

Opioid Litigation Outside Counsel Procurement

Determinations and Findings

I, Utah Solicitor General Tyler Green, having been appointed pursuant to Utah Code §6-6a-106(4)(e)(iv) by Attorney General Sean Reyes to serve as the Procurement Officer for the Request for Proposals to Provide Legal Services to Assist the Office of the Attorney General with Opioid Litigation, Solicitation Number BP18025 (the “RFP”), hereby make the following determinations and findings:

General Findings Pertaining to the RFP

Pursuant to Utah Code § 63G-6a-106(5)(a), the Attorney General is authorized to retain outside counsel under a contingent-fee contract in accordance with the Utah Procurement Code and Utah Code §67-5-33, and without involvement by the Utah Division of Purchasing and General Services or the Chief Procurement Officer.

The RFP seeks legal services related to one or more lawsuits that the Office of the Attorney General (“OAG”) has filed or may file in the future alleging violations of various laws in the manufacture, marketing, distribution, and sale of opioids (“Opioid Cases”).

The Attorney General and the OAG are deeply concerned about the growing opioid addiction crisis in our country. There is a belief among law enforcers across the country that companies engaged in the manufacture, marketing, distribution, and sale of opioids may have violated various laws in ways that contributed to that crisis. The OAG has been evaluating that issue for some time, and is now seeking outside counsel to assist in litigating Opioid Cases against specific companies. The Utah State Legislature also recently passed HJR 12, a joint resolution that asks the OAG to “proceed with haste to file suit against prescription opioid manufacturers in order to hold them accountable for the destruction and devastation they have inflicted upon the citizens of the state.” The OAG recently filed an Opioid Case, *State of Utah v. Purdue Pharma*.

It is possible that the OAG could file multiple Opioid Cases. Each Opioid Case could have multiple defendants. Although no final determination has yet been made, it is possible that some Opioid Cases may be filed outside of the State of Utah, or may be transferred to courts outside of the State of Utah.

The Opioid Cases pose complex issues of law, and require experienced specialists in order to be successfully litigated. While the OAG does have experienced attorneys and support staff, the logistical requirements of the Opioid Cases have the potential to significantly exceed the available resources within the OAG.

Specific Determinations Pursuant to Law

The general findings set forth above apply to each of the specific determinations below to the extent that they are applicable.

I have determined that the RFP process will provide the best value to the Issuing Procurement Unit because (a) this is a procurement for professional legal services in a particularly complex and specialized area of the law, (b) this procurement will be for a Contingent Fee and cost is not the most important factor to be considered in making the selection that is most advantageous to the Issuing

Procurement Unit, and (c) factors such as the level of professional skill and knowledge of the particular legal and factual subject matter involved in the Opioid Cases are highly significant in making the selection that is most advantageous to the Issuing Procurement Unit. Those factors can best be evaluated through an RFP process. *See*, Utah Code § 63G-6a-702(1) and (2).

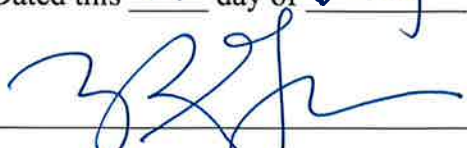
I have determined that using a Contingent Fee is cost effective and in the public interest with regard to the Opioid Cases because of the nature of the litigation. Depending upon the course of any Opioid Cases, including the scope of discovery, whether cases settle or go to trial, and other variables, it is reasonable to assume that potentially litigating multiple Opioid Cases simultaneously would require greater legal and financial resources than are available to the OAG for these purposes. Furthermore, there are numerous ongoing civil cases involving the same subject matter, mainly consolidated into multi-district litigation in a United States District Court in Ohio. As a result, it is likely that there are a number of qualified potential Offerors who would have subject matter expertise not available within the OAG. Given the real possibility that fully litigating the Opioid Cases may take years, it is advantageous to the State to offer a Contract that provides for a Contingent Fee. Given the nature of the matter, it is cost effective and in the public interest to pursue the Opioid Cases using private counsel hired under a Contingent Fee Contract. *See*, Utah Code § 67-5-33(3).

I have determined that the Evaluation Committee would benefit from the technical expertise of the following people serving as consultants and not as voting committee members: Representative Steve Eliason with respect to legislative resources and the intent behind HJR 12, Director Francine Giani with respect to Utah Department of Commerce resources and enforcement priorities, and General Counsel to the Governor Ron Gordon with respect to the possible impact of opioid litigation on other state entities. *See* Utah Code §63G-6a-707(4).

I hereby approve the interview procedures contained within Section 4.2 of the RFP. *See*, Utah Code §63G-6a-707(5).

I hereby designate Kimberley Schmeling, the OAG's Chief Financial Officer, and Peter Anjewierden, the Utah Department of Commerce's Budget Director, neither of whom are members of the Evaluation Committee, to fulfill the tasks set forth in Utah Code § 63G-6a-707(6)(b), including calculating scores for cost based upon the applicable scoring formula, weighting, and other scoring procedures contained within the RFP, reviewing the evaluation committee's scores and correcting any errors, scoring inconsistencies, and reported noncompliance with this chapter, adding the scores calculated for cost, if applicable, to the evaluation committee's final recommended scores on criteria other than cost to derive the total combined score for each responsive and responsible proposal, and provide to the evaluation committee the total combined score calculated for each responsive and responsible proposal, including any applicable cost formula, weighting, and scoring procedures used to calculate the total combined and provide scores.

Dated this 19th day of July, 2018



By Tyler Green, Utah Solicitor General and Procurement Officer