



City of Auburn, Maine

Finance Department

www.auburnmaine.gov | 60 Court Street
Auburn, Maine 04210
207.333.6601

December 16, 2016

Dear Bidder:

The City of Auburn is seeking proposals from qualified applicants to serve as **Legal Counsel**, hereinafter called City Attorney, on a contractual basis under appointment by the City Council. The firm selected would serve as chief legal advisor to the City for a contract term of three years, beginning upon the signing of a contract agreement February 1, 2017 and concluding January 31, 2020 with provisions for extension on a year-to-year basis.

The City Attorney will provide legal advice to City officials, City employees, board and commissions, and will represent them in court as may be required. The attorney will also prepare and review contracts, deeds, leases, ordinances, workers' compensation claims, etc., and reserve and provide opinions for the City on a variety of subjects excluding bond counsel and School Department Board and Personnel. The attorney may be required to attend City Council meetings and may be asked to attend other meetings and hearings and will be expected to provide legal assistance in a prompt and efficient manner.

The successful candidate will be licensed to practice law in the State of Maine and will demonstrate substantial training and experience in all areas of municipal law including but not limited to land use, finance, civil and criminal litigation, real estate, risk management and environment.

Proposals will not receive consideration unless submitted in accordance with the following instructions to bidders. Please mark sealed envelopes plainly: **“Legal Services RFP #2017-016.”**

Bid packages will be available beginning on Friday, December 16, 2016. Documents can be obtained on the City Website: <http://www.auburnmaine.gov/Pages/Government/Bid-Notices>. Questions regarding this Request for Proposals should be directed to Derek Boulanger, dboulanger@auburnmaine.gov.

Please submit your proposal to the City of Auburn by 2:00 p.m. Thursday, **January 12, 2017**. Proposals must be delivered to **Derek Boulanger, Facilities Manager/ Purchasing Agent, 60 Court Street, Auburn, Maine 04210** on or before the date and time appointed. No proposals will be accepted after the time and date listed above. Proposals will be opened at 2:00 p.m. on that date.

Derek Boulanger
Facilities Manager/ Purchasing Agent
dboulanger@auburnmaine.gov
207.333.6601 ext.1135

CONDITIONS AND INSTRUCTIONS TO BIDDERS

1. Bidders shall use the enclosed bid form for quotations. Whenever, in bid forms, an article is defined by using a trade name or catalog number, the term "or approved equal", if not inserted, shall be implied.
2. Submit a separate unit price for each item unless otherwise specified in the bid request. Award will be made on a basis of each item, or as a group, whichever is in the best interest of the City. Prices stated are to be "delivered to destination".
3. Bid proposals must be completed in full, in ink and must be signed by firm official. Bid proposal **MUST** be notarized prior to bid being sealed and will be disqualified if not notarized. Bids may be withdrawn prior to the time set for the official opening.
4. Bids will be opened publicly. Bidders or representatives may be present at bid opening.
5. Awards will be made to the lowest responsible bidder, considering the quality of the materials, date of delivery, cost which meets specification and is in the best interest to the City of Auburn.
6. All transportation charges, including expense for freight, transfer express, mail, etc. shall be prepaid and be at the expense of the vendor unless otherwise specified in the bid.
7. The terms and cash discounts shall be specified. Time, in connection with discount offered, will be computed from date of delivery at destination after final inspection and acceptance or from date of correct invoice, whichever is later.
8. The City is exempt from payment of Federal Excise Taxes on the articles not for resale, Federal Transportation Tax on all shipments and Maine Sales Tax and Use Taxes. Please quote less these taxes. Upon application, exemption certificate will be furnished with the Purchase Order when required.
9. Time of delivery shall be stated. If time is of the essence, the earliest date may be a factor in the bid award.
10. No contract may be assigned without the written consent of the Finance Director or her designate.
11. Please state "**Legal Services– Bid 2017-016**", on submitted, sealed envelope.
12. The City of Auburn reserves the right to waive any formality and technicality in bids whichever is deemed best for the interest of the City of Auburn.

