



CITY OF OAKLAND
OFFICE OF THE CITY ATTORNEY
BARBARA J. PARKER, CITY ATTORNEY

**REQUEST FOR QUALIFICATIONS
FOR THE LEGAL SERVICES:**

Outside Counsel for Community Police Review Agency

Please respond by January 5, 2018

Contact Person: Mark Forte
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INTRODUCTION

In November 2016, Oakland voters overwhelmingly passed Measure LL, an amendment to the Oakland City Charter which established a seven-member Oakland Police Commission (“Commission”) and a Community Police Review Agency (“CPRA”). The Office of the Oakland City Attorney is responsible for providing all legal services for the City of Oakland Police Commission and is responsible for engaging outside counsel to advise the CPRA in conjunction with the City Attorney’s Office.

The CPRA will receive, review and prioritize all public complaints concerning the alleged misconduct of police officers, and will replace Oakland’s Citizens’ Police Review Board. The Agency’s day-to-day operations will be overseen by a Director, who in turn will report to the Commission. In accordance with Measure LL, the City Attorney wishes to retain outside counsel to provide the CPRA advice in the following two areas: 1) police misconduct investigations; and 2) recommending discipline. Interested firms/individuals must be available to commit a significant amount of time to the CPRA, and must not regularly defend law enforcement officers.

The City Attorney requests detailed information regarding the qualifications of attorneys or law firms interested in providing legal services to the CPRA to make this appointment and to establish a back-up list of qualified attorneys or law firms from which future outside counsel may be selected.

In general, the City Attorney is interested in hiring a diverse group of firms/individuals that will provide high-quality services while containing legal costs. We seek to build ongoing relationships with firms that share our commitment to quality and to cost containment, as well as expand and strengthen our relationships with Oakland-based firms that are committed to diversity.

Selection of outside counsel for all matters is based on the quality of their work, commitment to controlling costs, adherence to budgets, and commitment to providing equal opportunities for minorities and women, persons with disabilities and regardless of sexual orientation. We encourage innovative approaches to billing proposals, whether fixed rate per project, blended hourly rate per project, discounted rates, contingency fees, or some other method. When we select a firm to represent the City of Oakland we decide which attorneys will be working on our matters, and we require advance approval of any changes in assignments.

All firms that we retain must enter into Oakland’s standard Professional Services Agreement (PSA), and complete and provide the following schedules and documentation.

- Combined Schedules: C-1: Declaration of Compliance with the American Disabilities Act, Schedule P: Nuclear Free Zone Disclosure, Schedule U: Compliance Commitment Agreement, Schedule V: Affidavit of Non-Disciplinary or Investigatory Action, Schedule;
- Schedule B-2: Arizona Resolution
- Schedule D: Ownership Ethnicity and Gender Questionnaire;
- Schedule E: Project Consultant Team;
- Schedule N: Declaration of Compliance for the City’s Living Wage Ordinance;
- Schedule N-1: Equal Benefits Declaration of Nondiscrimination,;
- Schedule O: Contractor Acknowledgment of City of Oakland Campaign Contribution Limits;
- Proof of Insurance on the ACORD form showing the types and amounts of and insurance coverage required in Schedule Q, Insurance Requirements; and
- Current Oakland Business Tax certificate or application in progress.

In addition to the PSA, selected firms will be required to enter into a Scope of Service/Retention Agreement for each specific matter. Each Scope of Service / Retention Agreement includes a written work plan or case handling plan, a capped “not to exceed” amount and the names of the individuals in the law firm assigned to work on the matter and their hourly rates. The Scope of Service / Retention Agreement becomes a part of the overall agreement and cannot be modified without the advance written approval of the City Attorney, a Chief Assistant City Attorney or a Special Counsel. The Office of the City Attorney will not approve bills/invoices that are in excess of budget, absent prior approval. All invoices must set forth the billing amount, the cap, and the amount remaining on the contract. The documents listed above are included as an attachment.

