COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
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SECOND ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

October 25, 2012

All Interested Attorneys and Law Firms

Re: Request for Proposal - Legal Services for the County of Erie

To Whom It May Concern:

The purpose of this Request for Proposal ("RFP") is to identify suitable attorney(s) to act on behalf of the County of Erie in connection with specific legal issues that may arise from time to time including, but not limited to appeals, conflict work, contracts, defense of personal injury actions, environmental issues, intellectual property issues, labor and employment issues, and municipal law issues generally.

In order to respond, you must be an individual licensed attorney or law firm with attorneys admitted to practice law in New York State.

INSTRUCTIONS

Three copies of your response to this RFP and request for information contained herein should be submitted to the Erie County Attorney at the following address **no later than November 16 by 4:30 p.m.**:

Michael A. Siragusa
Erie County Attorney
County of Erie Department of Law
95 Franklin Street, Room 1634
Buffalo, NY 14202

Packages must be marked: **PROPOSAL - FOR LEGAL SERVICES**. Late proposals will not be accepted and will be marked "LATE" and returned unopened.

The responses must contain a manual signature of an authorized representative of the responding firm or individual attorney on a letter of transmittal.

ADDITIONAL INFORMATION

It is the responsibility of the respondent to inquire about and clarify any aspect of the RFP that is not understood no later than 4:30 p.m. on November 9, 2012. Written questions and requests for clarification should be directed to the Erie County Attorney, Michael A. Siragusa, 95 Franklin Street, Room 1634, Buffalo, NY 14202.

SCHEDULE

The County Attorney expects to select a panel of attorneys/law firms to perform legal services as necessary within a reasonable time following the submission deadline. No in-person interviews are necessary, but the County Attorney reserves the right to conduct telephone interviews and make such inquiries as the County Attorney determines to be appropriate.

GENERAL TERMS AND CONDITIONS

Responses should be prepared simply and economically, and should provide straight-forward and concise responses which satisfy the requirements of this RFP. Emphasis should be placed on completeness and clarity of content. The County shall not be liable for any expenses incurred in the preparation or presentation of the responses.

PUBLIC RECORDS

Responses may be a matter of public record and made available to the public at the appropriate time, as determined by the County (in the exercise of its sole discretion) in accordance with the law. Attorneys or firms who do not wish their proposals or rates to be public information should not respond to this RFP.

REVIEW PROCESS

The review process for a panel of attorneys to perform legal services will focus on the practical needs of the County. The County Attorney reserves the right, however, to reject any and all responses received, and also to waive any irregularity or informality if it is deemed to be of little import.

ACCEPTANCE/REJECTION

The County reserves the right to accept or to reject any or all of the proposal(s) and to select the proposal(s) which, in the opinion of the County Attorney, will be in the County's best interest. The County Attorney also reserves the right to reject the response of any respondent who has previously failed in the proper performance of an agreement with the County. The

County Attorney specifically may choose other than the lowest cost proposal in order to provide the requisite experience and background which are deemed to be most appropriate for the County relative to the delivery of legal services. However, cost is a significant criteria in awarding legal work to be performed on behalf of the County of Erie.

THE ISSUANCE OF THIS RFP CONSTITUTES ONLY AN INVITATION TO PRESENT PROPOSALS. THE COUNTY ATTORNEY AND THE RFP REVIEW COMMITTEE RESERVE THE RIGHT TO DETERMINE, IN THEIR SOLE DISCRETION, WHETHER ANY ASPECT OF THE PROPOSAL SATISFACTORILY MEETS THE CRITERIA ESTABLISHED IN THE RFP. THE COUNTY ATTORNEY AND THE RFP REVIEW COMMITTEE RESERVE THE RIGHT TO SEEK ADDITIONAL INFORMATION AND/OR CLARIFICATION FROM ANY RESPONDENT, THE RIGHT TO NEGOTIATE WITH ANY RESPONDENT SUBMITTING A RESPONSE, AND THE RIGHT TO REJECT ANY OR ALL RESPONSES, WITH OR WITHOUT CAUSE. IN THE EVENT THAT THE RFP IS REJECTED BY THE COUNTY ATTORNEY FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, THE FAILURE TO OCCUR OF ANY OF THOSE THINGS OR EVENTS SET FORTH HEREIN, THE COUNTY AND THE LAW DEPARTMENT SHALL HAVE NO LIABILITY TO ANY RESPONDENT FOR ANY COSTS OR EXPENSES INCURRED IN CONNECTION WITH THIS RFP OR OTHERWISE.

PROPOSAL REQUIREMENTS

I. Qualifications - The County Attorney intends to engage person(s) and/or firm(s) that (a) possesses the professional, financial and administrative capabilities to provide the proposed services, and (b) will agree to work under the compensation terms and conditions as outlined in the attached Outside Counsel Guidelines – County of Erie.

