



State of West Virginia
Office of the Attorney General

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Request for Proposal for Legal Services To Represent the West Virginia Department of Transportation

The West Virginia Department of Transportation, Division of Highways (hereinafter "WVDOH") has requested legal representation in conjunction with the establishment of several public-private partnerships ("P3"). As set forth in greater detail below, the WVDOH is specifically seeking legal services and associated strategic, financial, feasibility, marketing and/or implementation consulting services with respect to the implementation of the West Virginia Public-Private Partnership Act, as amended.

Qualified law firms or attorneys are invited to submit a proposal on or before Friday, September 6, 2013, to assist with the representation of the WVDOH in this matter. Selection of a winning proposal, if any, will be made as soon as possible after that date with representation to commence forthwith upon selection.

Background

The West Virginia Department of Transportation, Division of Highways ("WVDOH") is the state agency for the State of West Virginia responsible for planning, engineering, right-of-ways acquisition, construction, reconstruction, traffic regulation and maintenance of more than 35,000 miles of state roads. Traversing mountains, valleys, wild rivers and rolling countryside, the roadways maintained by the Division of Highways include:

- 38,646 miles of public roads (2011 Public Certified Mileage);
- 35,896 miles of state owned highways, 88 miles of West Virginia Turnpike, 835 miles of federally owned roads and 2,908 miles of municipally owned roads;
- 549 miles of State owned Interstate Highway;
- 1,818 miles included in the National Highway System, 23 miles of which are connectors to other modes of transportation such as airports, trains and buses;
- 6,800 bridges of which 32 percent are more than 100 feet in length; and,
- 1 All American Road, 5 National Byways, 14 State Byways and 8 Backways.

In 2013, the West Virginia Legislature passed, and the Governor signed, Senate Bill 190, amending the Public-Private Transportation Facilities Act (W.Va. Code §17-27-1, *et seq.*, “the Act”). The Act provides a framework for WVDOH to finance, construct, operate and maintain transportation facilities in the state in partnership with private entities, and the WVDOH is seeking legal services accordingly to assist with the establishment of P3 under the Act.

Scope of Representation

The client is the WVDOH. The attorney or law firm, if any, that is selected as a result of this process will work in close coordination with the WVDOH to provide legal services and any associated strategic, financial, feasibility, and marketing advice and consulting services to the WVDOH regarding the development and implementation of P3 transportation facilities projects, including necessary process development (the “needed services”).

The WVDOH anticipates some or all of the needed services and phases set forth below will be required for P3 projects. ***The Initial Project is anticipated to involve the financing and design-build construction of a fourteen-mile four-lane limited access section of U.S. Route 35 in Putnam and Mason Counties in West Virginia.*** The estimated length of each phase described below is based on anticipated timeframes applicable to the Initial Project. Timeframes relevant to each subsequent P3 project may vary.

The WVDOH anticipates that the needed services will include some or all of the following activities:

Planning Phase (September 10-25, 2013):

1. Guide legal aspects of development of project concept and objectives.
2. Prepare legal analyses and recommendations of project delivery alternatives that consider such items as delivery timeframes, allocation of risk, market conditions, land acquisition, utilization/disposition of existing assets, facilities design, legal and regulatory requirements, security, construction, operations and maintenance.
3. Recommend financial structure(s), considering debt and equity sources from capital markets and public funding vehicles.
4. Develop a model communications structure for the project.
5. Develop an organizational model for the project.
6. Assist in the development and preparation of contract and related documents both as templates for P3 transportation projects generally and for specific P3 projects
7. Assist in development of project performance expectations including benchmark criteria for total project life-cycle costs, project cost comparisons to traditional delivery and financing options, project risk assessments and allocations, utility/energy conservation requirements that meet or exceed state regulatory standards and operations cost controls and reductions goals.
8. Assess interest of potential providers of goods and services required in the development of the P3 project.

9. Assist in the preparation of procedures and schedule for solicitation of providers of construction, development, and other services and goods or materials required in the development of the P3 project (generally, “Developers”).
10. Assist in the development of evaluation criteria and selection procedures for Developers.

Solicitation of Developers Phase (September 25 – November 25, 2013):

1. Prepare sections of Developer solicitation documents relating to legal, financing and business terms.
2. Identify potential responders to Developer solicitation documents.
3. Advise concerning the marketing of solicitation document to potential responders.
4. Participate in pre-proposal meetings.

Evaluation of Developer Proposals (November 25 – December 10, 2013):

1. Review proposals submitted with respect to specified solicitation document criteria, including legal and related financial and risk analysis.
2. Participate in interviews of firms responding to solicitation documents (potential Developer).
3. Prepare written and oral evaluations that include ability of potential Developers to perform, including risk analysis and related financial analysis.

