

REQUEST FOR PROPOSALS
For
Orange County Power Authority

GENERAL COUNSEL SERVICES

Solicitation Number: 23-001

RESPONSE DUE
by
5:00 p.m.
on
March 17, 2023

For complete information regarding this project, see RFP posted at www.ocpower.org or contact OCPA at the email address listed below.

Thank you for your interest!

SHalligan@ocpower.org

A. GENERAL REQUEST

Orange County Power Authority (OCPA) is seeking proposals from qualified attorneys and law firms (“Consultants”) to provide general counsel legal services.

1. BACKGROUND

OCPA was created as a California Joint Powers Authority (JPA) on November 20, 2020, as a Community Choice Aggregator (CCA) in Orange County. OCPA provides several benefits to its participating customers including:

- Providing electric power at competitive costs with reduced carbon emissions
- Procuring energy with a priority on the use and development of local renewable resources
- Stimulating local job creation through various program development
- Promoting personal and community ownership of renewable resource
- Stabilizing long-term electricity rates for residents and businesses

OCPA is governed by a board of directors (Board) consisting of elected representatives from each participating jurisdiction. The JPA authorizes OCPA with the rights and powers to set rates for the services it furnishes, incur indebtedness, and issue bonds or other obligations. OCPA serves the cities of Buena Park, Fullerton, Huntington Beach, Irvine, and the Unincorporated areas of Orange County.

OCPA began providing electricity supply services to commercial, industrial, and municipal customers in April of 2022 and residential customers in October 2022.

2. TERM OF AGREEMENT

The initial term of the Agreement(s) shall be for three years, subject to approval by OCPA’s Board of Directors of the corresponding annual budget, unless otherwise mutually agreed upon in writing. OCPA reserves the right to extend the agreement(s) for two additional years.

3. MINIMUM CONSULTANT QUALIFICATIONS

- All proposers should have a valid business license for the City in which they operate.
- A physical office presence in Orange County, CA, and be able to attend most in-person meetings within four (4) hours of notice.
- All attorneys proposed by any firm must be admitted to practice in the State of California and in good standing with the California State Bar.
- The attorney proposed to act as General Counsel to OCPA must have at least 10 years legal experience.
- Demonstrated legal expertise in the following areas as it relates to public agencies or CCAs:
 - Laws and regulations governing California, such as the California Government Code, Ralph M. Brown Act, Public Records Act, Political Reform Act, General Municipal Law, and operating procedures relative to the conduct of business.
 - Experience and knowledge of the bidding, award, and administration of public contracts, including Public Contract Code, Labor Code, and other California

- o statutes governing the procurement process.
- o Experience in public employment labor laws.
- o Environmental laws, including the California Environmental Quality Act (CEQA);
- o Contracts, joint powers authorities, memoranda of understanding, including risk transfer provisions.
- o Preparation and review of ordinances and resolutions.
- o Real estate law, easements, rights-of-way, and other related agreements and negotiations.
- o Other relevant areas pertaining to special districts, CCAs and municipal law

B. SERVICES REQUESTED

1. SCOPE OF WORK TO BE PERFORMED

OCPA is releasing this Request for Proposals (RFP) to obtain proposals from qualified attorneys and law firms to provide general counsel legal services. The successful firm must provide a designated individual to serve as OCPA General Counsel with expertise in the areas including, but not limited to, public sector law, public meetings, land use, environmental, personnel, and contracting. Familiarity and working experience with the California Community Choice Aggregation (CCA) business model is highly preferred. A description of the services sought is described herein.