II. Transmittal Letter - Each response should be accompanied by a letter of transmittal not exceeding three (3) pages which summarizes key points of the response and which is signed by an officer or representative of the firm authorized to commit the firm's resources.

III. Questions - Responses to this RFP should describe the legal services that the individual/law firm seeks to provide to the County of Erie and their/its experience in such matters. Additionally, the respondent should include the following:

a) Whether any legal work has been performed by the individual/firm on behalf of the County of Erie, including when such work was performed, and a general explanation of the type of legal issue involved and outcome, if applicable. Additionally, whether the individual/firm represents or has represented any other municipality, identify the municipality(ies) and the applicable time period representing each. If the respondent believes a conflict may exist from time to time in the representation of the County of

Erie, please set forth generally the perceived/anticipated conflict and how it may be resolved.

b) An explanation of the type of legal work performed by the individual/firm generally and how such work can assist the County of Erie in matters of legal significance both from an experience and cost standpoint.

IV. Compensation - Please set forth respondent's fee schedule by individual name for each of the attorneys anticipated or expected to work on behalf of legal matters involving the County of Erie (time is to be billed in increments of tenths of an hour). Identify whether the attorney is a partner or an associate, how long they have been so designated at your firm, if applicable, and how long they have been practicing law in New York overall. Furthermore, please identify whether any of the legal services anticipated to be performed may be conducted by a paralegal, the individual name of same, and the applicable rate. You shall also indicate whether the individually designated paralegal is licensed as such, holds any additional professional licenses (e.g. R.N.) or is an unlicensed para-professional who is titled a paralegal. Please set forth the number of years of experience the paralegal has in New York.

V. Expenses and Costs - Additional costs or fees are payable only in accordance with the attached Outside Counsel Guidelines – County of Erie.

VI. Additional Information - Required information shall include the name, title and department of any employee, attorney or individual of your firm who was a County employee or officer in the one year period preceding the date of your response to this RFP.

VII. Marketing Materials/Brochures/Website - While not required as part of the submission, a copy of any marketing materials, brochures, and/or inclusion of web link information which further expands upon the qualifications and experience of the respondent is appreciated.

Thank you for expressing an interest in providing legal services on behalf of the County of Erie and we look forward to your participation in this RFP.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

Outside Counsel Guidelines – County of Erie

(Effective 11/1/11)

I. Introduction: Applicability and Purpose

These Guidelines apply to all outside counsel retained by the County of Erie (the "County") or any of its officers, employees, elected officials, or agents. These Guidelines are intended to ensure that outside counsel provide high-quality legal service and account for their work in a professional and transparent manner, while at all times maintaining confidentiality and remaining mindful of the necessity of conserving taxpayer-funded public resources. Outside counsel will be given a copy of these Guidelines at the inception of an engagement, and will be expected to know and strictly adhere to the Guidelines and to require all attorneys and support staff participating in the matter to also adhere to the Guidelines (e.g., timekeepers, billing staff who create invoices). The Guidelines also apply to matters currently being handled by outside counsel.

II. Case Management

Absent extreme urgency, all filings/submissions must be submitted to the County Attorney's Office for review before filing (preferably via e-mail unless the materials are extremely voluminous, i.e., SJ motions, in which case the supervising Assistant County Attorney should be consulted). The document should be submitted for review at least three business days before it will be filed/submitted. All major strategic decisions (i.e., whether or not to file a dispositive motion, which depositions to take, etc.) must be discussed with the County Attorney or supervising Assistant County Attorney. Absent advanced written permission, the County Attorney's Office will not pay filing fees.

a. Initial Suit Report:

Within thirty (30) days of receipt of the file, an initial suit report shall be provided to the County Attorney that includes the following:

i. Identification of parties;
ii. Venue;
iii. Estimated date of trial;
iv. Brief summary of the case, including summary of allegations;
v. Factual basis for claim;
vi. Information developed during preliminary investigation;
vii. Evaluation and analysis of liability and damages;

viii. Brief discussion of legal issues and affirmative defenses interposed;
ix. Potential exposure (Probable (50%+), Possible (20% - 49%) or Remote (0 – 19%));
x. Range of settlement value, if determinable; and
xi. A copy of the Answer and/or alternative pleading(s) shall be provided with the initial suit report.

b. Litigation Plan:

A litigation plan shall be provided to the County Attorney within forty-five (45) days of receipt of the file. The litigation plan shall identify each activity proposed and the anticipated cost for each activity, the potential for early disposition, recommendations for ADR/arbitration/settlement; discussion of when motions may be appropriate and their probable success and an estimate of a trial date.

