



**Department of Law**

Barbara A. Langhenry, Director  
601 Lakeside Avenue, Room 106  
Cleveland, Ohio 44114-1077  
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# **Request for Proposal for Professional Legal Services Workers' Compensation**

**Proposal Due 12:00 p.m. (Noon) August 9, 2016:**

**Submit Proposal to:** Barbara A. Langhenry  
Director of Law  
City of Cleveland  
601 Lakeside Ave. Room 106  
Cleveland, Ohio 44114

E-mail: [blanghenry@city.cleveland.oh.us](mailto:blanghenry@city.cleveland.oh.us)

**Submit:** 1 Printed, Signed Original Proposal  
4 Copies of Original Proposal

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## INTRODUCTION AND BACKGROUND

The City of Cleveland (City) is requesting proposals from interested law firms/partnerships/licensed professional services organizations, specifically to represent the interests of the City in administrative hearings before the Industrial Commission of Ohio, and to obtain related comprehensive services necessary to handle and manage workers' compensation disputes and claims, effective upon award and signing of a contract.

The City historically has used outside counsel to provide the services described above. The City desires to meet the legal needs of the City in workers' compensation cases in an effective and cost efficient manner.

The successful law firm/partnership/licensed professional service organization will act as Associate Counsel accountable and responsible to the Director of Law. The Director of Law solely has the discretion to enter into, modify, or terminate an agreement for professional services, and is the sole judge of the quality of the services rendered.

A pre-proposal conference will be held at the Department of Law, 601 Lakeside Avenue, Room 106, Cleveland, Ohio 44114, on Tuesday, July 26, 2016 at 2:00 p.m. At or before the conference interested parties may submit or ask questions pertaining to this Request for Proposals ("RFP") and the services desired.

Prospective proposers are encouraged to attend the conference although attendance is not mandatory.

Each firm shall submit one originally signed proposal and four additional complete proposals, and an electronic copy on CD-ROM, to the City no later than 12:00 p.m. on Tuesday, August 9, 2016. **No proposals will be accepted after that time unless the City extends the deadline by a written addendum.**

Separate, sealed technical and fee proposals may be mailed or delivered to the address below and must be clearly identified on the outside of the envelope(s) as "Proposal for Professional Legal Services, Workers' Compensation."

Barbara A. Langhenry, Director of Law  
City of Cleveland,  
Department of Law Room 106  
City of Cleveland  
601 Lakeside Ave.  
Cleveland, Ohio 44114

The City reserves the right to reject any or all proposals or portions of them, to waive irregularities, informalities, and technicalities, to re-issue or to proceed to obtain the service(s) desired otherwise, at any time or in any manner considered in the City's best

interests. The Director may, at her sole discretion, modify or amend any provision of this notice or the RFP.

## SCOPE OF SERVICES

Cleveland has 7,500+ employees. These employees provide varied services, including police, fire, and emergency medical services; waste collection, street cleaning and snow removal; repair and installation of water pipes, electric lines and cables; and vehicle repair and maintenance. The City is organized into 18 departments and 63 divisions.

1. The City has approximately 2000-2500 docketed claims per year;
2. There are 35-45 DHO and SHO hearings per week at the Industrial Commission.<sup>1</sup>
3. There is an average of 3 VSSR claims annually.

Two lawyers in the City's Law Department are primarily devoted to Workers' Compensation court appeals and the City maintains a Risk Management and Workers' Compensation Office with four full-time staff people. The City also contracts with a Third Party Administrator (TPA) that provides actuarial data to assist in evaluating and estimating length of time and costs of injured employee claims. The City is "retro rated", which is basically, self-insured with stop-loss protection from CY 2003-2007. The City does not have a stop-loss cap from 2008 to 2015, but has a cap again in 2016. The City is evaluating self insurance as a future initiative.

Regular communication with the Law Department and the City Office of Workers' Comp and Risk Manager is required. Please propose a weekly or biweekly meeting schedule, as warranted, with a Law Department representative and/or the City's Risk Manager. Those meetings should be in person (Quarterly) or on occasion by telephone conference. The City desires risk management training for various personnel twice a year.

