

**REQUEST FOR PROPOSALS FOR LEGAL ASSISTANCE ON
FERC RELICENSING ISSUES
FOR THE
SKAGIT RIVER HYDROELECTRIC PROJECT**

The City Attorney's Office of the City of Seattle issues this Request for Proposals ("RFP") for the provision of legal services to the City on the relicensing of the Skagit River Hydroelectric Project (FERC No. 553) and in the use of the Integrated or Alternative Licensing Processes as described by FERC in 18 CFR Part 5. Firms or Persons responding to this RFP are referenced herein as Proposers.

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 regarding the most effective and appropriate ways to involve and interact with key regulatory agencies, tribes and non-governmental organizations (License Participants) in the relicensing process for the Skagit River Hydroelectric Project.
- Review study requests and draft study plans prepared by City Light and other License Participants. These study requests and plans will be focused on addressing natural or cultural resource issues and filling data gaps but may also have strategic implications for the relicensing process.
- Advise the City on strategies for addressing issues related to federal Indian law, treaty rights, and usual and accustomed hunting and fishing grounds, as well as Section 106 of the National Historic Preservation Act.
- Advise the City on transboundary issues that may have implications for relicensing, including British Columbia and Canadian laws and First Nation rights in the United States.
- Assist with developing strategies for facilitating meetings with License Participants and negotiating Settlement Agreements.
- Review license application materials and associated documents, including the Biological Assessment and 401 Certification Application, and develop appropriate responses to comments from License Participants.

- Assist with the preparation of draft License Articles and any needed post-filing documents.
- Review and prepare comments on the License Articles, the Biological Opinion, and the 401 Water Quality Certification and other agency-prepared documents.

2.0 QUALIFICATIONS

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

Experience providing legal services to utility clients on hydropower relicensing processes in the Western region of the U.S.

Expert knowledge of and experience with the Federal Power Act, 16 USC §791a et seq., and with the Federal Energy Regulatory Commission on hydropower relicensing. Expert knowledge of and experience with Canadian Law and the US-Canadian border issues.

Experience engaging with Indian tribes in both the U.S. and Canada.

Experience consulting with the National Park Service.

Expert knowledge of other regulatory processes that may impact the Skagit River Hydroelectric Project relicensing process, including:

- NEPA/SEPA
- Washington Department of Ecology's Total Maximum Daily Load processes for TDG and Temperature
- Washington Department of Ecology's 401 Certification
- Coastal Zone Management Act
- Endangered Species Act
- National Historic Preservation Act
- Fish and Wildlife Coordination Act
- Wild and Scenic Rivers Act

3.0 PROPOSAL CONTENT

3.1 Experience and Qualifications

- The City will accept proposals from individual attorneys as well as from law firms. The successful Proposer must have extensive knowledge and

experience in FERC relicensing issues. A knowledge of past, present and future trends in FERC relicensing is essential.

- 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.
- 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.

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.

Five paper copies of each proposal must be received no later than 5:00 p.m., Seattle time on July 20, 2018. The City will accept personal delivery, courier service, e-mail, or United States mail. No late proposals will be accepted.

Proposal should be addressed as follows:

Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097

Attention: William C. Foster

Email: william.foster@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. Peter S. Holmes, the Seattle City Attorney, 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:

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

6.0 CONTRACT NEGOTIATION

After selecting the apparent successful Proposer, the City may negotiate a contract with the apparent successful Proposer, based on the City Attorney's Office general terms and billing procedures for outside counsel, a copy of which is attached. If unable to reach agreement with the Proposer initially selected, the City 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 City 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 City's representative named below:

William C. Foster
206.233.2161
william.foster@seattle.gov

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

7.2 Schedule

RFP Released ----- June 27, 2018
Deadline for questions ----- July 6, 2018
Proposals due ----- July 20, 2018, 5:00 PM PDT
Interviews (at City's option) ----- Week of July 30, 2018
Selection----- August 10, 2018

8.0 MISCELLANEOUS

This Request for Proposal (RFP) is a request for offers to contract and does not obligate the City of Seattle to contract for any services. The City of Seattle 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 representation to the City of Seattle and/or officers and employees of the City of Seattle.

