



**District of Columbia
Health Benefit Exchange**

**Request for Proposals:
Outside Legal Counsel**

April 29, 2013

I. INTRODUCTION

A. Overview

You are invited to review and respond to this Request for Proposals (RFP), which is being issued by the District of Columbia Health Benefit Exchange Authority (“Exchange”) pursuant to D.C. Official Code §§ 31-3171.04(a)(5) and 3171.08(d)(2)), and § IIC of the Exchange’s Contracting and Procurement Policies and Procedures, as adopted on October 3, 2012. To submit a Proposal to provide the requested services, firms submitting proposals (“Offerors”) must comply with the instructions contained in this document. By submitting a Proposal, the Offeror agrees to the terms and conditions stated in this RFP, as well as any other terms or conditions mutually agreed upon.

This is a time and materials contract for outside legal counsel only with a maximum fixed price of \$500,000. The contract term will be a base year of twelve (12) months from the date of the award with 4 twelve (12) month option periods to be exercised based on performance and availability of funds.

Read this document carefully. The proposal due date is May 8, 2013 by 4:00 p.m. Responses to this RFP must be submitted to the Exchange contact noted below.

B. Key Dates

Offerors are advised of the key dates and times shown below. All times noted are Eastern Daylight Time (EDT).

KEY ACTION DATES:

Release RFP Date: April 29, 2013 at noon.

Proposals Due Date: May 8, 2013 by 4:00 p.m.

Notice of Intent to Award Date: May 14, 2013 by noon.

Estimated Term Dates: May 20, 2013 through
May 19, 2014

C. Contact Person

Sandra E. Robinson
District of Columbia Health Benefit Exchange Authority

E-mail address: sandrae.robinson@dc.gov
441 4th Street, NW, Suite 870N
Washington, DC 20001

D. Format of Proposals

Proposals must be received by the Exchange by certified mail receipt or any other service where receipt can be tracked, and shall contain all Attachments and Exhibits in a sealed envelope. The sealed envelope must be plainly marked with: (1) the RFP number and title; and (2) the Offering firm's name and address. The following is an acceptable example of the labeling address:

DCHBX Outside Legal Counsel RFP-02-2013
Attention: Sandra Robinson
District of Columbia Health Benefit Exchange Authority
441 4th Street, NW, Suite 870N
Washington, DC 20001

Name and Address of Firm

Proposals shall be on standard 8 1/2" x 11" paper, and once submitted, shall become the sole property of the Exchange. Offerors shall submit a minimum of four (4) copies of their Proposal in the sealed envelope. One (1) copy of the proposal shall be titled "Master Copy" and the remaining three (3) titled "Copies." In addition, an electronic .pdf file copy of the Proposal on a USB flash drive shall also be submitted to the contact person identified in § I.C. above.

A Proposal that is not submitted meeting the standards above will not be evaluated and returned to the Offeror.

II. MINIMUM QUALIFICATIONS

A. Offeror's Minimum Qualifications

The Exchange is a new, independent authority of the Government of the District of Columbia, governed by an Executive Board. As such, the Exchange will require the broad range of services that would be required to serve the needs of a start-up organization. The firm selected to provide legal services identified in the Statement of Work must have demonstrated capabilities and expertise in the following areas:

1. Corporate governance of enterprises similar to the Exchange;
2. Procurement and contracting practices and procedures including the negotiation of and drafting of contracts in a government setting;

3. Employment law and practice in a government setting;
4. Drafting legislation, rules and procedures, contracts, and other documents to implement the policy decisions of the Exchange's Executive Board;
5. Health insurance regulation at the state level as well as regulation at the federal level including knowledge of ERISA;
6. Experience with existing and expected federal and DC laws and regulations related to the implementation of the federal Affordable Care Act; and
7. Knowledge of and working experience with the operations and processes of the government of the District of Columbia.

B. Required Disclosures

1. A disclosure statement shall be submitted with an Offeror's Proposal (1) identifying, with an appropriate explanation, any clients of the Offeror's firm that have interests adverse to the District, and (2) stating that the Offeror's firm has conducted an internal conflicts check and discharged any and all obligations under the District of Columbia Rules of Professional Responsibility.

Upon awarding the contract, the winning Offeror shall have an on-going duty to update the disclosure statement filed above. Noncompliance with this disclosure obligation shall be cause for termination of this Agreement.

2. A disclosure statement that the Offeror has adequate financial resources to perform under the terms of the contract, including professional liability coverage in excess of \$1,000,000.