c. Status Updates:

Status updates shall be provided on June 30th and December 31st. These updates shall include, where applicable, a discussion of all significant developments in the case including discovery served and received, status of motion practice, updated liability evaluation and investigation, etc.

d. Pleadings:

Copies of all pertinent pleadings (Summons, Complaint, Bill of Particulars, Notice(s) to Admit, Interrogatories, Interrogatory Responses, Motion for and responses to Summary Judgment, etc.) shall be provided to our office at the time they are served.

e. Depositions:

Our office shall be provided with copies of any and all deposition summaries within ten (10) business days after the deposition. These reports shall include a description of the witness' appearance; evaluation of the witness' credibility; the witness' date of birth; a summary of the witness' testimony; and the evaluation of the impact of the witness' deposition on the case.

f. Trial Reports:

Trial reports shall be provided to our office **sixty (60) days** prior to the start of trial and shall include the following details:

i. Plaintiff's name;
ii. Defendant's name;
iii. Venue;
iv. Trial date;

v. Jury or non-jury trial;
vi. Recommendation of settlement. If so, how much;
vii. Evaluation of anticipated outcome of a trial, including possible verdict range and/or probability of defense verdict. If so, probable verdict value;
viii. Injuries;
ix. Special damages;
x. Comparative negligence;
xi. Key elements of plaintiff's case;
xii. Witnesses that will support plaintiff's case and summary of their anticipated testimony;
xiii. Credibility of plaintiff's witnesses;
xiv. Key elements of defense;
xv. Witnesses that will support defense and summary of their anticipated testimony;
xvi. Anticipated trial motions;
xvii. Expert witnesses and their anticipated testimony;
xviii. Most recent demand; and
xix. Most recent offer;

g. Post-Trial Reports

Upon completion of the trial, a post-trial summary report is required. An analysis of possible appeals or post-trial motions shall be included in your report.

h. Staffing and Supervision of Matters Sent to Outside Counsel

i. Attorneys

When it retains outside counsel to work on County matters, the County Attorney's Office expects that the specific lawyer(s) with whom the engagement is established ("lead counsel") will be directly and intimately involved in that matter throughout its course, unless the County Attorney agrees otherwise in writing. Lead counsel may not assign additional lawyers to any County matter without prior written approval from the County Attorney, and will not bill time expenditures for such lawyers absent such approval.

The County Attorney's Office expects that outside counsel will <u>not</u>:

- Overstaff matters;
- Shift assigned personnel, except when absolutely necessary;
- Charge for learning time of newly assigned lawyers when a shift in personnel is warranted;
- Authorize premature or peripheral legal or factual research;
- Hold non-substantive internal conferences;

- Submit charges at a rates that exceed the rate approved by the County Attorney; or
- Charge for routinely digesting, abstracting, or summarizing documents and depositions, absent specific tasks through persons who are either over-qualified (e.g., routine document review by a senior lawyer) or under-qualified (e.g., extensive research of general principles of law by junior associates).

The County will only pay for one half hour for the preparation and submission of an audit letter.

ii. Paralegals

Examples of activities that a paralegal should generally perform are:

- Preparing first drafts of basic forms and documents;
- Preparing subpoenas or notices for depositions, entry of appearance, substitution of counsel, interrogatories, requests to produce, jury trial demands, and other routine litigation documents;
- Summarizing answers to interrogatories;
- Preparing records requests and subpoenas;
- Proofing documents bates stamped by non-billing staff;
- Summarizing employment and other records;
- Abstracting or digesting depositions;
- Summarizing document production;
- Organizing materials that require professional judgment (a detailed billing description is required- a billing description merely stating "organizing materials" will be interpreted as administrative and, thus, non-billable);
- Organizing and re-organizing files that involve case documents such as separating and cataloguing responses to requests for production of documents (a detailed billing description is required- a billing description merely stating "organizing files" will be interpreted as administrative and, thus, non-billable);
- Indexing file material if professional judgment with respect to categorization is required;
- Preparing and filing UCC statements;
- Ordering searches such as title or legal records searches;
- Ordering public records documents for closings; and
- Creating and organizing binders, notebooks (witness and trial), folders, files, etc.;

III. Settlement Authority

The Erie County Attorney retains sole authority to settle or compromise all litigated matters under the Erie County Charter and no settlement agreement can be entered into without the County Attorney's prior written consent and approval. All civil legal matters involving the County, its officers and employees require that the County Attorney sign such settlement agreement.