OCPA anticipates that an individual or firm will provide services as General Counsel under a fixed monthly retainer with additional services billed at an hourly rate. It is expected that the services provided under a retainer as General Counsel would be an average of 20 to 30 hours per month. Expectations for general counsel legal services include:

- a. Physical attendance at all meetings of the Board of Directors (monthly) and special meetings if called. Attendance may also be needed at monthly standing committees depending on the matters under consideration. The standing meetings include the staff review of Board Agenda (weekly), the Community Advisory Committee (CAC)(monthly) and various Board-created subcommittees as may be created from time to time. Must be able to attend most in-person meetings within four (4) hours of notice.
- b. Provide general legal advice and counsel to OCPA Board Members, and OCPA Staff related to matters important to the agency.
- c. Research and interpret laws, proposed legislation, court decisions, and other legal authorities to prepare legal opinions and to advise the Board and Staff accordingly.
- d. Review and assist in the preparation of OCPA Board and Committee meeting agenda packets, resolutions, ordinances, contracts, agreements, memoranda, and other writings as needed.
- e. Present written or oral legal reports or advice to the OCPA Board, CAC, and staff.
- f. Coordination of required work of outside legal counsel retained by OCPA for finance activities, regulatory compliance, litigation, or other proceedings.
- g. Provide advice and assistance as needed on its application to the operation of OCPA, on matters pertaining to the organization of OCPA, contracts/agreements, procurement, conflicts of interest, and human resources.
- h. Maintain OCPA's standard contract/agreement provisions ("boilerplate templates") required of vendors.
- i. Time incurred for internal conversations, consultation, emails, memoranda, cross training, etc. between attorneys, paralegals and other staff within the firm.

- j. Assist with delivery, development, and contract review and management for OCPA programs, including the program plan, any Federal and/or State grants, and any additional programs that may be created.
- k. Coordinate, research, and respond to Public Records Act (PRA) requests. This includes but is not limited to assisting OCPA via consultant owned advanced tools to locate, review, and produce records, and evaluate what should be disclosed.
- l. Other routine legal advice, consultation, and opinions to OCPA on areas such as: public sector law, public meetings, public records act requests, contracts/agreements, existing and proposed transportation laws and regulations, land use, employment laws, human resources management, conflicts of interest, environmental and hazardous material laws, litigation, risk management, procurement of goods and services, and knowledge of applicable California Codes and federal codes and regulations.

Additional Services

There will likely be matters that, due to complexity, size in scope, litigation, special projects, new laws or regulations, ballot measures, etc., requiring services beyond that which are encompassed in general counsel legal services. Effective communication will be essential to ensure that the need for Additional Services is discussed in advance and with a reasonable expectation of the number of legal services required. It may also be in OCPA's best interest to retain additional outside counsel for unique or specialized matters of law. In those circumstances, OCPA General Counsel may be asked to coordinate with outside counsel. Additional Services, beyond the scope of General Counsel, will be billed at an hourly rate. Such services would be authorized by task orders on a case-by-case basis.

C. PROPOSAL SUBMISSION REQUIREMENTS

OCPA will establish a Consultant Selection Panel (Panel) including but not limited to representatives from the Board, and Staff. The Panel will evaluate the proposals based on the information submitted according to the proposal evaluation criteria below.

OCPA reserves the option to invite short-listed Proposers for a pre-selection interview.

Based on the proposals and/or interviews, the Panel will rank proposals and may recommend to Board of Directors to enter a contract with the top-ranked individual/firm. The Board of Directors has final approval authority to enter a contract with the selected individual/firm.

OCPA reserves the option to not select any proposals from this RFP. Only digital submissions will be accepted. Please submit all proposals in PDF format to SHalligan@ocpower.org. Other digital formats will not be accepted.

1. PROPOSAL FORMAT

- a. All Proposals must be submitted electronically.
- b. Executive Summary with brief description of company including Firm or individual name and contact information, including e-mail and website addresses, year organized, principals with the firm, types of work performed, number of employees.
- c. Summary aligned with Section B.1. "Scope of Services" above including qualifications, specializations, experience, professional affiliation, special training, availability, California Bar license numbers, and contact information for key personnel and proposed lead and back-up attorneys.

