

MEMORANDUM

TO: DCHC MPO Governance Subcommittee
FROM: Doug Plachcinski, AICP, CFM, Executive Director
DATE: January 4, 2023
RE: **MPO LEGAL SERVICES PROCUREMENT**

OVERVIEW

The MPO governance study complete in 2022 recommend the MPO acquire legal services independent of the Lead Planning Agency. I developed a procurement document, attached, that initiates that procurement process. The Governance Subcommittee, at their December 15, 2022 meeting, recommend the Policy Board move forward with this task.

REQUEST

- 1. The MPO Policy Board initiate a Request for Legal Services procurement process.**

This process will include that the Governance Subcommittee review interested parties' submissions and make a recommendation to the Policy Board for an ongoing legal services vendor. City of Durham corporation counsel provided input and NCDOT TPD will review the Request for Legal Services before the MPO advertises.

Request for Qualifications

General Legal Services

Durham-Chapel Hill-Carrboro

Metropolitan Planning Organization

January 2023

REQUEST FOR QUALIFICATIONS (RFQ)

DURHAM-CHAPEL HILL-CARRBORO MPO GENERAL LEGAL SERVICES

I. PURPOSE

The Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (MPO) seeks a qualified individual or firm to contract as agency counsel.

Selected firm(s) or individual(s) will be retained for a period of three approximately three (3) months and the following (3) fiscal years; July 1, 2022, through June 30, 2025.

II. RFQ SCHEDULE

Advertise RFQ	January XX, 2023
RFQ Question Submittal Deadline – 11 a.m.	January 18, 2023
RFQ Response Submittal Deadline – 11 a.m.	January 25, 2023
Tentative Candidate Selection	February 9, 2023
Contract Negotiations	February 23, 2023
Anticipated Notice to Proceed	March 8, 2023

III. LEAD AND SPONSORING AGENCIES

The Federal Aid Highway Act of 1962 requires that transportation projects in urbanized areas of 50,000 or greater in population be based on a continuing comprehensive urban transportation planning process undertaken cooperatively by the states and local governments. To complete this transportation planning process in an effective manner, the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization was created. The current MPO planning area includes all of Durham County and portions of Orange and Chatham Counties.

The MPO must provide a regional, comprehensive, and cooperative planning process that serves as the basis for the expenditure of all federal transportation funds within its boundaries. Under Section 134 of the Federal Highway Act of 1973, MPOs are required to prepare long range transportation plans for the planning area with a minimum of a 20-year planning horizon.

The City of Durham is the MPO's Lead Planning Agency. The MPO anticipated negotiating a new Lead Planning Agency agreement and relocating the MPO to the Triangle J Council of Governments on July 1, 2023. The MPO must complete the transportation planning process in a continuing, cooperative, and comprehensive manner. In order to accomplish these goals, MPO staff has the responsibility of coordinating Technical Committee and MPO Board activities, designing and implementing an annual Unified Planning Work Program (UPWP), reviewing and approving the Transportation Improvement Program (TIP), adopting a Metropolitan Transportation Plan (MTP) and a Comprehensive Transportation Plan (CTP), approving changes to the Federal-Aid Functional Classification System, and establishing goals and objectives for the Transportation Planning Process. The MPO also has several assigned responsibilities as part of the Durham and Orange County Transit governance structure, including developing and adopting the annual Transit Work Programs and participating in the Staff Working Group.

IV. BACKGROUND

The individual or firm acting as agency counsel must perform general legal counsel services including but not limited to:

- 1) Legal services relating to review and/or preparation of agreements and contracts necessary to carry out the duties and responsibilities of a metropolitan planning organization pursuant to 23 CFR Subpart C, 450.300 – 450.340 and N.C. General Statutes §§ 136-200 through 136-202.
- 2) Interpretation of applicable federal, state, and local laws, regulations, and guidance necessary to carry out the metropolitan planning process in accordance with 23 CFR Subpart C, 450.300 – 450.340 and N.C. General Statutes §§ 136-200 through 136-202; and
- 3) Initial review and response to future litigation pertaining to the MPO's roles in the metropolitan transportation planning "3-C" process.

V. SCOPE OF SERVICES

Proposals must address each of the requests for information included in this document. The scope of services that respondents must provide fees and rates include the following three (3) categories. The selected firm must provide a detailed, itemized billing for each category every fiscal quarter.

- 1) Legal Services to deliver the services described in Section IV (Background) above consistent with applicable federal and state law requirements. The selected candidate must be familiar with federal and state law procurement requirements. General Representation and legal review/interpretation of agreements, contracts, and other legal instruments.
- 2) Interpretation and familiarity with laws and regulations impacting the governance of MPO staff and MPO board, including those laws and regulations relating to local governments, transportation and environmental laws, public records, and open meetings laws.

