



State of West Virginia
Office of the Attorney General

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Request for Proposal for Legal Services To Represent the State of West Virginia

The State of West Virginia has filed a legal challenge to the U.S. Environmental Protection Agency's recent disapproval of the State's plan for implementing the good-neighbor provisions of the 2015 ozone national ambient air quality standards. The State is now seeking help from outside counsel in advancing that litigation to a favorable outcome.

Qualified law firms or attorneys are invited to submit a proposal on or before Friday, June 23, 2023, to assist with the Office of the West Virginia Attorney General's representation of the State. Selection of a winning proposal or proposals, if any, will be made as soon as possible after that date with representation to commence forthwith upon selection.

Background

The State is in need of counsel experienced in appellate advocacy, administrative law, and environmental issues. Specifically, the State seeks an attorney or law firm with significant experience engaging with federal environmental law—particularly the Clean Air Act.

Selected counsel would serve as lead counsel in proceedings, including, but not limited to, a pending petition for review in the United States Court of Appeals for the Fourth Circuit. *See West Virginia v. EPA*, No. 23-1418 (4th Cir. Apr. 14, 2023). The petition for review seeks to overturn a decision by the EPA's Administrator to disapprove West Virginia's proposed state-implementation plan for the interstate transport requirements of 42 U.S.C. § 7410(a)(2)(d)(i) relating to the 2015 eight-hour ozone national ambient air quality standards. *See Fed. Reg.* 9336 (Feb. 13, 2023).

Scope of Representation

The client is the State of West Virginia. An attorney or firm, if any, will be selected for the legal matter set forth above, and will work in close coordination with the Attorney General's Office, to provide the legal services in question.

A motion to transfer proceedings to the United States Court of Appeals for the D.C. Circuit (or alternatively dismiss) is currently fully briefed and pending. If the case is not dismissed, the State anticipates that it may file a motion to stay the disapproval decision as soon as possible. The

State will also require assistance with substantive briefing on the petition for review itself, including an opening and response brief. If oral argument is set, the State could also request the selected firm to represent the State at that argument.

Conflict of Interest Information

In addition to disclosing any prior representation of the State of West Virginia, the bidding firm or attorney should disclose matters where they have previously been adverse to the State as well as any other matter(s) that could impact a conflict analysis for this potential client. Retention of any selected firm(s) will be subject to completion of further conflict analyses specific to the scope of work to be performed for the State.

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,¹ and should also address your experience and demonstrated skill (via references, example documents, and/or a descriptive narrative) in the following practice areas:

1. Environmental Law, with an emphasis on the Clean Air Act.
2. Administrative Law, with an emphasis on petitions for review before federal circuit courts.
3. Appellate Law, with an emphasis on prior representations of States or State-related parties.

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.

In addition, your proposal should disclose any prior legal work you have performed for the State or adverse to the State, as well as any experiences that may particularly qualify you for the requested legal representation.

The Office of the Attorney General is particularly interested in receiving proposals employing an alternative fee arraignment (particularly those using a phased, budget-based billing approach). Proposed fee arraignments should include anticipated costs and fees for:

1. Fully briefing a potential stay motion;
2. Fully briefing the merits of the petition for review; and
3. Arguing the petition for review.

Counsel should anticipate that the above events could occur in either the Fourth Circuit or the D.C. Circuit. This Request for Proposal does not extend to any work before the U.S. Supreme Court.

If you nevertheless propose to bill hourly rates, please state them separately for each attorney or paralegal to be assigned to this representation. 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

The Office of the Attorney General will evaluate your proposal to determine the best value for the State. "Best value" comprises more than cost; it also includes the qualifications, experience, abilities, capacity, and cost-effectiveness of bidder proposals after reviewing any actual, apparent, or potential conflicts of interest.

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 # 118, and any and all correspondences relating to this Request for Proposal should reference RFP # 118. All proposals must be received by email no later than Friday, June 23, 2023, 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 Attorney General. In no event will any such contract preclude the termination of the representation at any time by official action of the Office of the Attorney General. Further, the State may modify or discontinue the Request for Proposal at any time.

Thank you for considering this Request for Proposal.