) will discuss his/her respective degree of involvement, division of responsibility, and strategy. At a minimum, the Metro Attorney will participate fully in all decisions regarding significant aspects of the matter. Unless there is a valid reason for his or her not appearing, the Metro Attorney will enter an appearance in any lawsuit as attorneys of record.

Except for quickly obtainable routine factual information (e.g., telephone numbers, addresses), all communications by outside counsel with Metro personnel should be through the Metro Attorney, unless the Metro Attorney agrees in a specific instance that direct communication with other Metro personnel would be more efficient.

Outside counsel will forward a copy of all documents to the Metro Attorney with sufficient time for meaningful review before dissemination or filing. If time does not permit forwarding a document, it will be reviewed with the Metro Attorney by telephone.

Outside counsel will promptly furnish the Metro Attorney with copies of all legal opinions, memoranda of law, or other research, pleadings, and correspondence.

All settlement overtures should immediately be reported to the Metro Attorney.

Outside counsel should avoid contact with media representatives covering Metro matters. If media representatives contact outside counsel concerning matters being handled for Metro, outside counsel should decline any comment beyond confirming factual matters that are already a matter of public record. All media calls should be referred to OMA.

B. Billing.

All billings by outside counsel are subject to approval by the Metro Attorney. It is expected that outside counsel will adhere to the following billing procedures, and that any significant deviation from them will be discussed with the Metro Attorney in advance.

Prior to entering into a personal services agreement on any matter, outside counsel will provide an estimate of hours and costs for identifiable phases of the claim, and a statement of its hourly rates and billing policies.

Any major research projects will be discussed and approved in advance.

Because outside counsel is being retained, at least in part, because of its expertise in this area of law, no basic legal research should be billed for.

There will be a primary contact at the law firm who is aware of the status of the matter at all times. The primary contact will be personally involved in and responsible for all aspects of the matter, including billing.

Neither other counsel nor experts may be retained on Metro's behalf without prior approval by the responsible Metro Attorney. Only one outside counsel attorney should attend meetings, arguments and depositions, unless specifically authorized in advance.

Outside counsel will not bill for start-up time of educating a lawyer when a matter has been transferred to another attorney unless the transfer and billing is pre-approved by the Metro Attorney.