3. A disclosure statement that the Offeror is in compliance with all District licensing requirements and tax laws. For compliance with the District's tax laws, attach an executed copy of the "Clean Hands Self Certification" form.

4. A disclosure statement that the Offeror is not debarred, suspended or ineligible from participating in the procurement processes of the federal government or the District of Columbia government.

5. A disclosure statement, which may be included in the retainer agreement, stating the Exchange is the client, irrespective of the source of funds used to pay the legal bills associated with the legal services provided to the Exchange.

6. A statement that the Offeror, if awarded the contract, agrees to preserve and keep confidential any information or documentation it becomes aware of or comes into possession of as a part of its engagement with the Exchange.

III. SCOPE OF WORK

A. Legal Services

The purpose of this solicitation is to select a law firm to provide the Exchange with a broad set of legal services to help establish sound practices necessary to support its mission. The Exchange requires a law firm with proven expertise, extensive experience and the depth of staff to provide sound advice on any number of legal issues that arise, the most significant of which are more fully set forth in § II.A above. The firm engaged will also be expected to provide legal services on any issue deemed necessary by the Exchange's in-house legal staff.

Additionally, the firm engaged will provide legal services as are necessary to interpret, predict and comply with regulations and guidance from the federal government in relation to the implementation of the federal Affordable Care Act, and to implement any of the policies adopted by the Exchange Board that would require legislation, rules, interim policies, or health or dental insurance carrier agreements, among other things.

The firm engaged will be paid upon the submission and approval of monthly billing invoices. The firm engaged will serve at the direction of the Executive Director or General Counsel of the Exchange.

B. Contract Value; Payment and Invoicing; and Agreement Format

Payment to the firm engaged is contingent upon the Exchange having funds available. Any agreement entered between the Exchange and the firm engaged shall be subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08 (2001), (iii) D.C. Official Code § 47-105 (2001), and (iv) D.C. Official Code § 1-204.46.

The agreement is a time and materials contract with a maximum fixed-price of \$500,000. Payment to the firm engaged will be contingent upon the review and approval of each monthly invoice by the General Counsel of the Exchange or a designee. The firm engaged will be paid for services rendered, billed in 15 minute increments or on a flat rate basis per project as specified. The firm engaged may not invoice the Exchange for any costs that are not reasonable and consistent with the current market rates. The agreement shall have no minimum value. The Exchange reserves the right to unilaterally terminate or suspend the agreement or engagement indefinitely without cause.

The format of the agreement shall consist of a retainer that incorporates by reference the terms included in this RFP, attaches as exhibits or incorporates the required disclosures referenced in § II.B, and addresses any other terms deemed necessary by the parties.

IV. PROPOSAL CONTENT AND EVALUATION CRITERIA

A. Overview

All Proposals shall include the contents specified in this section. The instructions below track the criteria that will be used to evaluate Proposals. In order to achieve the highest score for a criterion, Offerors should follow the content instructions as closely as possible. If an Offeror does not follow the content instructions, the Offeror risks having the total points awarded for the corresponding criterion reduced, or having no points awarded at all.

Evidence of extensive previous experience in a similar context under short deadline efforts will receive significant consideration in the evaluation process, as will demonstrated experience in providing similar legal services to other states implementing the ACA and establishing health benefit exchanges. The Proposal that is most highly rated after applying the weighted evaluation criteria described herein will be recommended for selection. The Proposal content requirements and evaluation criteria include the following subject areas with the corresponding weighted point totals:

Administrative Requirements (10 points)
Offeror Qualifications (55 points)
Costs (20 points)
Certified Business Entity Participation (15 points)

Maximum Total Points – 100 points

Scoring shall be based upon the Offeror’s understanding of and insights into how the outside legal counsel will help the Exchange achieve its objectives and goals as outlined in the Scope of Work in §III. The Offeror will be assigned a score for each criterion based on the information contained in the Offeror’s Proposal. A panel created by the Exchange will score the results and will use the following approach in evaluating the Proposals:

1. Each content requirement or criteria will be evaluated independently. The Offeror whose response for a given content requirement is evaluated to be the most superior will be awarded the maximum points according to the weighted point totals, unless otherwise specified. The remaining Offerors will be awarded points on a comparative basis to the Offeror receiving the maximum total points for the relevant content requirement. After applying this approach to all of the content requirements, the Offeror will be assigned a total score that will equal the sum of points awarded for each content requirement.

