

# **Request for Qualifications**

## **Legal Analysis and Disparity Study**

**Chattanooga Purchasing Division  
City of Chattanooga, Tennessee**

**August, 2016**

### **Section 1 Introduction**

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**REQUEST FOR QUALIFICATIONS**  
**LEGAL ANALYSIS AND DISPARITY STUDY**  
**PURCHASING DIVISION**  
**CITY OF CHATTANOOGA, TENNESSEE**

**1.0     INTRODUCTION**

**1.1     PURPOSE OF RFQ**

There have been a number of significant court cases that shed light on actions that a legislative body can take to increase diversity in government contracting, and the constitutionality of minority- and women-owned business programs, which have been decided by both the United States Supreme Court and several of the United States Courts of Appeal. The selected Special Counsel/Consultant will be expected to conduct a complete legal analysis, including a full and comprehensive disparity study, to determine whether there is a need to create programs and/or modify existing procurement activities, to ensure fairness and diversity in City of Chattanooga procurement.

Special Counsel/Consultant shall design and conduct a disparity study, through means that fully comply with the United States Supreme Court's strict scrutiny standard of review, and assess the findings of the study, considering controlling laws, including, the parameters set forth by the decisions of the United States Supreme Court in the cases of City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) ("Croson") and Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995) ("Adarand"), and any other federal or state court decisions that bear on the rights, abilities and obligations of the City. Some significant decisions which shall be considered, include, **but are not limited to**, Associated General Contractors of Ohio v. Drabik, 214 F3d 730 (6<sup>th</sup> Cir. 2000); Adarand Constructors, Inc. v. Slater, 228 F3d 1147 (10<sup>th</sup> Cir. 2002); Concrete Works of Colorado v. City and City of Denver, 321 F3d 950 (10<sup>th</sup> Cir. 2003).

Special Counsel/Consultant shall analyze all relevant laws and court decisions, and shall make recommendations on methods, techniques and approaches that would meet the requirements of controlling laws. Based on an evaluation of responses to this RFQ, one or more firms/consultants will be selected and invited to participate in further discussions and negotiation of a contract for the requested services.

**1.2     DISCLOSURE OF STATEMENT OF QUALIFICATIONS CONTENTS**

The firm understands and acknowledges that the City is a governmental entity, subject to the laws of the State of Tennessee, and that any reports, data, or other information supplied to the City is subject to being disclosed as a public record, in accordance with the laws of the State of Tennessee. All Statements of Qualifications and other materials submitted become the property of Chattanooga City Government.

# Section 2

## Qualifications Package Instructions

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### 2.0 QUALIFICATIONS PACKAGE INSTRUCTIONS

#### 2.1 GENERAL

**Five (5) bound copies, one (1) unbound original copy (clearly identified as 'original'), and an electronic copy in PDF format** of the Qualifications Package (QP) shall be submitted. The QP should be limited to the requested content.

All QPs shall be submitted in a fully sealed (securing in a manner which does not allow for examination of the contents) envelope or box externally marked with the following - **"CONFIDENTIAL, LEGAL ANALYSIS AND DISPARITY STUDY, CITY OF CHATTANOOGA"**.

The original and copies of the QP shall be indexed with tabs for each section.

All QPs shall be submitted no later than **4:00 p.m. EDT, on September 30, 2016** to the attention of:

City of Chattanooga  
Debbie Talley  
Purchasing Department  
101 E. 11<sup>th</sup> Street, Suite G13  
Chattanooga, TN 37402  
Phone: (423) 643-7230  
FAX: (423) 643-7244

Submission date and time shall be determined by time-stamped receipt. Postmarks will not be accepted in lieu of actual receipt.

**Submissions that are not in compliance with stated requirements will be considered non-responsive and will not be accepted.**

#### 2.2 QP WITHDRAWAL PROCEDURE

QPs may be withdrawn up until the date and time set above for opening of QPs. Any QP not so withdrawn shall, upon opening, constitute an irrevocable offer for a period of (90) days to provide the services set forth in the QP or until one of the QPs has been accepted and a contract has been executed between the City and the successful QP submitter.

#### 2.3 RESERVATION OF CITY RIGHTS

- A. The City reserves the right to request clarification of submitted information and to request additional information of one (1) or more QPs.

