

REQUEST FOR PROPOSALS FOR LEGAL ASSISTANCE ON RENEWABLE ENERGY POWER PURCHASE AND ENERGY RESOURCE AGREEMENTS

The Seattle City Attorney's Office ("CAO") issues this Request for Proposals ("RFP") for the provision of legal services to the City on negotiations of power purchase agreements for new or existing third-party owned renewable energy generation projects. Firms or Persons responding to this RFP are referenced herein as Proposers.

The outside legal counsel will support the City of Seattle's City Light department (the "City") with the creation of a pro forma power purchase agreement and negotiation of power purchase agreements with selected counterparties. It is estimated the legal services support being sought will involve negotiating approximately 10-20 power purchase agreements over 1-2 years.

1.0 SCOPE OF WORK

While the duties of outside legal counsel will vary over time or due to changes in circumstances, it is expected that those duties may include the following:

- Advise the City on contractual structures related to renewable energy procurement including tradeoffs between a power purchase agreement and ownership structure.
- Draft pro forma agreements for procurement of renewable energy including power purchase agreements or agreements in which the City takes an ownership role including the option for direct pay included in the Inflation Reduction Act of 2022 (IRA). These agreements should include appropriate provisions to:
 - Ensure compliance with the Clean Energy Transformation Act ("CETA") and the Climate Commitment Act ("CCA");
 - Allow flexibility for future carbon or renewable regulations;
 - Account for the formation of an organized market in the future; and
 - Enable the transfer of transmission rights and / or Ancillary Services.
- Advise the City on and participate in negotiations related to power purchase agreements with various counterparties.
- Assist with analyzing benefits and risks to the City associated with various qualitative contract terms and coordinating with the City's technical and general counsel to modify and finalize agreements. The firm may assist with drafting comments and feedback, and otherwise provide counsel during the negotiation process, in response to counterparties' questions and suggested revisions.

2.0 QUALIFICATIONS

The CAO is seeking outside legal counsel with the following qualifications:

- Experience providing legal services to municipally owned or public power utility clients on power purchase agreements in the Western region of the U.S.
- Expert knowledge of and experience with Washington State laws including CETA, CCA.
- Expert knowledge of other regulatory processes that may impact the negotiation of power purchase agreements or procurement of renewable resources, including California Independent System Operator (“CAISO”) Energy Imbalance Market (“EIM”), and the California Air Resource Board (“CARB”).
- Expert knowledge of Northwest power markets, Bonneville Power Administration (“BPA”) and its open access transmission tariff (“OATT”), BPA transmission business policies, and other regional OATT and business practices.
- Familiarity with provisions of Inflation Reduction Act of 2022 (“IRA”) and how the provisions of the IRA impact the various structures through which the City may procure renewable energy including via power purchase agreement or ownership.
- Familiarity with market development in the West including CAISO’s Extended Day Ahead Market (“EDAM”) and Southwest Power Pool’s (“SPP”) Markets Plus initiatives and how the development of these markets may impact PPA negotiations.

3.0 PROPOSAL CONTENT

3.1 Experience and Qualifications

- The CAO will accept proposals from individual attorneys as well as from law firms. The successful Proposer must have extensive knowledge and experience with power purchase agreement negotiations as well as other contractual or ownership structures in the Western region of the United States.
- Provide the qualifications and experience of the specific individuals(s) who will provide advice under this contract. Identify the lead attorney for the contract.
- Identify the attorney/firm's principal place of business and identify the location from which the attorney/firm would provide the legal services under this contract.
- Name(s) of person(s) authorized to represent the firm, authorized to answer

questions and bind the firm, including the person(s) title and contact information.

- An affirmative statement that the firm and all assigned key professional staff are properly licensed to practice in Washington.
- Provide at least two references for each attorney who will provide advice under this contract, including at least one governmental entity if the Proposer has provided legal services to a government entity. Provide the name, agency, address, and phone number for each reference.
- In one page or less, explain why the City should consider you/your firm.
- Disclose any potential or actual conflicts of interest. "Conflict of interest" shall have the meaning as described in the Washington Rules of Professional Conduct.
- Please provide separate estimated budgets of hours required to complete each of the following activities:
 - Draft a pro forma power purchase agreement template;
 - Support the City in negotiating a power purchase agreement.