## TERM

The term of the Agreement shall begin upon its effective date and, unless extended by the City or unless sooner canceled or terminated under the provisions of the Agreement or the determination of the Director of Law, shall be for an initial term of twelve months.

## PROPOSAL REQUIREMENTS

### A. Submission of Proposal

Each proposer shall submit its proposal(s) in the number, form, and manner, and by the date and time and at the location required in the section, **Introduction and Background** above.

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1. Based and averaged from last three years.

- i. Each Proposer shall provide all information requested in this Request for Proposal. The proposer should carefully read all instructions and requirements and furnish all information requested. If a Proposal does not comply with all terms, conditions, and requirements for submittal, the City may consider it unacceptable and may reject it without further consideration.
- ii. The City wishes to promote the greatest feasible use of recycled and environmentally sustainable products and to minimize waste in its operations. To that end, all proposals should comply with the following guidelines: Unless absolutely necessary, copies should minimize or eliminate use of non-recyclable or non re-usable materials. Materials should be in a format permitting easy removal and recycling of paper. A proposer should, to the extent possible, use products consisting of or containing recycled content in its proposal including, but not limited to, folders, binders, paper clips, diskettes, envelopes, boxes, etc. Do not submit any or a greater number of samples, attachments or documents not specifically requested. Two-sided copies may be used.
- iii. If you find discrepancies or omissions in this RFP or if the intended meaning of any part of this RFP is unclear or in doubt, send a written request for clarification or interpretation to Barbara Langhenry, Director of Law, 601 Lakeside Ave., Room 106, Cleveland, Ohio 44114 no later than August 2, 2016. Requests for clarification or interpretation may be submitted via e-mail to [blanghenry@city.cleveland.oh.us](mailto:blanghenry@city.cleveland.oh.us).

## **B. The City's Rights and Requirements**

- i. The Director, at her sole discretion, may require any Proposer to augment or supplement its proposal or to meet with the City's designated representatives for interview or presentation to further describe the Proposer's qualifications and capabilities. The requested information, interview, meeting, or presentation shall be submitted or conducted, as appropriate, at a time and place the Director specifies.
- ii. The City reserves the right, at its sole discretion, to reject any proposal that is incomplete or unresponsive to the requests or requirements of this RFP. The City reserves the right to reject any or all proposals and to waive and accept any informality or discrepancy in the proposal or the process as may be in the City's best interest.
- iii. **Proposal as a Public Record.** Under the laws of the State of Ohio, all parts of the proposal, other than trade secret or proprietary information, may be considered a public record which, if properly requested, the City

must make available to the requester for inspection and copying. Therefore, to protect trade secret or proprietary information, the Proposer should clearly mark each portion of each page—but only that portion of each page—of its proposal that contains that information. The City will notify the Proposer if such information in its proposal is requested, and will make every attempt to protect trade secret or proprietary information by citing to the applicable exemption in Ohio’s Public Records Laws. Blanket marking of the entire proposal as “proprietary” or “trade secret” is not acceptable and will not protect the entire proposal unless each part of the entire proposal is in fact trade secret or proprietary information. The City is not obligated to protect information that is obviously not a trade secret, obviously not proprietary, and obviously public, even if labeled as such. Upon submission of a proposal that contains clearly marked trade secret or proprietary information, the Proposer is agreeing to defend and indemnify the City against any lawsuit or claim that the City improperly withheld a public record based upon the Proposer marking it as a trade secret or proprietary information.