Selected firms are required to be current on the payment of Oakland business taxes. This tax is based on income from work the firm performs in Oakland. Selected firms must have or obtain an Oakland Business Tax Certificate regardless of where the firm is located. See the attached Outside Counsel Policy Guide for more information.

REQUESTED INFORMATION (FIRM DATA & INFORMATION)

Respondents should provide the following background information for each attorney in the firm who wishes to be qualified to provide advice or assist in providing advice to the CPRA. Please provide two copies of the responses and please identify the partner or shareholder who would be in charge of the representation. For purposes of providing background information, “peace officers” include all law enforcement officers, including but not limited to police officers, deputy sheriffs, highway patrol officers, and corrections officers,

1. Describe your professional experience in the area of peace officer misconduct, including any experience in civil rights litigation, *Pitchess* motion practice, *Brady* disclosures, the Public Safety Officers Procedural Bill of Rights, internal affairs investigations, and arbitration of peace officer discipline.
2. Describe your professional experience in the area of employee misconduct generally, including any experience in workplace investigations, employment litigation, and employee discipline and termination.
3. Describe any other experience that may be relevant to advising the CPRA on investigations and discipline.
4. Have you ever represented a client in a claim or lawsuit against a peace officer department or agency? If so, please describe the timing and nature of the representation(s).
5. Have you ever represented a peace officer department or agency in a law suit? If so, please describe the timing and nature of the representation(s).
6. Have you ever represented a peace officer in a civil or criminal matter for alleged on-the-job misconduct? If so, please describe the timing and nature of the representation(s).
7. Have you ever represented a peace officer or a peace officer employee association in a discipline matter or collective bargaining dispute? If so, please describe the timing and nature of the representation(s).

In addition, Respondents should include the following information:

1. Your office's availability to perform the work of outside counsel to the CPRA, including number of hours per week/month the lead attorney can personally commit, availability of attorneys for on-site meetings and consultations, any regular time constraints or competing commitments, and availability of associate attorneys to advise the CPRA in the absence of the lead attorney.
2. The diversity of the firm in terms of women, minorities, persons with disabilities, sexual orientation (LGBT), etc..
3. A description of the nature and scope of specific projects handled by each qualified attorney, or significant matters that may be relevant to representation of the City of Oakland in such disputes.
4. An agreement not to engage in litigation against the City of Oakland or represent clients that have interests that are directly adverse to the City of Oakland without first informing the Office of the City Attorney and obtaining written permission from City to do so.
5. A firm resume or brochure.

FEE STRUCTURE

Respondents should provide hourly rates for each attorney seeking qualification, as well as paralegals and other professionals who will assist in the representation.

The hourly rate quoted should include all salary and compensation, and all overhead expenses, profits and other employee costs, including but not limited to clerical and word processing expenses. Respondents should list all expenses they propose to bill in addition to legal fees and the basis for such expenses. The contract will provide for usual and customary reimbursement of third party costs based on the actual expense. The City does not reimburse for additional overhead on third party costs.

If rates are to be adjusted during the course of representation, the method for such adjustment should be described. Respondents should include alternatives to hourly billing, including fixed price representation and contingency fee arrangements. The City Attorney will establish with selected firms legal fees and expense budgets for each assigned matter. Please see the attached Outside Counsel Policy Guide for more information.

REVIEW OF SUBMISSIONS

The City Attorney's Office will develop a list of firms to conduct work on behalf of the Office based upon its evaluation of the responses to this Request for Qualifications. Price will not be the controlling factor in selecting firms for the list, but price will be a factor in making work assignments. A firm is not entitled to be placed on the list or entitled to work solely on the basis of submission of a low price quotation. The City Attorney will evaluate the responses in the areas of Scope of Service / Scope of Representation, Firm Data and Information and Fee Structure.