All interested parties must show they can provide the legal services described in the scope of services above; possess expertise of applicable state and federal laws and legal principles; and undertake and complete assigned work tasks within allotted timeframes and budgets. The MPO expects that assigned personnel are licensed to practice law in North Carolina. Experience working with and/or representing Metropolitan Planning Organizations is desirable, but not required.

VI. STATEMENT OF QUALIFICATIONS, INTEREST AND EXPERIENCE

Statements of Qualifications of no more than five (5) pages, not including the cover, and must be submitted via email to Doug.Plachcinski@dchcmmpo.org in PDF format. Statements of Qualifications should include a comprehensive response describing the firm's knowledge and experience with the tasks described in the Scope of Services. Statements of Qualifications should also include:

- 1) *General Experience Summary*: The summary will need to emphasize the firm's experience with providing general legal services to public agencies consistent with the requested Scope of Services as presented above, including evidence of licensure to practice law in the State of NC.
- 2) *Project References*: References will need to include a brief project description, contact name, address, telephone number, email address, and provide evidence of similar work completed

within the last five (5) years.

- 3) *Project Team*: Provide resumes for specific personnel that will be assigned to the account, including verification that they have experience with similar work and capacity to complete assignments in a reasonable amount of time. Rates for each team member assigned to scope categories I, II, and III as applicable should be included.
- 4) *General Information*: Include a firm context and relevant client examples in this section along with additional information the firm feels would be useful during the evaluation process.
- 5) *Vendor ID Numbers*: Any interested respondent must be a registered vendor with the City of Durham and the NC Department of Transportation prior to executing a contract with the MPO. If available, vendor identification numbers for both organizations should be provided in the RFQ response.

VII. EVALUATION PROCESS

The MPO will evaluate Statements of Qualification according to the respondent's relevant knowledge and experience in the tasks described in the Scope of Services and thoroughness in addressing the Statements of Qualifications requirements. Evaluation criteria include, but are not limited to:

- 1) Firm qualifications, previous experience with similar agencies, and legal competence of consultant team.
- 2) Understanding and approach toward scope of services and demonstrated ability to successfully interact with clients.
- 3) Appropriateness of organization, key personnel, and their availability.
- 4) Quality of references; and
- 5) Ability to undertake tasks in a timely manner and meet deadlines.

The MPO may select a firm or firms based on the RFQ response. Next, the MPO will define work elements described in the Scope of Services, so that tasks are authorized by assignment based on negotiated hours necessary to complete the assignment.

During this solicitation, the MPO will ensure that all answers or clarifications to questions posed by interested parties are provided through the MPO website by 5:00 p.m. on the date contained in the schedule. The MPO reserves the right to negotiate a contract (or contracts), with any respondent or other qualified party. The MPO may enter contracts with multiple respondents.

VIII. GENERAL INFORMATION

The successful firm or firms must enter a contract with the MPO that specifies requirements for indemnification, insurance, and other applicable policies.

The MPO reserves the right to suggest to any or all respondents to this RFQ form into teams if advantageous to the MPO. Respondents have the right to refuse to enter any suggested relationship.

The MPO may reject any or all the submissions as it deems in its best interests. The Capital Area MPO reserves the right to waive any irregularities or technicalities when it deems the public interest will be served thereby.

This request for qualifications does not commit the MPO to award a contract, to pay any costs incurred in preparation of a response to this invitation, or to procure or contract for services or

supplies. The MPO reserves the right to accept or reject any or all responses or to cancel this request in part or in its entirety if it is in the best interest of the MPO.

Commencement of an engagement with any selected firm(s) is subject to negotiations of terms acceptable to the MPO. Attachment A: Federal Requirements applies to this RFQ.

IX. METHOD OF COMPENSATION

Submissions by interested firms should include proposed billable rates for all professionals providing services under engagement with the MPO. Proposed rates are subject to negotiation by the MPO before entering an engagement letter with the selected firm(s). Proposed rates are subject to review and approval by NCDOT and must not exceed NCDOT-approved rates as applicable.

X. MPO CONTACT INFORMATION

Questions regarding this RFQ must be received via email no later than 11 a.m. on the date contained in the schedule. (Email versions are acceptable; no phone calls). Based on questions received, the project manager will provide clarification or further information through the project website, if needed. Questions may be emailed to Doug.Plachcinski@dchcmpo.org

All Qualification Statements in response to this RFQ must be received at doug.plachcinski@dchcmpo.org no later than 11:00 A.M. on the date contained in the schedule.

ATTACHMENT A: FEDERAL REQUIREMENTS

All recipients of federally funded grants or use federal assistance to support procurements must comply with the applicable provisions of the Federal procurement standards 2 CFR pt. 200. As result, firms awarded federally funded contracts by City of Durham must comply with the following contract provisions set forth herein, unless a particular award term or condition specifically indicates otherwise. These terms and conditions are hereby incorporated into any resulting contract.