- d. Resumes of key staff that would work on OCPA projects.
- e. Information on any previous experience or services provided, including CCA experience, work for other California electric utilities, General Counsel services, public agency representation, relevant litigation experience, list of relevant past or present clients, etc.
- f. List of clients you currently represent that could cause a conflict of interest with your responsibilities as General Counsel for OCPA.
- g. If your firm or you have filed any litigation in the past five years in which OCPA, its city/county members, or one of their employees was named as a party, please describe the case(s).
- h. Other factors or special considerations you feel would influence your selection.
- i. List of references and contact information.
- j. Proposed retainer and hourly rates for the attorney assigned to OCPA or any alternative fee structure you propose.

2. EVALUATION CRITERIA

The proposals submitted in response to this Request for Proposals shall be evaluated for award based on the following criteria and weighting.

Criteria	Weight
Minimum Qualifications	Pass/Fail
Experience	35%
1. Experience of firm and specific qualifications of attorney designated to serve as OCPA General Counsel in the areas identified in Scope of Services	
2. CCA or Energy Utility Experience	
Qualifications	25%
Demonstrated capacity to fulfill Scope of Work as outlined	20%
Commercial Terms (Price)	20%
Total	100%

3. OCPA PROJECT TIMELINE

Release of RFP	February 24, 2023
Deadline for Question Submittal	March 3, 2023
Posting of Responses to Questions	March 10, 2023
Proposals Due	March 17, 2023
Tentative Award Contract (Board Approval)	April 19, 2023
Contract Begins	May 1, 2023

D. TERMS AND CONDITIONS

1. GENERAL

Incurring Cost

This RFP does not commit OCPA to award or pay any cost incurred in the submission of the proposal, or in making necessary studies or designs for the preparation thereof, nor procure or contract for services or supplies. Further, OCPA will not reimburse proposer for any costs incurred in responding to this RFP.

Claims Against OCPA

Neither your organization nor any of your representatives shall have any claims whatsoever against OCPA or any of its respective officials, agents, or employees arising out of or relating to this RFP or these RFP procedures, except as set forth in the terms of a definitive agreement between OCPA and your organization.

Guarantee of Proposal

Responses to this RFP, including proposal prices, will be considered firm and irrevocable for ninety (90) days after the due date for receipt of proposals.

Basis for Proposal

Only information supplied by OCPA in writing by OCPA in connection with this RFP should be used as the basis for the preparation of Consultant's proposal.

Form of Proposals

Proposals must be submitted electronically by e-mail and must be received by OCPA prior to the deadline.

Amended Proposals

Consultants may submit amended proposals before the Deadline to Submit Proposals. Such amended proposals must be complete replacements for previously submitted proposals and must be clearly identified in a written format.

Withdrawal of Proposal

Consultants may withdraw their proposals at any time prior to the Deadline to Submit Proposals. The Consultant must submit a written withdrawal request signed by the Consultant's duly authorized representative addressed to and submitted to the Contact.

No Late Responses

To be considered, proposals must be received electronically by email by March 17, 2023, 5:00 PM PST.

California Public Records Act (CPRA)

All proposals become the property of OCPA, which is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Consultant proprietary information is contained in documents submitted to OCPA, and Consultant claims that such information falls within one or more CPRA exemptions, Consultant must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, OCPA will make best efforts to provide notice to Consultant prior to such disclosure. If Consultant contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief, or other appropriate remedy from a court of law in Orange County, before OCPA's deadline for responding to the CPRA request. If Consultant fails to obtain such remedy within OCPA's deadline for responding to the CPRA request, the OCPA may disclose the requested information.

Consultant further agrees that it shall defend, indemnify, and hold OCPA or its agents, harmless against any claim, action, or litigation (including, but not limited to, all judgments, costs, fees, and attorney's fees) that may result from OCPA's assertion of an exemption or privilege as a basis for withholding any information marked confidential by the Consultant.

Confidentiality

All data and information obtained from or on behalf of OCPA by the Consultant and its agents in this RFP process, including reports, recommendations, specifications, and data, shall be treated by the Consultant and its agents as confidential. The Consultant and its agents shall

not disclose or communicate this information to a third party or use it in advertising, publicity, propaganda, or in another job or jobs, unless written consent is obtained from OCPA. Generally, each proposal and all documentation, including financial information, submitted by a Consultant to OCPA is confidential until a contract is awarded, when such documents become public record under State and local law, unless exempted under CPRA.