3.2 Fees

List the hourly rates of each attorney who will provide service under this contract, and the hourly rates of any paralegals and/or any other personnel.

3.3 Diversity Statement and Programs

The City remains committed to creating a diverse workplace that is representative of the diverse Seattle community. The City is looking for like-minded legal partners who are committed to creating measurable leadership opportunities for women, minority, LGBTQ and disabled lawyers. In light of this commitment, as well as in recognition of ABA House of Delegates adopted Resolution 113, please describe your firm's diversity composition, together with any diversity programs maintained by you or your firm. Track records of success in this area are of particular interest, specifically in the recruitment and retention of diverse lawyers. To the extent possible, the City further requests that Proposers indicate an anticipated percentage of time being billed by diverse lawyers if you or your firm is the successful Proposer in as much detail as possible.

4.0 PROPOSAL FORMAT, DELIVERY, AND OTHER REQUIREMENTS

Proposals submitted in responses to this RFP are limited to seven pages, exclusive of resumes.

Proposals should be submitted as one PDF file including all of the items identified above.

The proposal must be received no later than **5:00 p.m., Seattle time on January 11, 2023**. No late proposals will be accepted. Proposals should be sent to stephen.karbowski@seattle.gov.

5.0 METHOD OF PROPOSAL EVALUATION

The City will evaluate all properly submitted proposals by way of an internal review panel. Oral interviews of the highest ranked Proposers may be required prior to final selection. The Seattle City Attorney's Office will make the final selection of the firm/attorney to be retained by the City after consultation with the review panel.

The criteria and weightings for evaluation will be as follows:

Qualifications, experience, and competence of the firm and/or individuals to be assigned, clarity of presentation, and other factors	80%
Fees	20%

6.0 ENGAGEMENT LETTER

After selecting the apparent successful Proposer, the Proposer will be required to execute an engagement letter and agree to the CAO's outside counsel general terms and conditions (incorporated into the letter as Attachment A.) Proposers are advised that the general terms and conditions are considered final. Proposed changes are not encouraged and may be rejected. If unable to reach agreement with the Proposer initially selected, the CAO may terminate contract negotiations and reserves the right to select and negotiate with the Proposer with the next most favorable proposal. Negotiations will continue until an agreement is reached or until the CAO decides not to enter into an agreement under this RFP.

7.0 SOLICITATION PROCESS REQUIREMENTS

7.1 Communications with City

All Proposer communications regarding this RFP must be directed to the CAO's representative named below:

Stephen Karbowski
stephen.karbowski@seattle.gov
206-684-8245

Unless authorized by the CAO's representative named above, no other City official or employee is empowered to speak for the CAO with respect to this RFP. Proposers are advised that the CAO shall not be bound by information, clarification, or interpretation from other City officials or employees.

7.2 Schedule

RFP Released----- December 14, 2022
Deadline for questions ----- December 21, 2022
Proposals due ----- January 11, 2023, 5:00 PM PDT
Interviews (at City's option)----- Weeks of January 23 and 30, 2023
Selection Notification ----- February 14, 2023

8.0 MISCELLANEOUS

This Request for Proposal (RFP) is a request for offers to contract and does not obligate the CAO to contract for any services. The CAO reserves the right to:

- a) Request clarification of any proposal;
- b) Modify or alter any of the requirements herein;
- c) Reject any or all proposals, waive immaterial irregularities or informality in any proposal, and reissue this or a modified RFP.

Proposers are responsible for any costs involved in the preparation and submission of proposals, or for preparation of and attendance at any oral interviews or presentations.