- iv. **Cleveland Area Business Code. Requirements.** During performance of an Agreement, a Contractor with the City shall comply with all applicable requirements of the *Cleveland Area Business Code*, Chapter 187 of the Codified Ordinances of Cleveland, Ohio, 1976 (“C.O.”), and any *Regulations* promulgated under the *Code*, which *Code* and *Regulations* are incorporated into and made part of this RFP by this reference as fully as if rewritten in it or attached.
- a. Under the *Cleveland Area Business Code*, the City of Cleveland is firmly committed to assisting Minority Business Enterprises (MBEs), Female Business Enterprises (FBEs), and Cleveland-area small businesses (CSBs) by providing and enhancing economic opportunities to participate in City contracts. The successful proposer for a contract will be a firm that shares that commitment. Accordingly, a proposer is strongly encouraged to use the services of qualified MBE/FBE/CSB sub-consultants that are certified by the Mayor’s Office of Equal Opportunity (the “OEO”) in its proposal.
  - b. The standard subcontracting goal for professional services contracts is 10% Cleveland Area Small Business (“CSB”) subcontractor participation.
  - c. Proposers may obtain a listing of firms certified by the OEO as CSBs, MBEs and FBEs by checking the City’s website at <http://www.city.cleveland.oh.us>. On the home page, select “Equal Opportunity” from the drop-down menu of City departments. On the Equal Opportunity page, select the “B2Gnow” tab, then the “CSB/MBE/FBE & Section 3 Registry Search”. To obtain a full list of

all certified entities, scroll down to “Search by Certification Type,” check all boxes, and then download to excel or to CSV.

Proposers are responsible for obtaining the most current list and for contacting potential CSB/MBE/FBE sub-consultants. The City assumes no responsibility for matching prime consultants with qualified, certified MBE, FBE, and/or CSB sub-consultants.

- d. The successful proposer, as Contractor, will be required to comply with all terms, conditions, and requirements imposed on a “contractor” in the following *Equal Opportunity Clause*, Section 187.22(b) of the Cleveland Codified Ordinances, and shall make the Clause part of every subcontract or agreement entered into for services or goods and binding on all persons and firms with which the proposer may deal, as follows: No Contractor shall discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status. Contractors shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, religion, color, sex, sexual orientation, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status. As used in this chapter, “treated” means and includes without limitation the following: recruited whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship, promoted, upgraded, demoted, transferred, laid off and terminated. Contractors shall post in conspicuous places available to employees and applicants for employment, notices to be provided by the hiring representative of contractors setting forth the provisions of this nondiscrimination clause.

Specifically, compliance under any resulting agreement shall include, but not be limited to, the Proposers:

- Compliance with its proposal representations regarding CSB, MBE, and/or FBE participation in performance of the Agreement;
  - Compliance and cooperation with Project Monitors, whether from the Mayor’s Office of Equal Opportunity (the “OEO”) or the contracting department;
- v. **Term of Proposal’s Effectiveness.** By submission of a proposal, the Proposer agrees that its proposal will remain effective and eligible for acceptance by the City until the earlier of the execution of a final contract or 180 calendar days after the proposal submission deadline (the “Proposal Expiration Date”).

- vi. **Execution of a Contract.** The successful Proposer shall, within ten (10) business days after receipt of a contract prepared by the City Director of Law, exclusive of Saturdays, Sundays and holidays, execute and return the contract to the City together with evidence of proper insurance and intent to conform to all requirements of the contract attached hereto or which are a part hereof and all applicable federal, state and local laws and ordinances prior to or at the time of execution of the contract.
- vii. **“Short-listing”.** The City reserves the right to select a limited number (a “short list”) of Proposers to make an oral presentation of their qualifications, proposed services, and capabilities. The City will notify the Proposers selected for oral presentations in writing.
- viii. **Proposer’s Familiarity with RFP; Responsibility for Proposal.** By submission of a proposal, the Proposer acknowledges that it is aware of and understands all requirements, provisions, and conditions in and of this RFP and that its failure to become familiar with all the requirements, provisions, conditions, and information either in this RFP or disseminated either at a pre-proposal conference or by addendum issued prior to the proposal submission deadline, and all circumstances and conditions affecting performance of the services to be rendered by the successful proposer will not relieve it from responsibility for all parts of its Proposal and, if selected for contract, its complete performance of the contract in compliance with its terms. Proposer acknowledges that the City has no responsibility for any conclusions or interpretations made by Proposer on the basis of information made available by the City. The City does not guarantee the accuracy of any information provided and Proposer expressly waives any right to a claim against the City arising from or based upon any incorrect, inaccurate, or incomplete information or information not otherwise conforming to represented or actual conditions.