GENERAL CONDITIONS

1. Equal Employment Opportunity

The City of Auburn is an Equal Opportunity Employer and shall not discriminate against an applicant for employment, and employee or a citizen because of race, color, sex, marital status, physical and/or mental handicap, religion, age, ancestry or natural origin, unless based upon a bona-fide occupation qualification. Vendors and contractor or their agents doing business with the City shall not violate the above clause or the Civil Rights Acts of 1964. Violations by vendors shall be reviewed on a case-by-case basis and may mean an automatic breach of contract or service to the City of Auburn.

2. Save Harmless

The Bidder agrees to protect and save harmless the owner from all costs, expenses or damages that may arise out of alleged infringement of patents of materials used.

3. Subcontracting

The Bidder shall not subcontract any part of the work or materials or assign any monies due it without first obtaining the written consent of the municipality. Neither party shall assign or transfer its interest in the contract without the written consent of the other party.

4. Warranty

The Bidder warrants that all work will be of good quality and free from faults and defects, and in conformance with the specifications. All work not conforming to these standards may be considered defective. The Bidder agrees to be responsible for the acts and omissions of all of its employees and all subcontractors, their agents and employees, and all other persons performing any of the work under a contract with the Bidder.

5 Termination

Either party has the right to terminate said agreement by placing a written Thirty (30) days notice of such termination in the United States Mail, postage prepaid and addressed to, in the case of the City of Auburn, Jill Eastman, Finance Director, 60 Court St Auburn, ME 04210.

SPECIFICATIONS FOR

Legal Services for the City of Auburn

The City of Auburn, Maine, hereby solicits proposals from individual attorneys and/or law firms to represent the City as its City Attorney. The Attorney and/or firm selected by the City would serve as legal counsel to the City Council, the City Manager, and would work through the City Manager to serve all City departments and various City boards, committees, agencies, commissions and review of workers' compensation claims for a contract term beginning upon the signing of a contract agreement February 1, 2017 and concluding January 31, 2020 with provisions for extension on a year-to-year basis.

The City of Auburn's selection will be based on its evaluation of the written proposal, the attorney and/or firm's qualifications and experience, client references, the areas of legal services which the attorney and/or firm are willing to provide, an oral presentation (if requested) and the overall fee structure. **The City may consider engaging more than one firm for services should responses demonstrate particular strength in one or more areas outlined in this request.**

Proposals in whole or in part, must be received by the Finance Department, Auburn City Hall on or before 2:00 PM, **Thursday, January 12, 2017**. Proposals must be sealed and clearly marked, "Legal Services RFP #2017-016". Respondents must submit an original proposal and five (5) copies.

Miscellaneous Requirements: The City will not be responsible for any expenses incurred by an attorney or firm in preparing, submitting or presenting a proposal. All proposals shall provide a straightforward, concise delineation of the attorney's or firm's capabilities to satisfy the requirements of the request. Emphasis should be on completeness and clarity of content.

The City reserves the right to waive any informalities in proposals, to accept or reject any or all proposals for any reason, to negotiate with any attorney, law firms, or business and to select one or more of the attorneys and/or law firms deemed to have submitted a proposal which in the judgment of the Auburn City Council is in the best interest of the inhabitants of the City of Auburn. **The City of Auburn specifically reserves the right to accept more than one proposal and may select more than one attorney and/or law firm to serve as a legal counsel to the City of Auburn.**

Proposals may be held by the City for a period not to exceed forty-five (45) days from the date of the opening of proposals for the purpose of reviewing proposals and investigating the qualifications of the proposers prior to the award of a contract.

INTRODUCTION

The City of Auburn has a City Council/City Manager form of government with the City Manager operating as the Chief Administrative Officer. The population of the City is approximately 23,055. The 2017 annual budget is approximately \$80,530,771 (including education, general government operations, and capital). Legal services expenditures have been approximately \$90,000 annually. The City currently retains separate bond counsel for the purpose of issuing municipal bonds as well as separate counsel for workers' compensation and the Department of Education maintains a separate counsel for its board and staff.

The City has a complex land use ordinance. The City operates under a City Charter and extensive City policies and ordinances. Like most municipalities, Auburn is involved in a variety of activities which require a diversity of legal services, but land use/planning/zoning matters, union contracts and economic development administrative legal issues, represent a majority of them.