Electronic Mail Address

Most of the communication regarding this procurement will be conducted by electronic mail (e-mail). Potential Consultants agree to provide the contact with a valid e-mail address to receive this communication.

OCPA Rights

OCPA and its Contact reserve the right to do any of the following at any time:

- a. Reject any or all proposal(s), without indicating any reason for such rejection;
- b. Waive or correct any minor or inadvertent defect, irregularity, or technical error in a proposal or the RFP process, or as part of any subsequent contract negotiation;
- c. Request that Consultants supplement or modify all or certain aspects of their proposals or other documents or materials submitted;
- d. Terminate the RFP, and at its option, issue a new RFP;
- e. Procure any services specified in this RFP by other means;
- f. Modify the selection process, the specifications or requirements for materials or services, or the contents or format of the proposals;
- g. Extend a deadline specified in this RFP, including deadlines for accepting proposals;
- h. Negotiate with any or none of the Consultants;
- i. Modify in the final agreement any terms and/or conditions described in this RFP;
- j. Terminate failed negotiations with any Consultant without liability, and negotiate with other Consultant(s);
- k. Disqualify any Consultant on the basis of a real or apparent conflict of interest, or evidence of collusion that is disclosed by the proposal or other data available to OCPA;
- l. Eliminate, reject, or disqualify a proposal of any Consultant who is not a responsible Consultant or fails to submit a responsive offer as determined solely by OCPA or its representative; and/or
- m. Accept all or a portion of a Consultant's proposal.

2. INSURANCE REQUIREMENTS

Evidence of Coverage:

1 Prior to commencement of a Contract with OCPA, Consultant shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Consultant upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to OCPA.

2. This verification of coverage shall be sent to OCPA, unless otherwise directed. Consultant shall not receive a "Notice to Proceed" with the work under any Contract until it has obtained all insurance required and such insurance has been approved by OCPA. This approval of insurance shall neither relieve nor decrease the liability of Consultant.

Qualifying Insurers:

All coverages, except surety, shall be issued by companies which hold a current policy holder's

alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by OCPA.

Insurance Coverage Requirements:

Without limiting Consultant's duty to indemnify, Consultant shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

(i) Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Consultants, Products and Completed Operations, and cross liability with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate. (Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in red. All proposed modifications are subject to OCPA approval.)

(ii) Automobile Insurance Threshold: Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Contract, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence. (Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in red. All proposed modifications are subject to OCPA approval.)

(iii) Workers' Compensation Insurance, if Consultant employs others in the performance of this Contract, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease. (Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in red. All proposed modifications are subject to OCPA approval.)

(iv) Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the Consultant shall, upon the expiration or earlier termination of this Contract, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Contract. (Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in red. All proposed modifications are subject to OCPA approval.)

Other Insurance Requirements:

Unless otherwise specified by this Contract, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date Consultant completes its performance of services under this Agreement.

Commercial general liability and automobile liability policies shall provide an endorsement naming OCPA, its Directors, Board members, officers, agents, and employees as Additional Insureds with respect to liability arising out of the Consultant's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by OCPA and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Consultant's insurance.

Consultant shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in an Contract, which shall continue in full force and effect.

Consultant shall always during the term of a Contract maintain in force the insurance coverage required under an Contract and shall send, without demand by OCPA, annual certificates to OCPA. If the certificate is not received by the expiration date, Consultant shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Consultant to maintain such insurance is a default of an Contract, which entitles OCPA, at its sole discretion, to terminate an Contract immediately.

3. OCPA CONTACT

All questions regarding these specifications, terms and conditions are to be submitted in writing, via e-mail, no later than by 5:00 p.m. March 3, 2023, to:

Steven Halligan, Management Analyst

SHalligan@ocpower.org

The OCPA website will be the official notification posting place of all Requests for Interest, Proposals, Quotes and Addenda. Go to <http://www.OCPower.org> to view current contracting opportunities.