



State of West Virginia  
Office of the Attorney General

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Attorney General

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## **Amended Request for Proposal for Legal Services**

The Governor of West Virginia (hereinafter "Governor") is seeking the assistance of outside counsel to assist with currently pending litigation. More specifically, the Governor is seeking legal assistance to defend litigation styled: *State of West Virginia ex rel William K. Schwartz v. The Honorable James Justice, Governor of the State of West Virginia et al.* Case No. 18-0789 currently pending in the Supreme Court of Appeals of West Virginia.

Qualified law firms or attorneys are invited to submit a proposal on or before **Monday, September 17, 2018, at 5:00 p.m.**, to assist the Governor 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.

**Please be advised that the needed legal representation requires briefing to be completed and filed by September 19, 2018 to comply with the Supreme Court of Appeals of West Virginia's Scheduling Order attached hereto.**

### **Background**

The Governor of West Virginia (hereinafter "Governor") is seeking the assistance of outside counsel to assist with currently pending litigation. More specifically, the Governor is seeking legal assistance to defend litigation styled: *State of West Virginia ex rel William K. Schwartz v. The Honorable James Justice, Governor of the State of West Virginia et al.* Case No. 18-0789 currently pending in the Supreme Court of Appeals of West Virginia:

- Constitutional Law;
- Extraordinary Writs;
- Election Law; and
- General litigation background and experience.

### **Scope of Representation**

The client is the Governor. The attorney or firm, if any, that is selected as a result of this process will work in close coordination with Governor's staff and attorneys to assist with the legal services in question.

## **Conflict of Interest Information**

The attorney or firm should disclose any prior or current representations of (1) the Governor, (2) The Secretary of State, (3) Evan Jenkins, (4) Tim Armstead, and (5) William K. Schwartz. The final selection of counsel, if any, is contingent upon the successful completion of a conflicts of interest analysis.

## **Your Proposal**

No specific form is required of your proposal, but it should address those factors identified in the Attorney General's Outside Counsel Policy,<sup>1</sup> and should also address your experience and demonstrated skill (via references, example documents, and/or a descriptive narrative) in the following practice areas:

- Constitutional Law;
- Extraordinary Writs;
- Election Law; and
- General litigation

In addition, your proposal should disclose any prior legal work you have performed for (1) the Governor, (2) The Secretary of State, (3) Evan Jenkins, (4) Tim Armstead, and (5) William K. Schwartz as well as any experiences that may particularly qualify you for the legal matter in question.

If you propose to bill hour rates, please state them separately for each attorney or paralegal to be assigned to this representation, and indicate the approximate portion of time that will be billed at each rate. When possible, please indicate an estimated number of hours anticipated to complete the legal services in question.

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<sup>1</sup> 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.

If you propose to bill hourly rates, 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. Computerized legal research tools, such as WESTLAW or LEXIS, may not be billed as an expense. Please state your per-unit costs (if any) for expenses such as copying; whether you will bill for travel expenses and at what rate; and whether and how you bill for any additional attorney-time while traveling. Representations made in your proposal will supersede any conflicting terms that are less favorable to the client appearing in any written contract or invoice.

### **Evaluation and Acceptance**

Your proposal will be evaluated by the Governor. 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](mailto:rfpresponse@wvago.gov). This Request for Proposal shall be known as RFP # 73, and any and all correspondences relating to this Request for Proposal should reference RFP # 73. All proposals must be received by email no later than **Monday, September 17, 2018, at 5:00 p.m.** Any questions regarding this request for proposal should likewise be emailed to [rfpresponse@wvago.gov](mailto:rfpresponse@wvago.gov).

Retention of the selected attorney or firm, if any, is conditioned upon the execution of a written contract approved by the Attorney General. In no event will any such contract preclude the termination of the representation at any time by official action of the Governor or the WVAGO.

Thank you for considering this Request for Proposal.

**STATE OF WEST VIRGINIA**

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on September 14, 2018, the following order was made and entered:

State of West Virginia ex rel.  
William K. Schwartz,  
Petitioner

vs.) No. 18-0789

James Justice, Governor of the State of West Virginia;  
Mac Warner, West Virginia Secretary of State;  
Evan Jenkins; and Tim Armstead,  
Respondents

**Scheduling Order**

On September 13, 2018, the petitioner, William K. Schwartz, by counsel Teresa C. Toriseva, Joshua D. Miller, and S. Paige Flanigan, presented to the Court his petition praying for a combined writ of mandamus and writ of prohibition to be directed against the respondents, James Justice, in his official capacity as Governor of the State of West Virginia; Mac Warner, in his official capacity as West Virginia Secretary of State; Evan Jenkins; and Tim Armstead, as therein set forth.

It is hereby ordered that the respondents file a response to the petition, pursuant to Rule 16(g) of the Rules of Appellate Procedure, or a summary response, pursuant to Rule 16(h), on or before September 19, 2018.

A True Copy

Attest: /s/ Edythe Nash Gaiser  
Clerk of Court