### C. Interpretation

The City is not responsible for any explanation, clarification, interpretation, representation or approval made concerning this RFP or a Proposal or given in any manner, except by written addendum. The City will mail, e-mail, or otherwise deliver one copy of each addendum issued, if any, to each individual or firm that requested or received a RFP. Any addendum is a part of and incorporated in this RFP as fully as if originally written herein.

## QUALIFICATIONS FOR PROPOSAL

- A. Each Proposer, regardless of the form of its business entity, must have lawyers licensed to practice law in the State of Ohio and otherwise be authorized to conduct business in the State of Ohio, County of Cuyahoga and the City of Cleveland. Failure to meet this requirement may be cause for rejection of a proposal.

**B. Insurance:** The successful Proposer, at its expense, shall at all times during the term of the contract resulting from this RFP, maintain the following insurance coverage. The insurance company(ies) providing the required insurance shall be authorized by the Ohio Department of Insurance to do business in Ohio and rated "A" or above by A. M. Best Company or equivalent. The successful Proposer, as contractor, shall provide a copy of the policy or policies and any necessary endorsements, or a substitute for them satisfactory to and approved by the Director of Law, evidencing the required insurances upon execution of the contract.

- i. Professional malpractice insurance with limits of not less than \$1,000,000.00, and if not written on an occurrence basis, shall be maintained for not less than two (2) years after satisfactory completion of the services under the contract.
- ii. Workers' compensation and employer's liability insurance as provided under the laws of the State of Ohio.
- iii. Statutory unemployment insurance protection for all of its employees.
- iv. Such other insurance coverage(s) as the City may reasonably require.

**C. Indemnification:** The successful Proposer shall indemnify and save harmless the City of Cleveland and its respective officers, agents, and employees from and against all suits or claims for bodily injury, death or physical damage to real and personal property, to the extent directly and proximately caused by the negligent acts of the successful Proposer while engaged in the performance of services under the Agreement with the City; and the successful Proposer shall, at its own expense, defend the City in all litigation, pay all reasonable attorney's fees, damages, court costs and other expenses arising out of such litigation; and shall, at its own expense, satisfy and cause to be discharged such judgments as may be obtained against the City, or any of its officers, agents or employees, arising out of such litigation. Such indemnification shall survive the term of the Agreement. As a condition to the foregoing indemnification obligations, the City shall provide the successful Proposer with prompt notice of any claim for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with firm in connection with such claim. The successful proposer shall be entitled to control the handling of such claim and to defend or settle any claim with counsel of its own choosing.

## **PROPOSAL CONTENTS**

Each proposal shall include the following parts in the below order. Please separate and identify each part by tabs for quick reference. Each proposal should be organized so as to facilitate its evaluation.

- A. Cover Letter:** The cover letter shall identify and introduce the Proposer and provide other general information about Proposer's business organization including, at least, in one or more attachments or in the Proposal, Proposer's name, principal address, federal ID number, telephone and facsimile numbers, and e-mail address.

If a corporation, provide the state of incorporation, and the full name, title, and experience of each high level corporate officer. If the Proposer is not an Ohio corporation, please state whether or not the Proposer is qualified to do business in the State of Ohio as a foreign corporation. A foreign corporation must provide evidence, prior to execution of a contract, that is qualified to do business in the State of Ohio or it must register with the Ohio Secretary of State.

If the Proposer is a sole proprietorship, state the name of the proprietor doing business.

If a partnership, state the full name, address and other occupation, if any, of each partner; whether the partner is a general or limited partner, and whether active or passive.

If a joint venture, state the name of each firm participating in the joint venture and each principal officer of each firm; each officer's experience and the proportionate share of the joint venture owned by each joint venture partner.