Award Phase (December 10-31, 2013):

1. Participate, with the WVDOH, in negotiations of agreements with selected potential Developers.

Implementation Phase:

1. Provide project implementation and benchmark achievement analyses as needed, including reviewing periodic progress reports and recommending action, during design and construction phases.

Coordination of Services

The attorney or firm, if any, selected will be expected to work with the WVDOH and other professionals with respect to any P3 project. WVDOH anticipates designating some or all of the following professionals, and the needed services will include coordination with these professionals:

- WVDOH Project Manager – a single point of responsibility within the WVDOH will be identified with responsibility for all aspects of each P3 project.
- Architectural / Engineering – one or more firms may assist in the development of design requirements and performance specifications for each P3 project.
- Bond Counsel – one or more law firms may provide services as bond counsel if and as deemed necessary or desirable for each P3 project.

Your Proposal

Proposals should comply with the form set forth below, and should address those factors identified in the Attorney General's Outside Counsel Policy.¹ As a general matter, your proposal should also address your experience and demonstrated skill (via references, example documents, and/or a descriptive narrative) in the following practice areas:

1. Public Sector law;
2. Tax law;
3. Public Infrastructure Projects;
4. Public Contracts;
5. Financial Services Regulation;
6. Capital Markets;
7. Environment and Land Use;
8. Eminent Domain; and,
9. Valuation, Banking and Finance.

In addition, your proposal should disclose any prior legal work you have performed for the WVDOH, as well as any other experiences that may particularly qualify you. The attorney or firm should also disclose any current representations of (1) the WVDOH or (2) entities/individuals that may have interests that are, or are likely to become, adverse to the interests of the WVDOH. Additionally, the attorney or firm should disclose any matter or information that could impact a conflict analysis for this potential client.

Proposals should clearly and accurately demonstrate the specialized knowledge and extensive, successful experience required of the consultant firm for consideration. The successful proposer will be expected to demonstrate competence and experience providing legal and financial related services for governmental and other public sector entities in a variety of single and multi-modal P3 transportation projects utilizing various project delivery mechanisms

¹ Pursuant to the Outside Counsel Policy, the Attorney General shall consider the following factors when determining the most competitive proposal for legal services:

- Whether the private attorneys possess the requisite skills and expertise needed to handle the legal matters in question;
- Whether the private attorneys possess requisite staffing and support to handle the scope of the litigation or matter;
- Whether the private attorneys, or any members of the private attorneys' law firm, have been subject to reprimand by the West Virginia State Bar, or other entities, for unethical conduct;
- Whether the private attorneys have been peer rated, and if so, what peer ratings they have received, along with any other recognitions or awards for legal services;
- The estimated fees, costs and expenses of the private attorneys to perform the legal services requested;
- The willingness of the private attorneys to enter into alternative billing arrangements;
- Whether the private attorneys are in compliance with all applicable laws of the State of West Virginia;
- Any potential conflicts of interest between the private attorneys and the State;
- Any relevant input from the state entity client, if applicable, regarding the needed legal services; and
- Any such other relevant factors as may be identified by the Attorney General.

(design-build, design-bid-build, build-operate-maintain, etc.), project financing options (partner financing, toll concessions, operations-maintenance-back office service contracts, TIFIA, TIF, availability payments, bond issues), and procurement approaches (negotiated, best value, etc.).

The successful Proposer will also have demonstrated competence and experience in identifying and addressing legal and related financial issues in NEPA and other environmental laws and regulations as they impact and are impacted by the various project procurement, financing and delivery options and approaches.

Responsive proposals should provide straightforward, concise information that satisfies the requirements noted below. Expensive bindings, color displays, and the like are not necessary. Emphasis should be placed on brevity, conformity to instructions, requirements of this RFP, as well as the completeness and clarity of content. Proposals that do not meet technical requirements for a responsive proposal as set forth herein may not receive consideration under this RFP.

Proposals should include quotes for hourly rates, as well as a budget for needed services based on the parameters set forth for the initial project (US-35), for which WVDOT anticipates services may include:

- Preparation of an analysis of the US-35 Project under a traditional and P3 Design Build Finance delivery model.
- Assistance with the development of a presentation comparing the two delivery models against the client's quantitative and qualitative evaluation criteria to assist the WVDOT in decision-making.

The successful Proposer should be prepared to facilitate a kick-off meeting that would include key participants from the WVDOT. As part of this kick-off meeting, the following items may be discussed:

- Background to the project;
- Technical inputs required for financial analysis to be provided by the WVDOT;
- Funding inputs for the financial analysis to be provided by the WVDOT;
- Background to the GARVEE bond program; and,
- Timetable for development of any and all deliverables.