The City prefers to conduct business using e-mail and other electronic media, when reasonable within the confines of confidentiality and other business constraints. To that end, it is frequently important for the City to be able to receive digital copies of ordinances, policies, contracts and other documentation that are readable by the City's official software (Microsoft Office products).

THE PROPOSAL

Scope of Legal Services Required per RFP

Attached to this request for Proposal is Appendix A, which describes various areas of legal work, which should be provided to the City of Auburn. Each applicant must place an “X” on the line next to each of those areas of legal work in which the applicant is willing and able to provide legal counsel to the City of Auburn. After Appendix A has been so completed, it must be returned with the Proposal of the applicant.

Unless the applicant indicates that the Proposal may only be accepted if the applicant is selected to represent the City in every area designated by the applicant, the City reserves the right, at its discretion, to appoint the applicant to represent the City in one or more or all of the areas designated by the applicant.

In addition, even if an applicant is selected to represent the City with regard to one or more or all of the areas of legal work designated by the applicant, the City reserves the right, at their discretion, to appoint another attorney and/or law firm to represent the City with regard to such designated area of legal work from time to time if the City Council deems such action to be in the best interest of the City.

Exception-Amendment; An applicant may provide a narrative of additional services that they or their firm could offer to the City should the need arise. This would be included as an exception-amendment to the proposal.

Qualifications and Experience of Legal Counsel

The proposal must identify the principal attorneys within the firm who would be providing legal services to the City. Resumes shall be submitted for each such attorney who would be providing services to the City. The attorney and/or law firm making a proposal must describe the attorney and/or law firm’s expertise in providing the services described in Appendix A.

Client references

List clients’, references with addresses, phone numbers and types of legal services provided who may be contacted by the City of Auburn in connection with the proposal

Compensation-Fee Structure

The city will entertain two fee schedules:

- 1) Hourly rates only
- 2) A flat rate for 60 hours per month, included in the 60 total hours per month 8 hours per week the selected attorney will be expected to be in office located at Auburn City Hall

Each applicant must state the compensation for the services provided by the applicant.

Other Required Narrative Topics

Good Standing and License: The Attorney and/or law firm submitting a proposal must be in good standing and licensed to practice law before all courts and administrative agencies of the State of Maine and before the United States District Court for the District of Maine.

Access and Availability: Each applicant must identify an address of the offices of the attorneys who would provide services to the City of Auburn and their proximity in miles and driving time to the Auburn City Office. The applicant must indicate their availability to provide services in the evening hours between approximately 6:00 p.m. and 10:00 p.m.

Casework-Management: The City expects each applicant to demonstrate how it will manage casework for the City of Auburn. Each applicant shall identify their response time to questions and assistance (e.g. – verbal response within 1 hour, written response within 24 hours).

Proactive Practices: The City is interested in developing and implementing practices that promote litigation prevention through proactive and educational methods. Each applicant shall identify their thoughts and proposed approach toward providing proactive legal services, which will minimize claims and expensive litigation.

Contract for Services:

The attorney or firm that is selected by the City of Auburn will be required to sign a contract and additional terms and provisions may be included in the contract. In addition to the contents of the proposal submitted by the applicant, and this Request for Proposal, will be part of any such contract awarded.

In addition, the City anticipates that the following provisions will become a part of that contract.

Compensation: Each applicant must state the compensation that will be required for the services of the applicant. The City of Auburn will entertain two separate proposals from each applicant: (1) payment on an hourly basis only, and (2) a flat rate fee based on 60 hours of service per month. The selected attorney will be expected to be in office at Auburn City Hall for 8 hours per week of the 60 total hours per month. Itemized bills including the date, time and description of service and department requesting service will be required to be submitted before each payment will be made by the City of Auburn. Such bills shall be submitted on a basis no more frequently than monthly.

Billing for services shall be explained in detail including all support services such as: paralegal, clerical, supplies, mileage, research through West Law or other equivalent services, and other expenses. Applicants shall identify whether they have a toll free telephone number.