- B. Table of Contents:** Include clear identification of the material submitted by section and page number.
- C. Executive Summary:** The Executive Summary should provide a complete and concise summary of Proposer's background, area(s) and level(s) of expertise, relevant experience and ability to meet the requirements of this RFP. The Executive Summary should briefly state why Proposer is the best candidate for the engagement. The Summary should be organized so it can serve as a stand-alone summary apart from the remainder of the proposal.
- D. Exceptions:** Proposer shall itemize any exceptions it has to the RFP. If it has no exceptions to or deviations from any part of this RFP, it shall so state on an "Exceptions" page. If no deviations or exceptions are identified, Proposer understands that if the City accepts the Proposer's proposal, it must comply with and conform to all of the requirements of the RFP.
- E. Qualifications:** In the Qualifications section, each Proposer should state in detail its qualifications, and experience, and how its services are unique and best suited to meet the requirements and intent of this RFP. Proposer may include as much information as needed to differentiate its services and product(s) from other Proposers. At a minimum, please include, the following:

- i. How Proposer meets or exceeds qualifications;
- ii. A description of the nature of the individual lawyer's and/or group's experience, in both time and breadth, in providing the services sought by this RFP, including the individual lawyer's and its experience providing representation to employers before the State Industrial Commission and with VSSR claims. State the number of persons currently employed for such purpose;
- iii. The total number of such engagements and clients comparable to the City for which the firm has provided like or similar services within the last five (5) years;
- iv. The name, location, and date of all Proposer's agreements for like services that have been terminated, canceled, or suspended prior to completion of the engagement or expiration of the full term within the past five (5) years, and any judgment terminating, or any pending lawsuits or unresolved claims or disputes for damages or termination of such agreements within the past five (5) years; and
- v. The names, addresses (both geographic and e-mail), and telephone numbers of at least three (3) references for the firm's professional capabilities, especially references for which the Proposer has rendered services substantially similar to those sought by this RFP.

**F. Proposed Services:** Proposer shall describe in detail how Proposer's management and operating plan for delivery of the services for the engagement or project will achieve the intent and goal(s) of the RFP. In its response to this sub-section, Proposer shall provide or describe:

- i. An organizational chart specific for the proposed engagement or project;
- ii. Resumes of key personnel;
- iii. An operational plan describing in detail how Proposer will achieve the intent and purpose(s) of the engagement or project;
- iv. A detailed description of the professional services to be provided;
- v. Trouble shooting/follow-up protocols;
- vi. Project management tools to be used in implementation;

**G. Environmental Sustainability:** Describe how the proposed services/project/solution incorporate environmental sustainability

- H. Fee Proposal:** Proposer should submit its fee proposal for all its services in a separately sealed envelope clearly marked on the outside. Itemize the fee, as practical, in dollars and percentage. Proposer shall provide its best estimate of expenses including, but not limited to, travel and associated expenses. The fee proposal shall be a firm and final amount including the costs and expenses for all anticipated services.
- i. The fee proposal shall include an hourly rate and an estimate of the number of hours for each service in the Scope of Services, including a separate hourly rate fee or blended rate fee per attorney or other personnel potentially providing services to the City.
  - ii. The Proposer should consider in its costs weekly or biweekly meetings to consult with Law Department attorneys and /or the City Office of Risk Management and Risk Manager. In addition, include costs for weekly email or other electronic summaries of Industrial Commission hearings.
  - iii. The Proposer should consider in its cost proposal consulting with City operations representatives, Labor Relations, and work/safety personnel to prepare for hearings.
  - iv. The Proposer should consider in its cost proposal risk management training to be provided two times per year.
  - v. The Proposer should consider in its cost proposal time for briefs, other written materials, internal research and memoranda, retention of ancillary services such as court reporters, videographers, physicians for independent medical evaluations, and costs incurred obtaining medical records.
  - vi. The City will reimburse Proposer for the following expenses only: long-distance telephone charges; expenses for pre-approved travel necessary for the performance of services under the agreement, including the cost of transportation, lodging, and meals that are approved in advance by the Director or her designee; filing fees; court recorder fees; and expert fees. No other expenses will be reimbursed without prior approval of the Director or her designee including, without limitation, postage; facsimile transmittal (except for associated long-distance telephone charges); parking (except when concerning pre-approved travel); keystrokes; staff overtime, courier services; and overnight delivery services. The City will not reimburse the costs of computer-aided legal research. Payment for reimbursable expenses will be based upon actual out-of-pocket cost without any handling, overhead, or other charges
- I. Proposer's Affidavit:** Proposer shall submit with its proposal an affidavit stating that neither it nor its agents, nor any other party acting for it has paid or agreed to pay, directly or indirectly, any person, firm or corporation any money or valuable