**Seattle City Attorney
Outside Counsel General Terms and Billing Procedures
Attachment A**

As used in this Attachment A, "Outside Counsel" means any individual lawyer, other than an employee of the City of Seattle, or any law firm hired by the Seattle City Attorney to provide legal advice and represent the City of Seattle, and its officers or employees.

I. Interaction with City

- A. The City Attorney¹ must be given notice of any significant decisions to participate fully in making such decisions.
- B. Outside Counsel must obtain written approval for any changes to the scope of work authorized under this agreement.
- C. The City Attorney must be provided with advance drafts of all significant documents (policy statements, pleadings, memoranda) in sufficient time to participate fully in decisions regarding such documents.
- D. The City Attorney must routinely receive copies of all other documents, including correspondence and internal legal memoranda.
- E. The City Attorney must fully participate in all deliberations and decisions regarding possible settlement of a case.
- F. The City Attorney must participate in the selection of all consultants or experts. No subcontracting is permitted under this contract without the specific authorization of the City Attorney, and compliance with Chapter 20.42 Seattle Municipal Code.
- G. Provisions of this section may be modified to the extent necessary to comply with RPC 1.6 when there is a conflict between an individual employee represented by Outside Counsel and the City. In those circumstances, the City recognizes Outside Counsel's duties under RPC 1.8(f).

II. Potential Conflicts of Interest

- A. Outside Counsel will be deemed to represent the entire City and all its departments, agencies, branches, boards, commissions, and offices, unless specifically notified otherwise. Outside Counsel retained by the City to represent individual employees

¹ References in this document to obligations and rights of the City Attorney shall usually be made by an Assistant City Attorney or other member of the City Attorney's Office as identified by the City Attorney. Outside counsel may, however, contact the City Attorney directly whenever warranted.

under SMC 4.64 are deemed to represent the individual employee and the City to determine whether a conflict of interest exists.

B. In each instance where Outside Counsel learns there may arise, is, or may be an actual or potential conflict of interest, Outside Counsel will promptly notify the City Attorney in writing and seek written waivers from the City Attorney and the individual employee represented under SMC 4.64 as appropriate under RPC 1.8(f) as soon as possible. The City Attorney may waive potential conflicts that do not involve the subject matter for which Outside Counsel is engaged, but reserves the right to decline to waive a real or potential conflict in each case. Outside Counsel will not engage in conduct that presents a real or potential conflict of interest unless the City Attorney waives the conflict or potential conflict. The City Attorney will not issue blanket waivers.

C. Conflicts of interest include:

1. Conflicts described in the Rules of Professional Conduct;
2. Situations where Outside Counsel or any of its agents or subcontractors participate in or benefit from a transaction upon which Outside Counsel advised or is advising, except for payments for Outside Counsel's legal services under this Agreement;
3. Situations in which Outside Counsel advises or participates in any transaction that is, or would appear to a reasonable person to be, in conflict or incompatible with the proper duties of the Outside Counsel as provided in its contract, or which would affect, or would appear to a reasonable person to affect, the independent judgment of Outside Counsel; and
4. Any similar situation that interferes with Outside Counsel's ability to impartially advise the City, and its officers or employees, or would appear to a reasonable person to do so.

III. Communications

A. All communications relating to representing the City and its employees between Outside Counsel and the City, its officers, employees or agents, whether oral or written, and all documentation whether prepared by Outside Counsel or the City shall be considered confidential and shall not be disclosed except by the written consent of the City Attorney or an individual employee represented under SMC 4.64 as appropriate under RPC 1.6.

B. Outside Counsel shall not contact the media, respond to requests for interview, or respond to any media inquiries about this matter or any related activities without express authorization from the City Attorney's Office. All media inquiries or requests for interview should be directed to the liaison attorney or Communications Director at the City Attorney's Office.