I. Interaction with City

- A. The City Attorney¹ must be given advance notice of any significant decisions in order to be able to participate fully in making such decisions.
- B. The City Attorney must be provided with advance drafts of all significant documents (policy statements, pleadings, memoranda) in sufficient time to be able to participate fully in decisions regarding such documents.
- C. The City Attorney must routinely receive copies of all other documents, including correspondence and internal legal memoranda.
- D. The City Attorney must fully participate in all deliberations and decisions regarding possible settlement of a case.
- E. 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 the relevant provisions of Chapter 20.42 Seattle Municipal Code.
- F. 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 pursuant to SMC 4.64 are deemed to represent

¹ References in this document to obligations and rights of the City Attorney shall in most cases be made by the Assistant City Attorney or other member of the Law Department identified by the City Attorney. Outside counsel may, however, contact the City Attorney directly whenever warranted.

both the individual employee and the City for purposes of determining whether a conflict of interest exists.

B. In each instance where Outside Counsel becomes aware that there may arise, that there is, or that there 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 pursuant to 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 has been engaged, but reserves the right to decline to waive a real or potential conflict in each case. Outside Counsel will not engage in conduct which 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 in which Outside Counsel or any of its agents or subcontractors participate in or benefit from a transaction upon which Outside Counsel has provided or is providing advice, except for payments for Outside Counsel's legal services under this Agreement;
3. Situations in which Outside Counsel provides advice 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.
4. Any similar situation that interferes with Outside Counsel's ability to fairly and impartially advise the City and its officers or employees, or would appear to a reasonable person to do so.

III. Confidential Communication

All communications relating to the representation of 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 and/or an individual employee represented pursuant to SMC 4.64 as appropriate under RPC 1.6.

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 at all times throughout the representation with integrity.
- 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 should notify the City Attorney in advance of providing any free legal services to individual City employees.

V. Billing Procedures for Outside Counsel

- A. Billings by Outside Counsel must be submitted on a monthly basis and will be paid within thirty (30) days of submittal.
- 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 be set forth for each date services were performed and the following:
 - (1) A brief summary of the services provided specified by task; block billing is not acceptable;
 - (2) The number of hours, or fractions of hours, spent by each provider;
 - (3) The hourly rates of each of the providers;
 - (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 the following:
 - (a) Air travel must be approved by the City in advance and is reimbursable at coach rates;

- (b) Other travel expense reimbursement will be consistent with the requirements of SMC 4.72.010 governing travel expenses for City employees;
 - (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;
 - (e) The City will not pay costs that should be part of the firm's overhead such as phone calls, copies, courier services and postage;
- (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 in the event of a public disclosure request.
- E. Any changes in Outside Counsel's fee schedule must be discussed with the City Attorney prior to implementation.
- F. Outside Counsel has been 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. Outside Counsel will keep accurate records and books for all work provided under this agreement with the City. At the City's request and at the City's cost, Outside Counsel will permit the City to inspect and audit all pertinent books and records of counsel related to the work performed for and charged to the City, at any and all times deemed necessary by the City, including up to six years after the final payment or release of withheld amounts has been made under this agreement.

VI. Audit

Outside Counsel must keep adequate and accurate records supporting all amounts invoiced to the City and must maintain such records for at least six years following completion of any work. Outside Counsel shall allow the City Auditor to review and audit all records relating to services provided under the contract with the City.

VII. 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 the presence of 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 the presence of any sensory, mental or physical handicap. Such efforts shall include, but not be limited to the following: 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 available minority community and public organizations to perform outreach.
- C. By executing an agreement with the City, Outside Counsel affirms that it complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42. Any violation of the requirements 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 applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.

VIII. 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 is obligated to 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) 684-4529 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 is in violation of SMC Ch. 20.45 during the term of the contract; or
 - (2) Terminate the contract; or
 - (3) Disqualify Outside Counsel from bidding on or being awarded a City contract for a period of up to five (5) years; or
 - (4) Impose such other remedies as provided for in SMC Ch. 20.45.

IX. Other Terms

- A. Use of Recycled Content Paper: Outside Counsel shall use, whenever practicable, recycled content paper on all documents submitted to the City.
- B. Americans with Disabilities Act: Outside Counsel shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this contract.
- C. Fair Contracting Practices Ordinance: Outside Counsel shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.