Applicants shall also list any services that will be provided free of charge such as attendance at annual, special City meetings and/or educational forums on various topics or any non-charged, in-house expenses. Each applicant should provide an explanation of how the City will be billed for consultations between two attorneys who are both members of your legal firm.

The City wants information about how applicants bill for informational correspondence, i.e. courtesy copies and e-mails, other billing practices, etc.

Supervision and Control: The City Attorney shall be under the general supervision of the City Manager. It is specifically noted that answering inquiries from the general public and the press is outside the purview of the position of City Attorney and that he/she shall courteously refer such inquiries to the City Manager, unless otherwise instructed by the City Manager. Since individual committee and City Council members have no legal authority to incur expenses on behalf of the City, the City Attorney is not authorized to provide legal counsel to them individually, with the exception of the City Council chairman.

Except as otherwise requested by the City Council, all communications regarding legal services by the City Attorney shall be transmitted to the City Manager. Copies of such communications dealing with significant issues shall be forwarded by the City Manager to all Council members.

There shall be no limits to the matters referred to the City Attorney. City officials agree to avoid asking for assistance and review of non-legal matters.

Termination: Subject to the provisions below, the contract may be terminated by either party upon thirty (30) days advance written notice to the other party; but if any work or services hereunder are in progress, but not completed as of the date of termination, then

the contract may be extended upon written approval by the City Manager until said work or services are completed and accepted.

Termination for Convenience: In the event that the contract is terminated or cancelled upon request and for the convenience of the City, without the required thirty (30) days advance written notice, then the City shall negotiate reasonable termination costs, if applicable.

Termination for Cause: Termination by the City for cause, default or negligence on the part of the attorney or firm shall be excluded from the foregoing provision; i.e.- termination cost, if any, shall not apply. The thirty (30) days advance written notice requirement is waived in the event of Termination for Cause.

Assignment: The selected attorney or firm will be prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this agreement or its rights, title or interest therein or its power to execute such agreement to any other person, company or corporation without the previous consent and approval in writing of the City Manager.

Hold Harmless Clause: The Legal Firm shall indemnify the City from all suits, actions or claims of any kind brought on account of any injuries or damages sustained by any person in consequence of any negligence in performing contract work, or on account of any act or omission by the attorney or the firm or its employees, or from any claims or amounts arising or uncovered under any law, bylaw, ordinance, regulation, or decree, violated by such attorney or firm.

Insurance: The legal firm shall be required to carry Professional Liability Insurance. Proposals must specify the carrier and coverage limits of no less than \$1,000,000 per occurrence. The successful applicant or applicants shall provide to the City a certificate of proof of insurance and shall maintain required insurance coverage.

Unavailability: The attorney or firm must also provide advance notification to the City Manager of times when counsel will be unavailable (e.g. - vacations, professional conferences, etc.), and the name(s) of legal counsel who will handle City legal affairs in his/her absence.

Specialized Counsel: The City shall not be restricted from appointing specialized counsel when, in the judgment of the City, the need arises. The City Attorney agrees that he will assist the City Manager, the City Council and outside counsel in any way possible.

Illustrative examples of the anticipated services include:

1. **Advise the City Manager and Council:** Advise the City Council, City Manager, City committees and department managers upon all legal questions arising in the conduct of City business.
2. **Prepare Ordinances:** Prepare or revise ordinances when so requested by the City Council, City Manager, City committees or department managers.
3. **Give Opinions:** Give opinion upon any municipal legal matter or question submitted to him/her by the City Council, City Manager, City committees or department managers.
4. **Attend Council and Committee Meetings:** Attendance at all regular and special City Meetings as requested and other related municipal meetings as requested.
5. **Prepare Legal Instruments:** Prepare for execution all contracts and instruments to which the City is party when so requested by the City Council,
6. **Prosecute Offenders and Defend Officials:** When authorized by the Council, prepare all charges and complaints against, and appear in the appropriate court in the prosecution of, every person charged with the violation of a City ordinance. Under the direction of the City Council, defend City officials in any action or claim against them in their official capacity. In those claims where the City's insurance company has appointed legal counsel, the City Attorney shall provide only those services requested by the City Manager.
7. **Make Reports:** Immediately report to the City Manager the filing of any litigation against the City, as well as the final outcome of any such claims.
8. **Collections:** When requested by the Tax Collector, collect unpaid taxes, fines and loans.
9. **Real Estate:** Prepare deeds, easements and contracts as pertaining to real estate and render title opinions on property being acquired or sold by the City.
10. **Keep Records:** Keep a complete record of all suits in which the City had or has an interest, giving the names of the parties, the Court where brought, the nature of the action, the disposition of the case, or its condition, if pending, and the briefs of counsel. Keep a complete record of all written opinions furnished by him/her and of all certificates or abstracts of titles furnished by him/her to the City, or any department or official thereof. Each applicant shall agree to deliver such records, documents and property of every description in his/her possession, belonging to his/her office or to the City, to his/her successor, who shall give him/her duplicate receipts therefore, one of which he/she shall file with the Auburn City Clerk's office.