Definition	<i>Firm</i> means any company, corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, governmental body, or similar legal entity
Age Discrimination Act of 1975	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of the <i>Age Discrimination Act of 1975</i> (Title 42 U.S. Code, § 6101 <i>et seq.</i>), which prohibits discrimination based on age in any program or activity receiving Federal financial assistance.
Americans with Disabilities Act of 1990	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of Titles I, II, and III of the <i>Americans with Disabilities Act</i> , which prohibits discriminating based on disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities. (42 U.S.C. §§ 12101– 12213).
Byrd Anti-Lobbying Amendment	<p>All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Suppliers, contractors, subcontractors, consultants, and sub- consultants who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of an agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352.</p> <p>Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient.</p>
Civil Rights Act of 1964 – Title VI	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d <i>et seq.</i>), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
Civil Rights Act of 1968	All suppliers, contractors, subcontractors, consultants, and sub- consultants must comply with Title VIII of the <i>Civil Rights Act of 1968</i> , which prohibits discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. § 3601 <i>et seq.</i>), as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with

	four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201).
Clean Air Act and Federal Water Pollution	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—when contract amounts exceed \$150,000 and agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387).
Contract Work Hours and Safety Standards Act	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the <i>Contract Work Hours and Safety Standards Act</i> (40 U.S.C. 3701–3708) and where applicable, all contracts awarded more than \$100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
Copeland “Anti-Kickback” Act	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Sub-contractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
Davis-Bacon Act	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with <i>Davis-Bacon Act</i> , as amended (40 U.S.C. 3141–3148).When required by Federal program legislation, all prime construction contracts in excess of \$2,000 must comply with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).
Debarment and Suspension	All suppliers, contractors, subcontractors, consultants, and sub-consultants are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 C.F.R. Part 180. These regulations restrict awards, sub-awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.
Drug-Free Workplace Regulations	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), which requires agreement to maintain a drug-free workplace.
Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, based on sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.
Energy Policy and Conservation Act	All Suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state

	energy conservation plan issued in compliance with this Act.
<i>Fly America Act of 1974</i>	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.
<i>Hotel and Motel Fire Safety Act of 1990</i>	<i>In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a, all suppliers, contractors, subcontractors, consultants, and sub-consultants must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225.</i>
<i>Limited English Proficiency (Civil Rights Act of 1964, Title VI)</i>	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the <i>Title VI of the Civil Rights Act of 1964</i> (Title VI) prohibition against discrimination based on national origin, that requires taking reasonable steps to provide meaningful access to persons with limited English proficiency to their programs and services.
<i>Patents and Intellectual Property Rights</i>	Unless otherwise provided by law, suppliers, contractors, subcontractors, consultants, and sub-consultants are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All suppliers, contractors, and subcontractors, consultants, sub-consultants are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.
<i>Procurement of Recovered Materials</i>	All suppliers, contractors, and subcontractors, consultants, sub-consultants must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.
<i>Terrorist Financing</i>	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with E.O. 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism.
<i>Trafficking Victims Protection Act of 2000</i>	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of the government-wide award term which implements Section 106(g) of the <i>Trafficking Victims Protection Act of 2000</i> , (TVPA) as amended (22 U.S.C. § 7104). The award term is located at 2 CFR § 175.15, the full text of which is incorporated here by reference in the standard terms and conditions for federally funded procurements.
<i>Rehabilitation Act of 1973</i>	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the requirements of Section 504 of the <i>Rehabilitation Act of 1973</i> , 29 U.S.C. § 794, as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

<i>Universal Identifier and System of Award Management (SAM)</i>	All suppliers, contractors, subcontractors, consultants, and sub-consultants are required to comply with the requirements set forth in the government-wide Award Term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference in the standard terms and conditions for federally funded procurements.
<i>USA Patriot Act of 2001</i>	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.
<i>Whistleblower Protection Act</i>	All suppliers, contractors, subcontractors, consultants, and sub-consultants must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.
<i>Termination Provisions</i>	The City of Durham may terminate any resulting contract should the Contractor fail to abide by its requirements
<i>Legal Remedies Provisions</i>	In instances where the Contractor violates or breaches contract terms the City shall use such sanctions and penalties as may be appropriate.
<i>Conflict of Interest Provisions</i>	Interest of Members, Officers, or Employees of the Recipient Members of Local Governing Body or Other Public Officials. No member officer or employee of the recipient or its agent no member of the governing body of the locality in which the program is situated and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter shall have any financial interest direct or indirect in any contract or subcontract or the proceeds under this agreement. Immediate family members of said member's officers, employees and officials similarly barred from having any financial interest in the program. The recipient shall incorporate or cause to be incorporated in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purpose of this section.
<i>Access to Records and Record Retainage</i>	In general, all official project records and documents must be maintained during the operation of this project and for a period of five years following close out. The City of Durham, the comptroller General of the United States, or any of their duly authorized representatives shall have access to any books documents papers and records of the of the Administering Agency which are pertinent to the execution of the Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.