Once the list is established, specific firms and individual attorneys may be selected from the list for execution of the PSA, required schedules and Scope of Service / Retention Agreement as the need for legal services occurs or in anticipation of the need for such services. Execution of the PSA and related documents will not guarantee that any case or matter or the number of cases or matters will be assigned to outside counsel. The decision to retain outside counsel will be that of the City Attorney on a case-by-case or matter-by-matter basis. Contracts will remain in effect for a period of not less than one year from the date of execution thereof unless they are terminated before expiration by providing written notice, or unless they are renewed or extended. Fee

structures should take this time period into account.

RESPONDENT'S PERSONNEL

The City Attorney intends to reserve the right to designate a specific attorney(s) in a contracting law firm to work on a specific case or matter as lead counsel or as associate lead counsel for the services rendered pursuant to any contract, and further intends to reserve the right to terminate the contract if the lead counsel leaves employment of the firm.

CONFIDENTIALITY OF PROPOSAL INFORMATION WAIVER

Respondents specifically and categorically agree that, as a condition for the opening and review of their responsive submittals, the information relating to fees and fee structure submitted by every other respondent is confidential and proprietary information insofar as such Respondent is concerned.

Respondents are further advised that all the terms and conditions, including fees and fee structures, forming part of any agreement entered into shall, upon such agreement being executed, become a public record of the City and subject to full disclosure, and each Respondent waives any right to object to any such disclosure.

CITY'S RESERVATION OF RIGHTS

This Request for Qualifications does not constitute a commitment by the Office of the City Attorney or by the City Attorney to enter into any agreement or contract, or to pay any costs associated with the preparation of responses, submittals or other documents or any related-work by any Respondent. The City Attorney reserves the right to enter into agreements for legal services with persons or firms who do not respond. The City Attorney further reserves the right to waive responses to any part of this request if, in its sole judgment, it determines that it is in the best interests of the City to do so. The City Attorney may require any Respondent to participate in negotiations and to submit such other information or documentation as it may deem necessary as conditions of awarding a contract. The City Attorney reserves the right to vary or waive requirements for different Respondents as shall fit the City's needs.

STATEMENT OF INTEREST AND QUALIFICATIONS (SOQ)

Submit Proposal to:

City of Oakland, Office of the City Attorney
One Frank H Ogawa Plaza, 6th Floor Oakland, CA 94612

2 copies of the SOQ must be enclosed in a sealed package and marked as follows:

Confidential Documents / Attn: Mark Forte

For questions concerning this SOQ contact mforte@oaklandcityattorney.org

CITY OF OAKLAND OUTSIDE COUNSEL POLICY

The Office of the Oakland City Attorney (OCA) brings affirmative litigation to protect the civil and human rights of Oakland residents. The City Attorney retains outside counsel for three types of matters or cases: (1) cases that require specialized expertise that our office does not have in-house; (2) cases that present conflict of interest issues; and, (3) cases that we cannot handle due to lack of capacity due to reductions to the City Attorney's Office budget. The City of Oakland engages Outside Counsel only through the Office of the City Attorney.

SELECTION OF COUNSEL

The goal is to establish a list of qualified firms and individuals in a variety of practice areas for work that we may need during a fiscal year. We are interested in hiring a diverse group of firms/individuals that will provide high-quality services and that are dedicated to containing legal costs. We seek to build ongoing relationships with firms that share our commitment to quality and cost containment, as well as expand and strengthen our relationships with Oakland-based firms, small firms and firms that are committed to diversity.

Selection of outside counsel for all matters - large and small - is based on the quality of their work, commitment to controlling costs, adherence to budgets and commitment to providing opportunities for minorities, women, and persons with disabilities, regardless of sexual orientation. We encourage innovative approaches to billing, fixed rate per project, blended hourly rate per project, discounted rates, contingency fee arrangements, etc.

When we select a firm to represent the City we decide which attorneys will be working on our matters, and we require advance approval of any changes in assignments.