11. **Deliver Records to Successor:** Deliver all records, documents and property of every description in his/her possession, belonging to his/her office or to the City, to his/her successor in office, who shall give him/her duplicate receipts therefore, one of which he/she shall file with the City Manager.

12. **Informal Duties:** It is understood that added to this list of formal responsibilities are the informal activities expected of the City Attorney, including counseling department heads and elected officials, instructing officers and employees in the elements of public law and examining intergovernmental activities.

BID PROPOSAL FORM

In order to facilitate comparison of competing proposals, the City respectfully requests applicants to complete the following form. Please feel free to attach additional sheets where the information requested is more extensive than the space provided.

TO: City of Auburn
Facilities Manager/Purchasing Agent
60 Court Street
Auburn, ME 04210

THE UNDERSIGNED HEREBY DECLARES THAT:

- A. No person or persons other than those named herein are interested in this Proposal or in the Contract proposed to be taken; that it is made without any connection with any person or persons making any proposal for the same work, as is in all respects fair and without collusion or fraud; that no person acting for or employed by the City of Auburn (the City) is now or will hereby be directly or indirectly interested therein, or in any portion of the profits thereof in any manner which is unethical or contrary to law;
- B. He has read the information contained herein relating to the work;
- C. That in the event the legal services contract, as contemplated by this Proposal, is awarded to him or his firm, he will enter into a written Contract with the City, and agrees that in case he fails to do so, the City may determine that the bidder has abandoned the Contract, and thereupon the acceptance of the Proposal and the award shall be null and void, and that the proposal guarantee may be forfeited in whole or in part by the City as the City may determine.

Contact Information

Name of firm: _____

Mailing address: _____

Physical address: _____

Telephone: _____

Fax: _____

E-mail address: _____

Web site address: _____

Name of lawyer proposed as City Attorney: _____

Estimated percentage of time he/she spends on municipal legal affairs: _____%

Professional Liability Insurance

Insurance Carrier: _____

Limits: _____

Financial Consideration

Other billable items:

Will billable rates for travel include both ways, one way, or no charge?: _____

Mileage expense rate: _____

Research services cost/hour (e.g. West Law): _____

Other costs:

Photocopying _____

Fax _____

Telephone expense _____

Billing practices for services such as informational correspondence, i.e. courtesy copies and e-mails, etc. _____

EXCEPTIONS AND AMENDMENTS

***Bidder's Exceptions and Amendments are noted below (Please list)**

Yes_____ No_____

2. The undersigned declares that the signer of this proposal is:

(a) INDIVIDUAL doing business as

(b) PARTNERSHIP doing business as

(c) CORPORATION entitled

Organized under the laws of the State of _____ and having its principal offices at _____.

The names of all partners of a partnership or the principal officers of a corporation will be submitted upon request.

Signature _____ Print Name and Title _____

Print Firm Name _____ Print Street Address _____

Print City, State and Zip Code _____

Contact Name _____ e-mail address _____

Area Code and Telephone Number

Area Code and Fax Number

I, _____, hereby certify that I do not hold any executive or appointive office in the government of the City of Auburn; furthermore, I do not anticipate holding or seeking office in the City of Auburn for the duration of this contract. I further certify that the firm that I represent, as named above, is an Equal Opportunity Employer.