consideration for assistance in procuring or attempting to procure the contract proposed to result from its proposal, and further agreeing that no such money or reward will be paid.

- J. Additional Required Documents:** Proposer shall complete, execute, and return with its proposal the following documents, blank copies of which are attached to this RFP:
- i. Federal Form W-9 including Taxpayer Identification Number;
  - ii. Non-Competitive Bid Contract Statement for Calendar Year 2016.

## **PROPOSAL EVALUATION; SELECTION CRITERIA**

- A. Evaluation Methodology.** The City will evaluate each proposal submitted. The City will only consider proposals that are received on or before the proposal submission deadline, and which meet all the requirements of this RFP. The City reserves the right to request a “best and final offer” from Proposers meeting the minimum requirements.
- B. Evaluating Proposals.** The City will evaluate each Proposal in each of the following categories, but evaluation will not be limited to those categories:
- i. Experience and staff.
  - ii. Experience in Ohio Workers’ Comp representing Retro Rated Public Entities.
  - iii. Use of leading edge software or web-based claims hearing coordination.
  - iv. Size of any prior municipal clients and types of services provided to those municipalities.
  - v. Program Management Plan.
  - vi. Scope and approach to proposed services, including extent of use of City staff and reasonable estimate of projected hours.
  - vii. Sustainability.
  - viii. Effective incorporation of any Minority and Female Business (MBE/FBE), Small Business Enterprise (SBE), or Disadvantaged Business Enterprise (DBE).
  - ix. Cost.

Any ratings used to evaluate proposals are not intended or to be interpreted as a reflection of a Proposer’s professional abilities. Instead, they reflect the City’s best attempt to evaluate each Proposer’s ability to provide the services sought by the City and to meet the specific requirements of this RFP, for comparison purposes.

**C. Disqualification of a Proposer/Proposal:** The City does not intend by this RFP to prohibit or discourage submission of a proposal that is based upon a Proposer's experience in relation to the nature or scope of work or services described in this RFP or to prescribe the manner in which its services are to be performed or rendered.

The City will not be obligated to accept, however, significant deviations from the work or services sought by this RFP, including terms inconsistent with or substantially varying from the services or the financial and operational requirements of the RFP, as determined solely by the City. The City reserves the right to reject any proposal that does not furnish or is unresponsive to the information required or requested herein. The City reserves the right to reject any proposal or to waive or to accept any deviation from this RFP or in any step of the proposal submission or evaluation process so as to approve the award of the contract considered in the City's best interest, as determined in the City's sole discretion.

Although the City prefers that each Proposer submit only one proposal including all alternatives to the proposal that the Proposer desires the City to consider, it will accept proposals from different business entities or combinations having one or more members in interest in common with another Proposer. The City may reject one or more proposals if it has reason to believe that proposers have colluded to conceal the interest of one or more parties in a proposal, and will not consider a future proposal from a participant in the collusion. In addition, the City will not accept a proposal from or approve a contract to any Proposer that is in default as surety or otherwise upon an obligation to the City or has failed to perform faithfully any previous agreement with the City, or is currently in default under any agreement with the City.

The City reserves the right to reject any or all proposals. Failure by a Proposer to respond thoroughly and completely all information and document requests in this RFP may result in rejection of its proposal. Further, the City reserves the right to independently investigate the financial status, qualifications, experience, and performance history of a Proposer.

The City reserves the right to cancel the approval or authorization of a contract award, with or without cause, at any time before its execution of a contract and to later enter into a contract that varies from the provisions of this RFP, if agreed to by another Proposer.