IV. City Code of Ethics and Professional Conduct

- A. The reputation of the City and its officers and employees is of high importance to the City. All counsel representing the City and its officers and employees are expected to maintain high standards of professional conduct, and must behave with integrity throughout representation.
- B. Outside Counsel shall comply with all provisions of the Seattle City Code of Ethics (Seattle Municipal Code Title 4 Chapter 16) applicable to Outside Counsel.
- C. Outside Counsel shall be mindful of the requirements of SMC 4.16.070(3) in providing any free legal services to individual City employees and shall notify the City Attorney before providing any free legal services to individual City employees.

V. Billing Procedures for Outside Counsel

- A. Billings by Outside Counsel must be submitted monthly and will be paid within 30 days of receipt, unless they contain disputed costs. Any disputed costs must be resolved, and a revised invoice must be resubmitted with a new date. The new invoice will replace all subsequent versions and be paid within 30 days of receipt.
- B. Unless otherwise agreed upon in advance in writing, the City will be charged for services rendered on an hourly basis and billings will be reflected in increments of one-quarter of an hour or less.
- C. Approved out-of-pocket expenses will be reimbursed at cost.
- D. Each billing statement must identify each date services were performed and:
 - 1. A brief summary of the services provided specified by task; block billing is not acceptable;
 - 2. The number and fractions of hours spent by each provider;
 - 3. The hourly rate and State Bar Number of each provider;
 - 4. Any costs or expenses submitted for reimbursement must be verifiable with an invoice or other back-up documentation. Expenses and disbursements must be described in detail and comply with:
 - (a) Air travel must be approved by the City in advance and is reimbursable at coach rates;
 - (b) Other travel expense reimbursement follows the requirements of SMC 4.72.010 governing travel expenses for City employees;²

² Approved meal expenses are reimbursed at the Federal Per Diem daily meal rate (excluding the “Incidental” portion of the published CONUS Federal M&I Rate) for the city in which the work is performed. The current Federal Per Diem daily meal rate used by the City for reimbursement will be provided upon request. The invoice shall state “the meals are being billed at the Federal Per Diem daily meal rate,” and shall detail how many of each meal is being billed

- (c) The City must not be charged for courier service or other expedited mail delivery unless the urgency was caused by the City or the City requests the service;
 - (d) The City will not pay for computer research provider costs; and
 - (e) The City will not pay costs that should be part of the firm's overhead costs. Time devoted to these tasks in non-billable regardless of the level of the timekeeper performing the task: (1) opening or closing files; (2) processing conflict searches and waivers; (3) fees incurred by interns, associates, or law school graduates who have not passed the bar; (4) organizing material for storage; (5) preparing, reviewing, approving, or collecting billing statements or invoices; repetitive file review by the same timekeeper, (6) fees incurred for "learning time" associated with training junior attorneys; (7) scheduling and arranging meetings, depositions, examination or other even scheduling; (8) maintaining office or attorney calendars; (9) taking telephone messages and placing calls for counsel; (10) telephone calls or communications to copying services, record providers, or court reporters, (11) arranging for or making pick-ups and deliveries of documents and records; (12) filing or organizing correspondence, pleadings, or other documents in internal firm files; (13) typing, transcribing, data entry, document scanning or other clerical or secretarial services; and (14) in-firm conferences that are administrative, instructional, or supervisory in nature.
5. Billings for experts or consultants retained by Outside Counsel must be provided in substantially similar format as outlined above;
6. Outside Counsel bills are subject to public disclosure. Outside Counsel should avoid including privileged information in billings that would have to be redacted if a public disclosure request is received.
7. Billings must include:
- (a) Total fees and costs to date; and
 - (b) The amount authorized in the engagement letter.

As a reminder, charges are not to exceed the approved amount without prior approval.

- E. Any changes in Outside Counsel's fee schedule must be discussed with the City Attorney before implementation.

(e.g. the number of breakfasts, lunches, and dinners). The City will not reimburse for alcohol at any time. Rates depend on the location and the date(s) of travel, and can be verified at gsa.gov/travel/plan-book/per-diem-rates.