GENERAL EXPECTATIONS

It is the policy of OCA that the City Attorney has the ultimate responsibility for managing every legal matter affecting the City of Oakland. All strategic and tactical decisions must be approved in advance by the responsible in-house attorney. It is expected that firms hired as outside counsel observe the highest ethical standards when representing the City and that potential conflicts be discussed with OCA as soon as they are recognized. Outside counsel must fully understand the objectives to be achieved and their role in achieving them. This includes participation in establishing a strategy and a budget.

Outside counsel is to keep OCA advised of significant developments as they occur, and obtain the approval of the City Attorney, Assistant City Attorneys or Special Counsel prior to performing services that would cause the contractual budget to be exceeded. Further, outside counsel must avoid overstaffing, rotating the attorneys assigned to the City's matters, and multiple representation at meetings, depositions, hearings and court appearances. We discourage changes in the individual attorneys who are working on our matters and we must be consulted in advance of any proposed changes.

Drafts of all briefs and submissions to courts and agencies should be provided to the responsible in-house attorney. It is important that drafts be received in adequate time for review and comment. OCA also expects to receive the final version of briefs, filings and legal memos.

CONFLICTS OF INTEREST

It is expected that OCA will be notified immediately if outside counsel becomes aware of an actual or potential conflict. OCA recognizes that on occasion outside counsel will be asked to represent clients whose interests are inconsistent with the City's, and that outside counsel may even be asked to represent parties whose interests are in direct conflict with the City. OCA will generally waive conflicts where no issues of significant City policy are involved and where there is no connection between matters in which outside counsel has represented the City and matters in which outside counsel has been retained by other clients. Whenever OCA waives a conflict, the waiver will be conditioned on written agreement from the other client that it will not object to outside counsel representing the City in any pending or future matter. OCA generally will **not** waive a conflict if the matter is related to a matter in which outside counsel has represented the City, or if your firm has access to relevant confidential information of the City, or if your representation of the other client involves issues of important City of Oakland policy.

ASSIGNMENT OF ATTORNEY

Before OCA contracts with outside counsel, OCA expects a commitment with respect to the attorneys who will be representing the City. If it later becomes necessary to substitute an attorney or add additional attorneys, outside counsel must receive prior approval before doing so. Significant roles should not be given to other attorneys without OCA's prior concurrence.

While OCA expects senior attorneys to perform those tasks that require substantial experience, OCA expects that outside counsel will attempt to minimize legal expenses by relying on junior attorneys and paralegals for less demanding tasks.

STRATEGY AND BUDGET

For every new matter outside counsel and the responsible in-house attorney are required to prepare a strategy and a budget. The budget should estimate total fees and expenses to see the matter to its conclusion. If outside counsel anticipates a change in the budget after the agreement is executed outside counsel must discuss it with the City Attorney, Special Counsel or an Assistant City Attorney before the work is done or the expense is incurred. OCA will not approve bills/invoices that are in excess of budget absent prior approval.

Litigation strategy should identify alternate methods of disposing of the case, including ADR (Alternative Dispute Resolution) and settlement. An outline should be made of the proposed course of litigation, including dispositive pretrial motions, the scope of discovery and the trial strategy. If it appears that a case will go to trial, an estimate of costs should be sent to the responsible in-house attorney no later than the close of discovery, if possible. The detail of all plans (litigation and otherwise) will be dictated by the significance of the matter.

LITIGATION

Advance approval from the City Attorney, Special Counsel or an Assistant City Attorneys is required before:

- Preparing pretrial motions;
- Preparing a cross-complaint which adds new parties to the action; Selecting and retaining expert witnesses;
- Preparing motions during trial, post-trial motions or appeals;
- Undertaking any unusual activity, such as a major research memorandum;
- Agreeing to alternative dispute resolution processes;
- Agreeing to settlement.