## **CONTRACT TERMS AND CONDITIONS**

The Terms and Conditions, substantially in the form contained herein, shall be included in the Agreement between the City of Cleveland and the successful Proposer. Please review for compliance. No specific response to this section is required.

## **A. Subcontracting**

None of the services covered by the Agreement shall be subcontracted without the prior written approval of the Director of Law. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of the Agreement.

## **B. Assignment**

The Proposer shall not assign any interest in the Agreement, and shall not transfer any interest in the same, whether by assignment or notation, without the prior written consent of the Director of Law.

## **C. Compliance with Laws and Policies**

The Agreement is subject to, and Proposer shall comply with, all statutes, ordinances, regulations and rules of the Federal Government, the State of Ohio, the County of Cuyahoga and the City of Cleveland.

The City of Cleveland reserves the rights to cancel the contract that violates any federal or state law. Acceptance of the City's Agreement shall constitute an agreement by the proposer to abide by all federal and state laws.

## **D. Force Majeure Clause**

The Proposer shall not be charged with default nor the City held liable because of delays in completion of the work or payment therefore due to any of the following:

- i.** Acts of the Federal Government, including controls or materials, equipment, tool or labor essential to completion of the work by reason of war, national defense or any other national emergency.
- ii.** Changes in the method of performing work covered by the contract, upon order of the City to the extent that any delay is the direct result of any such change.
- iii.** Causes not reasonably foreseeable by the parties of this contract at the time of the execution of the contract, which are beyond the reasonable control of, and through no fault or negligence of, the Proposer or the City. This shall include, but not be restricted to, acts of God or the public enemy, freight embargoes and court actions; acts of another Proposer in the performance of some other contract with the City, fires, floods, epidemics, quarantines and strikes; weather of unusual severity such as hurricanes, tornadoes and cyclones; nuclear radiation or radioactive contamination; and other like factors of unusual severity which directly affect or prohibit work under the contract.

## **E. Conflict of Interest**

No officer, employee or agent of the City of Cleveland who exercises any functions or responsibilities in connection with the planning and carrying out of the program, nor any immediate family member, close business associate or organization which is about to employ any such person, shall have any personal financial interest, direct or indirect, in the Proposer or in the Agreement, and the Proposer shall take appropriate steps to assure compliance.

The Proposer agrees that it will not contract with any subcontractor in which it has any personal financial interest, direct or indirect. The Proposer further covenants that in the performance of the Agreement, no person having any conflicting interest shall be employed.

Proposer covenants that its principals have made no contributions to the Mayor of the City which would cause the Proposer to be ineligible for the award of an unbid contract under division (I) or (J) of Section 3517.43 of the Revised Code, and that it has executed and submitted to the City an affidavit to such effect.

Proposer also represents that, to the best of Proposer's knowledge, it presently has no interest which would constitute a conflict of interest under applicable professional standards, accounting rules or law with the performance of services required to be performed under the Agreement, and further covenants that no person having any such interest shall be employed in the performance of the Agreement. Proposer shall promptly notify the City of any potential conflicts which may arise during performance of the Agreement or prior to final payment for all services rendered under the Agreement.

## **F. Payment**

The City will pay Proposer after submission to and approval by the Director of monthly billings itemizing, by subject matter, the time spent daily by each attorney or other personnel involved in representation of the City, and the hourly rate charged for each person. Proposer's monthly invoice must include copies of receipts for all reimbursable expenses and an itemization of the date, nature, and amount of all expenses. The City will have no obligation to pay for services that were performed more than ninety (90) days prior to the date the invoice is submitted to the City.

## **G. Non-Exclusive Contract**

This is a non-exclusive contract and the City may purchase or engage the same or similar services from other Proposers at any time during the pendency of this contract.

## **H. Reports, Information and Audits**

The Proposer, at such times and in such form as the Director of Law may require, shall furnish the City such reports as may be requested pertaining to the services undertaken pursuant to the Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by the Agreement.