- B. The City reserves the right to negotiate an Agreement/Contract for Legal Analysis and Disparity Study with the next most qualified finalist, if the successful finalist does not execute an Agreement/Contract within seven (7) days after submission of an Agreement to such offer. The City reserves the right to negotiate all elements of work that comprise the selected QP submitter.
- C. The City reserves the right, after opening the QPs or at any other point during the selection process, to reject any or all QPs, modify or postpone the proposed project, evaluate any alternatives offered or accept the QP that, in the City's sole judgment, is in its best interest.
- D. The City reserves the right to terminate the Agreement if the Consultant fails to commence the work described herein upon giving the Consultant a 30 day written Notice of Award.

## 2.4 ADDITIONAL REQUESTS FOR INFORMATION

Any additional requests for information or additional clarification must be **directed in writing** to Debbie Talley by **12:00 p.m. EDT, on September 14, 2016**, by email or to the address below. Verbal questions will not be answered. Questions should reference the section of the Request for Qualification (RFQ) to which the question pertains and list all contact information for the person submitting the questions. All requests received will be addressed to the fullest extent possible by the City, in writing, and posted on the City's website by **September 19, 2016**. After that time, no further requests for information will be received or responded to.

Requests for information or clarification shall be sent to:

City of Chattanooga  
Debbie Talley  
Purchasing Department  
101 E. 11<sup>th</sup> Street, Suite G13  
Chattanooga, TN 37402  
Phone: (423) 643-7230  
FAX: (423) 643-7244  
dtalley@chattanooga.gov

The City specifically requests that any contact concerning this RFQ be made exclusively with Debbie Talley, or designee, until selection has been completed. Failure to honor this request will be negatively viewed in the selection process, and may disqualify the company from further consideration.

## 2.5 AFFIRMATIVE ACTION PLAN

The City is an equal opportunity employer, and during the performance of this Contract, the Consultant agrees to abide by the equal opportunity goals of the City of Chattanooga as follows:

- A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to

their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- B. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.
- C. The Consultant will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. In all construction contracts or subcontracts in excess of \$10,000 to be performed for the City, any Consultant and/or subcontractor is further required to file in duplicate, within ten (10) days of being notified that it is the lowest responsible bidder, an affirmative action plan with the EEO Director of the City of Chattanooga. This plan shall state the Consultant's goals for minority and women utilization as a percentage of the workforce on this project.
- E. This plan or any attachments thereto, shall further provide a list of all employees annotated by job function, race, and sex who are expected to be utilized on this project. This plan or attachment thereto, shall further describe the methods by which the Consultant and/or subcontractor will utilize to make good faith efforts at providing employment opportunities for minorities and women.

During the term of this Contract, the Consultant, upon request of the City, will make available for inspection by the City copies of all payroll records, personnel documents, and similar records or documents that may be used to verify the Consultant's compliance with these Equal Opportunity provisions.

## **2.6 DIVERSE BUSINESS ENTERPRISES**

The City of Chattanooga maintains a database of certified Diverse Business Enterprise (DBE) vendors. To be established as DBE, a vendor must be certified under the authority of an entity recognized by the City. The listing of acceptable certifications is posted on the Purchasing Division website -

<http://www.chattanooga.gov/purchasing/general-info>.

## **2.7 VENDOR REGISTRATION**

As a part of doing business with City of Chattanooga, each individual, company or organization is required to register with the City of Chattanooga, which may be accomplished by visiting the following website:

<https://vrapp.vendorregistry.com/Vendor/Register/Index/chattanooga-tn-vendor-registration>

# Section 3

## Qualifications Package Contents

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### 3.0 QUALIFICATIONS PACKAGE CONTENTS

#### 3.1 GENERAL INFORMATION – Limit 2 pages

The QP shall provide the following general information:

- A. **Description of Firm.** Describe your firm's legal structure, areas of practice, length of time in business, number of employees, and other information that would help to characterize the firm. Provide the address of the main office that will be responsible for managing any work performed by the firm.
- B. **Minimum Qualifications.** All attorneys and/or firms must have prior experience and expertise in conducting disparity studies. Describe how the firm meets this requirement. List all disparity studies the firm has conducted and whether each has been legally challenged. Give the results of any court decisions and provide documentation or citation for each.
- C. **Experience.** Briefly describe other legal matters handled by the firm that demonstrate relevant or unique experience. Also, list all public sector clients for which the firm has performed legal work, in the last five years. For each project mentioned, include the name, address and phone number of a person who can be contacted regarding your performance on the project. Projects listed in which the firm worked in an auxiliary capacity, or in a joint venture or partnership, please include the name of the lead firm.
- D. **Personnel.** Provide a professional resume for the key staff proposed to be assigned to work on this matter and describe relevant experience. Describe allocated individual proposed roles and responsibilities in this matter. Submittals must identify a proposed lead person, who would be responsible for the day-to-day management of project tasks, and would be the primary point of contact with the firm.
- E. **Capacity and Capability.** Provide information about the attorney and/or firm's capacity and capability to perform on short notice and in a timely manner.

#### 3.2 QUALIFICATIONS AND PROJECT APPROACH

The Consultant shall provide the following regarding technical qualifications and experience dealing with legal analysis and disparity studies.

- A. **Project Approach.** Describe the attorney and/or firm's approach to the work and how it would schedule activities.
- B. **Commitment to Diversity.** Describe the attorney and/or firm's efforts to recruit and retain minority and female attorneys and staff. Include in your response any policies or procedures related to the attorney and/or firm's commitment to diversity.
- C. **Approach to Communicating with the City.** Describe attorney and/or firm's approach to communicating with the City or designee.
- D. **Understanding of Services to be Provided.** Describe the attorney and/or firm's understanding of the Scope of Work.

- E. **Costs for Providing Services.** Provide an estimate of the costs for providing the services described above. Said costs should include a base fee for providing the services, and any additional fees related to subsequent potential litigation to defend the disparity study. The actual costs for providing the services will be negotiated with the selected respondent.
- F. **Work Schedule.** Provide a plan for service delivery, and whether the same can be completed within six to twelve months.
- G. **Conflict of Interest.** The attorney and/or firm, by submitting a Statement of Qualifications, certifies that to the best of its knowledge or belief, no employee or elected or appointed official of the City is financially interested, directly or indirectly, in their firm or in the purchase of services, as described in this RFQ. The attorney and/or firm also certifies that the information contained in the Statement of Qualifications submission is correct and complete to the best of its knowledge.
- H. **Other.** Brochures or other material that may be helpful in evaluating the firm may be included in an appendix of the submittal.

### 3.3 TERMS AND CONDITIONS

The terms and conditions shall be those addressed in the City Standard Terms and Conditions for Professional Services unless otherwise listed below.

- A. The Consultant shall at all times during the term of the Contract or agreement and for a period of five (5) years after the end of the contract, keep and maintain records of the work performed pursuant to this Contract or Agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Consultant. Documents shall be maintained by the Consultant necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The Consultant shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.
- B. The obligations of this Section shall be explicitly included in any Subcontracts or Agreements formed between the Consultant and any subcontractors or suppliers of goods or services to the extent that those Subcontracts or Agreements relate to fulfillment of the Consultant's obligations to the City.
- C. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The Consultant shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.
- D. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

### 3.4 LENGTH OF CONTRACT



The end of the Contract shall be twelve (12) months after Notice of Award.

## **Section 4**

# **Review and Evaluation of QPs**

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### **4.0    REVIEW AND EVALUATION OF QPs**

#### **4.1    EVALUATION COMMITTEE**

A evaluation committee consisting of individuals selected by the City shall receive and review all submitted QPs. The City, in its sole judgment, shall decide if a QP is viable.

#### **4.2    FORMAL PRESENTATIONS**

After reviewing each QP submittal, the City may prepare a short list of up to three (3) qualified firms for formal presentations. The City reserves the right to invite more or less than this number if the quality of the QPs so merits, or not to prepare a short list and require formal presentations.

#### **4.3    SELECTION CRITERIA**

Firm selection will be based on an objective factor evaluation, including, but not limited to, the following factors:

- A. History and Capability to Perform Project
- B. Relevant Project Experience
- C. Qualifications of Project Team
- D. Familiarity with Subject Area and Project
- E. Project Approach and Schedule

#### **4.4    SELECTION OF FINALIST**

After the review of the QPs by the Review Committee, and possibly formal presentations, the City may, at its sole option, elect to reject all QPs or elect to pursue the project further. In the event that the City decides to pursue the project further, the City will select the highest ranked finalist to negotiate an Agreement.