Outside counsel must consult with the in-house attorney concerning the strategy for taking depositions and other discovery. The deposition plan should include a brief explanation of the proposed deponent's location, his or her involvement in the matter, and the purpose of the deposition.

Outside counsel must exercise restraint in discovery and legal research conducted in routine small matters. We will not return to a firm that allows costs to approach - much less exceed- the City's exposure or potential recovery.

Litigation counsel must evaluate ADR as substitute for full-scale litigation. OCA expects that ADR techniques will be given active consideration from the commencement of litigation. OCA does not view ADR as an alternative to be considered only when trial is imminent and after months or years of costly discovery and pretrial battles.

RATE STRUCTURE

Billing rates will be established at the outset of each matter. In establishing the billing rates it is expected that outside counsel will consider the competitive climate in the practice of law and the fact that OCA assures prompt payment.

Changes in billing rates must obtain our advance consent and the existing agreement will need to be amended. OCA assumes that the rates agreed upon are as low as those offered to any other government/public agency client; if any other clients enjoy more favorable billing rates, OCA expects to be told how to qualify for similar billing treatment.

If the billing method is hourly rates, the rates should contain all overhead and internal charges associated with outside counsel's practice, such as administration, secretarial, docket, word processing, accounting, library and other clerical time. If outside counsel customarily makes separate charges for any of these functions; the billing arrangement must be specifically approved in advance by the responsible in-house attorney and the amount must be factored into the overall budget. OCA expects that the hourly rates of outside counsel that bill separately for secretarial or other services will be less than those of competitive firms that include all overhead in their billing rates.

BILLING/INVOICING

Separate bills/invoices are required for each specific matter. Absent an express agreement to the contrary, bills/invoices must be submitted monthly, unless another arrangement is agreed to in advance, or unless the matter is inactive.

All bills/invoices should include hours spent (to nearest fraction), brief description of the services rendered and the individual who provided the services. A summary of the total hours by individual with his/her billing rate should also be included.

All bills/invoices for services and disbursements must conform to the format of the budget per the Scope of Service Agreement, i.e., the bill/invoice must be in a form that will enable the Office of the City Attorney to compare the items that made up the budget with the items that appear on the bill/invoice.

All bills/invoices must include an accounting showing the original budget amount per the Scope of Service Agreement the billed/invoiced amounts to date and the amount remaining on the original budget. Bills not including this accounting will be returned unpaid.

OCA will not approve bills/invoices that are in excess of budget absent prior approval.

If travel time is devoted to working for one or more clients in addition to the City, OCA should not be billed for the time devoted to other clients. Billing for time spent in transit should not include time that would be spent in normal commute to your office unless agreed to in advance, OCA should not be billed for time away from home or the office, which is not in transit or spent performing legal services.

Any travel that requires an overnight stay or transportation by an airline must be approved in advance. If an overnight stay is necessary, OCA has the right to approve the accommodations. Reimbursement for meals will be made at the City's per diem rate (Breakfast \$11.00, Lunch \$16.00 and Dinner \$29.00 or \$56.00 per day). If airline travel is necessary, the OCA will reimburse at the coach rate.

As noted above, bills/invoices for disbursements must be detailed and must reflect only the amounts that were paid.

If outside counsel charges separately for fax services, duplicating, computer-assisted research, for a special word-processing project that was approved in advance, the bill/invoice must show the way in which the charge was developed (for example, in the case of fax and duplicating charges, the bill/invoice must show the number of pages and the per-page charge; in the case of Westlaw or Lexis research the bill/invoice must show the amount that was charged to outside counsel).

All disbursement charges must be accompanied by a copy of the invoice or statement to verify the charges. OCA will not pay charges that exceed the market rate for any service such as messenger, depositions, expert witness, etc.

COMMUNICATION

Outside counsel must contact the responsible in house attorney if any issue arises that is not covered by this policy, or if outside counsel wishes to deviate from any of the stated policies.