2. Each content requirement or evaluation criteria will be evaluated in terms of the quality and substance of the Offeror’s responses, the reasonableness of the response and the likelihood of the Offeror being able to perform as described, and the demonstrated knowledge of the Offeror as reflected in the relevant responses, as applicable. The administrative requirements and Certified Business Entity (“CBE”) participation will be awarded on the bases described in subsections A and D.

3. In light of the potential for unexpected legal issues and projects that will inevitably arise, cost will be a critical factor in that the Exchange has a limited legal budget but is in need of significant legal assistance. Cost will be evaluated, in part, in terms of the knowledge and experience of the Offeror and how efficiently and economically they can render the legal services required.

4. The Exchange may request that Offerors revise their proposals by submitting a best and final offer or a series of best and final offers.

The issuance of this RFP in no way constitutes a commitment by the Exchange or the Government of the District of Columbia to award an agreement. The Exchange reserves the right to reject any or all Proposals received if the Exchange determines that it is in the best interest of the Exchange. The Exchange may reject any Proposal that is conditional or incomplete. Assumptions made by an Offeror in responding to this RFP will not bind the Exchange in any way. An assumption made by an Offeror may also be considered as conditional, or contingent upon the happening of an event, which may serve as cause for a Proposal to be rejected. Responses to this RFP will be assessed based on the criteria below.

B. Administrative Requirements

The Proposal shall include one (1) hard copy marked “Master,” three (3) additional hard copies marked “copy,” and one (1) electronic .pdf copy that is to be submitted to the Exchange contact person on a USB flash drive. In addition to the substantive responses included in the Proposal, an Offeror shall also include the following documentation:

1. A cover letter or other signature page signed by a person authorized to bind the firm ratifying the submission of the Proposal on behalf of the Offeror.
2. A Certificate of Liability Insurance equal to or greater than \$1,000,000.
3. Disclosures as described in § II.B.

C. Offeror Qualifications

In addition to the Offeror Minimum Qualifications in § II.A., Offeror must also demonstrate experience performing the legal services described in this RFP, including evidence that their organization has previous experience with similar services on projects of a similar scope as the project specified in this RFP. Offerors must demonstrate the capacity to work on and effectively manage multiple projects simultaneously, including the ability to staff projects with personnel with the requisite education, experience, knowledge and skills to perform the Scope of Work described in § III.

The following are examples of the desired qualifications for a successful Offeror:

- Experience in consulting state and quasi-governmental agencies, particularly start up organizations;
- Experience in implementing, preparing, and strategizing for health reform on a statewide level;
- Knowledge and understanding of federal and District insurance laws including the ACA and ERISA; and

- Demonstrated health and/or health insurance policy expertise by non-lawyer staff.

Offerors should also include the following documentation in support of the key firm staff that will be providing legal services to the Exchange and the Offering organization:

1. A resume of the relevant experience for the key firm staff and Offering organization that includes for each referenced engagement or employment experience:

- a. The duration of time spent, with start and end periods (month/year);

- b. A brief description of the specific engagement or experience and the relevant experience, including the identification of the client, name of the project, roles and responsibilities of the individual, and services provided by the individual or organization.

2. Three references for the Offering organization. Include a current contact name, company or agency name, and telephone number for each reference. At least one of the references shall be from a state or other governmental entity that has engaged the Offeror to provide services. Reference Contacts must be individuals who managed or supervised the Offering firm's work. The Reference Contact must be available to confirm the experience provided on the dates specified in the resume. Offerors should note that references may be contacted and the results will be a factor in the evaluation and selection process.

D. Costs

Provide the billing rates for each attorney, advisor or other staff member that is likely to be assigned to the contract.

E. Certified Business Entity Participation

This RFP does not include a minimum CBE participation preference. However, CBE firms are encouraged to submit proposals, and non-CBE Offerors are encouraged to sub-contract with CBEs. The Exchange will incorporate the preference points codified at D.C. Official Code § 2-218.43(a) (1). The highest total of preference points obtained by an Offeror will receive the maximum point total associated with this criterion. The preference points attributable to the other Offerors will be calculated as a percentage of the highest preference point total submitted. For example, if Offeror A receives 10 preference points and Offeror B receives 6 preference points, Offeror B would receive 60% of the maximum score for the CBE evaluation criterion. In terms of total points awarded, Offeror A would receive 15 points and Offeror B would receive 9 points for this criterion.

Any preference points claimed must be accompanied with a copy of the appropriate certifications issued by the District's Department of Small, Local Business Development.