Utilizing this information, the successful Proposer may be asked to undertake the analysis of the US-35 Project under a P3 structure and a traditional delivery structure and to develop a presentation comparing the two structures.

Any and all timetables will be mutually agreed upon by the parties as part of the kick-off meeting.

Form of Proposal

Proposals should include a cover letter of no more than one page, and must be signed by an authorized representative of the law firm. The cover letter must reference this RFP (RFP # 011) and confirm that all elements of the RFP have been read and understood and that the proposing attorney or law firm takes no exception to the materials provided. The cover letter must also include:

- The exact legal name, address, telephone and fax numbers, and federal tax identification number of the organization proposing to do business with the WVDOH (or social security number if the organization is a sole proprietorship), including any proposed sub-consultants;
- The name, telephone, fax, address, and e-mail address of one business person who is the organization's designated representative that the WVDOH can contact for additional information; and, if different,
- The name, telephone, fax, address, and e-mail address of the contracts management or legal staff person who is empowered to speak on contractual and policy matters.

Proposals should also list the key members of Proposer's firm to be assigned to the needed services, including their roles and estimated participation in each phase of the needed services, as well as resumes of the key personnel that will perform the needed services. Supporting documents that would help with assessment of the proposal include an organizational team chart for the project (one page maximum) and a one page maximum firm description.

For the Proposer and any proposed sub-consultant, please provide answers to the following questions:

1. How have industry organizations ranked the firm and what industry recognitions has it received, if any, for its transportation P3 practice?
2. How extensive is its practice acting as a legal advisor to governments in transportation P3 transactions in the United States?
3. Describe the expertise of the firm in representing applicants to the U.S. Department of Transportation ("USDOT") and its modal administrations in securing the federal actions necessary for state and regional P3 success?

Bidding attorneys or firms also are encouraged to describe sample projects that best illustrate the firm's qualifications for the scope of the needed services. Projects should be of similar complexity completed and demonstrate the proposing attorney or firm's ability and experience to successfully perform the needed services. Provide current contact information for all references for all projects listed.

Proposals must also include a section exclusively dedicated to describing the firm's proposed approach to P3 processes, indicating strategies for issue identification and resolution, methodology for coordination of the needed services with WVDOH staff, and work by other professionals and firms engaged in a P3 project, as well as any other information the Proposer determines is pertinent. (ten pages maximum).

Billing and Expenses

If you propose to bill hourly rates and any other charges for the needed services, please state them separately for each attorney or paralegal to be assigned to this representation and indicate the approximate proportion of total time that will be billed at each rate. The hourly rate is intended to fully compensate respondents for all needed services. No additional expenses are allowed, including reproduction costs associated with the needed services, travel, lodging, meals, miscellaneous, and any other expenses related to the completion of the needed services.

If the proposing attorney or law firm intends to charge on a basis other than hourly rates, the Proposer must provide a full explanation of its proposed pricing structure, as well as sufficient information regarding performance metrics built into this structure, including guaranteed or estimated staffing levels at otherwise applicable hourly rates, to enable the WVDOH to make a price-based comparison.

Representations made in your proposal will supersede any conflicting terms that are less favorable to the client appearing in any written contract or invoice.

Confidentiality

If an attorney or law firm believes that its proposal contains material that is confidential and/or proprietary, the Proposer must clearly note or mark each section of material as confidential and/or proprietary. The WVDOH, in conjunction with the Office of the Attorney General, will determine whether such material meets the requirements for an exemption from disclosure. If so, that information will not be disclosed pursuant to a request for public documents. If the WVDOH does not consider such material to meet the requirements for exemption from disclosure, the material will be made available to the public, regardless of the notation or markings.

If a prospective Proposer is unsure if its confidential and/or proprietary material would meet the requirements for an exemption from disclosure, the firm should contact the WVDOH or the West Virginia Attorney General's Office for clarification before including such information in its Proposal.

Evaluation and Acceptance

Your proposal will be evaluated by the Office of the Attorney General in consultation with the WVDOH in accordance with the information provided herein. Any and all proposals may be rejected. Your proposal should be addressed to the Office of the Attorney General and

emailed to rfpresponse@wvago.gov. This Request for Proposal shall be known as RFP # 011, and any and all correspondences relating to this Request for Proposal should reference RFP # 011. All proposals must be received by email no later than Friday, September 6, 2013, at 5:00 p.m. Any questions regarding this request for proposal should likewise be emailed to rfpresponse@wvago.gov.

Retention of the selected attorney or firm, if any, is conditioned upon execution of a written contract approved by the Office of the Attorney General. In no event will any such contract preclude the termination of the representation at any time by official action of the WVDOH. Thank you for considering this Request for Proposal.