## **I. Proprietary Materials**

The City of Cleveland acknowledges that in the course of performing services, the Proposer may use products, materials, or propriety methodologies. The City of Cleveland agrees that it shall have or have obtained no rights in such propriety products, materials and methodologies except pursuant to a separate written agreement executed by the parties.

The Proposer acknowledges that in the course of performing services for the City of Cleveland, the materials and information obtained, used and/or produced for the City of Cleveland are the exclusive properties of the City of Cleveland and may not be disseminated in any manner without prior written approval of the City of Cleveland.

## **J. Ownership of Property**

The Proposer agrees that at the expiration or in the event of any termination of the Agreement, that any data, research, reports, and other similar items produced in connection with the Agreement shall become the property of the City of Cleveland and Proposer shall promptly deliver those items, or a copy of those items, to the City of Cleveland if requested. All documents, reports, spreadsheets, etc. produced as a result of this engagement belong to the City of Cleveland and can be used by the City at its sole discretion.

## **K. Warranty**

The Proposer warrants that the services to be provided by it hereunder will be performed in a good, timely and professional manner by qualified staff and in accordance with generally accepted professional standards. The Proposer further warrants that the design and recommended solution are workable and capable of meeting the scope of services.

## **L. Confidentiality**

The Proposer, its agents and employees will keep and retain any and all information and records generated under the Agreement in strictest confidence and will neither use such information or records nor disclose such information or records to anyone without the explicit written permission of the Director of Law or her designee. The Proposer warrants that it has and will continue to have safeguards in place to assure that such

information and records are kept confidential by the Proposer, its agents and employees.

#### **M. Termination**

Either the City or the Proposer may terminate the Agreement unilaterally by giving written or oral notice to the other party. Such termination shall be subject to Disciplinary Rule 2-110 of the Code of Professional Responsibility and any requirements of the Ohio Supreme Court or other applicable judicial forum. Upon any termination, Proposer must be paid, under this Agreement, for those services performed and expenses incurred prior to termination; the amount of such payments, however will be subject to any monetary limitations contained in the Agreement.

#### **N. Contract Documents**

An Agreement between the Director of Law and the successful Proposer will include the Proposal document and the Proposer's Proposal.

In the event of a conflict or variance between any of the documents comprising the Contract, such conflicts or variations and interpretations shall be resolved by giving precedence in the following order:

- i. The Agreement;
- ii. Scope;
- iii. Terms and Conditions; and
- iv. The Proposal.

#### **O. Waiver**

The Agreement shall be construed in a manner that a waiver or any breach of any provision of the Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provisions or of any other provision.

#### **P. Law to Govern**

The Agreement is entered into and is to be performed in the State of Ohio. City of Cleveland and Proposer agrees that the laws of the State of Ohio and the Codified Ordinances of the City of Cleveland shall govern the rights, obligations, duties and liabilities of the parties to the Agreement and shall govern the interpretation of the Agreement.

**Q. Limitation on Warranties**

Proposer warrants that it shall perform services hereunder in good faith and with due professional care. Proposer disclaims all other warranties, either express or implied, including, without limitation, warranties of merchantability and fitness for a particular purpose.

**R. Cooperation**

The City shall cooperate with the Proposer in the performance of the professional services as described hereunder, including, without limitation, providing Proposer with reasonable and timely access to data, information and personnel of the City. The Director of Law shall be responsible for the performance of City personnel and agents and for the accuracy and completeness of all data and information provided to Proposer for performance of their professional services.

**S. Internal Use**

The Director of Law agrees that all recommendations advice and representation, written memoranda, briefs, without limitation, shall be for the City's internal use, i.e., in representing the City in administrative hearings and before the Industrial Commission or Bureau of Workers' Compensation, or in the courts. Further, except as required by law, such recommendations, advice, and written memoranda, *et alia* shall not be circulated, quoted, disclosed, or distributed, nor be disclosed unless at the discretion of the Director of Law.

**T. Amendment**

The Agreement may be modified or amended only by written agreement duly executed by the parties hereto or their representatives

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