Approved lodging expenses are reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work is performed (the current maximum allowed reimbursement amount can be provided upon request). Receipts detailing each day / night lodging are required. The City will not reimburse for ancillary expenses charged to the room (e.g. movies, laundry, mini bar, refreshment center, fitness center, sundry items, etc.). The current cost index amounts used by the City for reimbursement will be provided upon request.

- F. Outside Counsel was retained because of its expertise. The City must not be billed for basic general legal or technical research necessary to educate staff or less experienced attorneys in the firm. Any extensive legal research proposed by Outside Counsel must be discussed in advance with the City Attorney and is subject to the City Attorney's approval.
- G. The City must not be billed for any time spent in preparing or reviewing the firm's billings to the City or in internal firm quality control procedures.
- H. Unless approved in advance, the City will not reimburse for time spent by more than one attorney attending meetings, witness interviews, depositions, hearings, and the like.
- I. Work executed under this agreement is owned by the City. Outside Counsel will maintain a reference table, or index, which clearly identifies the contents of the file associated with this matter. Outside Counsel will retain the file for ten years after final payment on this matter. The City may request a transfer or copy all or any parts of the file while the matter is pending and up to ten years after final payment is made under this agreement.

VI. Conclusion of Representation and Final Payment

When Outside Counsel is notified by the City Attorney's Office this matter is concluded and no further work is requested, Outside Counsel shall provide the City Attorney's Office with a final invoice and identify it as such. No further work is authorized once representation is terminated by the City Attorney.

VII. Audit

Outside Counsel will keep accurate records and books for all work provided under this agreement with the City. At the City's request and expense, Outside Counsel will permit the City to inspect and audit all books and records of counsel related to the work performed for and charged to the City, at any times deemed necessary by the City, including up to six years after the final payment is made under this agreement.

VIII. Equal Employment Opportunity and Outreach

- A. Outside Counsel shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Outside Counsel shall take affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or any sensory, mental, or physical handicap. Such efforts shall include, but not be limited to employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

- B. If Outside Counsel will hire employees for any work under the agreement, or if counsel will subcontract any work under the agreement (with City approval), Outside Counsel shall make affirmative efforts to recruit minority and women candidates. Affirmative efforts may include the use of advertisements in publications directed to minority communities and other targeted recruitment efforts, and using the services of minority and public organizations to perform outreach.
- C. By executing an agreement with the City, Outside Counsel affirms that it complies with all federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42. Any violation of the provisions in this Section 7 shall be a material breach of Agreement for which Outside Counsel may be subject to damages and sanctions provided for by the Agreement and by law, including but not limited to debarment from City contracting activities under SMC Ch. 20.70.

IX. Nondiscrimination in Employee Benefits

- A. Compliance with SMC Ch. 20.45: Outside Counsel shall comply with the requirements of SMC Ch. 20.45 and Equal Benefit Program Rules implementing such requirements, under which counsel must provide the same or equivalent benefits (“equal benefits”) to its employees with domestic partners as Outside Counsel provides to its employees with spouses. At the City’s request, Outside Counsel shall provide complete information and verification of compliance with SMC Ch. 20.45. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 6844529 or review information at <http://cityofseattle.net/contract/equalbenefits/>.)
- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Section 8 shall be a material breach of contract for which the City may:
 - 1. Require Outside Counsel to pay actual damages for each day that the counsel violates SMC Ch. 20.45 during the term of the contract;
 - 2. Terminate the contract;
 - 3. Disqualify Outside Counsel from bidding on or being awarded a City contract for a period of up to five years; and
 - 4. Impose other remedies as provided for in SMC Ch. 20.45.

X. Other Terms

- A. Outside Counsel shall use, whenever practicable, recycled content paper on all documents submitted to the City.
- B. Outside Counsel shall comply with all provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the ADA shall be a material breach of, and grounds for the immediate termination of, this contract.

- C. Outside Counsel shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC). Conduct made unlawful by that Chapter constitutes a breach of contract. Engaging in an unfair contracting practice may also result in imposing a civil fine or forfeiture under the Seattle Criminal Code and various other civil remedies.