Date: _____

Signature: _____

Print Name: _____

Attachments: Please attach the following to the original proposal and five (5) copies.

- Outline of the size and experience of the law firm.
 - Good Standing and License:
 - Access and Availability:
 - Casework-Management:
 - Proactive Practices:
- Resumes of legal staff with whom the City would be working.
- Fee Structure
- Proposal that includes a narrative on the following:
 - List of Services (Appendix A)
 - Additional list of Services (If applicable)
- Listing of municipal clients and other references (with addresses and phone numbers)

CITY OF AUBURN

APPENDIX A

1. Be charged with the performance of all legal services of the city, including those of legal advisor to the council, the manager and to all departments and officers of the city.
2. Upon the request of any department head, take the necessary steps to arrange for the prosecution of a violation of any ordinance, and in the furtherance thereof shall confer with and render to the county attorney such assistance as he shall request.
3. Represent the city in matters in which the city is interested, coming before any court, or tribunal.
4. Draft any ordinance when required by the council or the City Manager.
5. Perform such other duties as may be required by the council.
6. Attend meetings of the council as requested.
7. Report promptly to the council all suits brought against the city.
8. Make an annual report to the City Manager, which shall include a record of all claims outstanding at the commencement of the fiscal year, all new claims, all claims closed and status of outstanding claims.
9. Call to the attention of the council and the City Manager all matters of law affecting the city.
10. Review and represent the City in relations to workers' compensation claims and assist HR in managing claims along with the City's Third Party Administrator in laws pertaining Workers' Compensation.

Check list of possible areas of legal expertise

The areas of legal work to be provided by the Auburn City Attorney shall include, but not be limited to, the following items. While this list is representative of the areas of work required, it is not exhaustive, and applicant acknowledges and agrees to perform work in other areas as may be requested by City Officials. Please place an "X" next to each item, which the applicant agrees to perform any required legal services. (*Legal Services are Exclusive of Bond Counsel, and /School Department Board and Personnel representation*).

- _____ Police and law enforcement operations and practices.
- _____ Fire and fire prevention operations and practices.
- _____ EMS operations and practices.
- _____ Public works maintenance operations and practices which include road, bridge, sidewalk, cemetery and parks construction and maintenance practices.
- _____ Airport operations and practices.
- _____ Recreation and program operations and practices which include programs and maintenance and regulation of recreation areas including parks and facilities.
- _____ Pollution control operations and practices which include sewer line and facility construction and maintenance practices.

- _____ General government operations and practices which include eminent domain proceedings, deeds, easements, and contracts pertaining to real estate and title opinions, tax assessment and lien practices, collection of unpaid taxes, fines, loans or other monies owed to the City, drafting of municipal ordinances and related amendments, preparation of contracts and agreements to which the City is a party, advice regarding insurance coverage and insurance claims and other issues of a general municipal operational management nature.
- _____ Code enforcement operations and practices which include compliance with enforcement of State and Federal environmental laws as well as compliance with local codes and ordinances.
- _____ Attendance at Planning Board meetings, Zoning Board of Appeals meetings, and other related committee meetings when so requested for the purpose of giving legal advice when requested by its members through the City Manager. It is acknowledged that such meetings occur predominantly in the evening hours.
- _____ Prepare, when authorized, all charges and complaints against, and appear in the appropriate court in the prosecution of, every person charged with a violation of a City ordinance or law enforced by the City.
- _____ Defend municipal officials, including the City Council, the Planning Board, the Zoning Board of Appeals, the City Manager, City employees or any other municipal board or committee in the prosecution of a violation of any law or regulation or in any claim of them in their official capacity.
- _____ Represent the City of Auburn or any of its municipal officials in any other general litigation.
- _____ Provide general legal advice, oral or written, to the City Manager and the City Council or its committees or any City Official, when requested upon legal questions arising in the conduct of City business.
- _____ Provide legal advice regarding renewal of, or interpretation of, cable television contract.
- _____ Provide legal advice and assistance with regard to City municipal solid waste collection and disposal and other disposal operations or regulations within City limits.
- _____ Other areas of legal expertise not covered in above items and as arise from time-to-time.