IV. Compensation

a. Fees

Compensation shall be paid to the lawyer or law firm for all professional services actually performed in accordance with agreed-upon hourly rates.

i. Prohibition Against Reimbursement for Administrative or Clerical Functions

The County will only pay for work performed by attorneys or paralegals, and will not pay an hourly or flat rate or fee for work that is secretarial, clerical or administrative in nature, irrespective of the seniority of the person performing the task. Examples of such secretarial, clerical or administrative work include but are not limited to:

- Scheduling meeting and appointments;
- Making travel arrangements;
- Maintaining calendars;
- Filing, organizing or reorganizing files;
- Bates stamping documents;
- Date-stamping;
- Tabbing or indexing file materials (unless professional judgment as to the index categories must be used);
- Faxing documents;
- Photocopying documents;
- Proofreading documents;
- Scanning or coding documents;
- Pick-up or delivery of documents and records;
- Preparing documents for mailing or shipping;
- Ordering vendor services and providing instructions to vendors;
- Processing vendor bills;
- Collating;
- Data processing;
- Notice of filing;
- Organizing files for storage;
- Updating lists;

- Copying and binding documents;
- Inventorying documents;
- Preparing enclosure or transmittal letters; or
- Preparing invoices and discussing billing questions;

ii. Legal Research

Outside counsel must obtain prior approval from County Attorney's Office before conducting a legal research project that is expected to exceed five hours. The County does not pay for online research charges. When seeking approval, counsel should be prepared to address the following issues:

- The purpose of the research;
- Who will perform the research;
- Whether the research can be performed effectively by lower-level personnel;
- Whether the firm has previously conducted research on these or similar issues;
- Whether the attorney has access to prior research on the same topic; and
- The approximate number of hours needed to complete the research.

Outside counsel should not charge the County for routine research. The County Attorney's Office considers any matter of common knowledge among reasonably experienced counsel in the Erie County area routine research. Where circumstances exist that enable counsel to use counsel's data banks, brief bank, or existing work product, counsel should only charge the County for research connected with updating previously researched materials. The County Attorney's Office expects that counsel will use paralegals or junior associates for research matters, and avoid having partners or senior associates devote extensive time to research unless the complexity dictates as much. Counsel should forward copies of research products that are prepared for a County matter to the County Attorney's Office.

iii. Office Conferences

Intra-office conferences that deal with substantive issues pertaining to the matter are reimbursable when outside counsel provides a thorough description of the purpose of the conference. Generally, no more than two staff members should bill for an intra-office conference. The County will only pay for reasonable amounts of time expended on such conferences.

iv. Reviewing Files

Outside counsel shall not charge the County for general diary or status file reviews. Similarly, counsel shall not bill the County for file reviews if an event does not precipitate a file review (such as a telephone call or receipt of correspondence) or does not result in the creation of any tangible work product. The County will not pay for the review of a file by a party who is

merely supervising the work of another law firm employee. The County Attorney's Office considers such supervision to be part of the firm's overhead and already contained in the firm's hourly rate structure. The County Attorney's Office will not authorize payment for a billing charge that states "file review" without more detail as to the purpose.

The County will not pay for time spent by newly assigned attorneys or paralegals to familiarize themselves with a matter on which staffing has changed while the matter is in progress. If, however, the change in staff was made at the request of the County Attorney's Office, the County will pay reasonable costs associated with reviewing the files (unless the request was made for cause). Any billing entry for file reviews associated with staff changes should state that the County Attorney's Office approved the staff change and associated file review and list who approved the staff change.

b. Costs

Upon presentation of appropriate back up or supporting documentation, the County will reimburse the lawyer or law firm for reasonable costs and expenses incurred during the course of providing legal services including express mail, long distance telephone charges, postage, and photocopying charges (at no more than $0.10 per page); provided however, that individual reimbursable costs and expenses shall not exceed two hundred fifty dollars ($250), unless prior approval is obtained. Costs for travel within Erie County, courier charges, computerized research, and telefacsimile charges shall not be reimbursable by the County.

c. Retention of Experts, Unusual Expenses and Travel

Prior written approval is required for the retention of all experts and any expenses exceeding $2,500 to be incurred during the course of litigation. Additionally, all travel outside of Erie County requires advance approval and travel time for the lawyer shall be billed at one-half the hourly rate.

In addition, for any matters filed in State Supreme Court, the County does NOT have to pay filing fees.[1] Any charges on the billing invoice for such fees will not be reimbursed.

d. Invoices

All invoices shall be submitted on a monthly basis and include detailed individual itemized activity(ies), which shall include the date, time unit, the assigned staff, and the value of the unit of time along with a description of the work performed.

The County will not pay for "block billed entries," that is, a line item with a single time charge for multiple activities or disbursements. A time charge must accompany each fee

[1] Pursuant to CPLR § 8017.

activity, and outside counsel must itemize each disbursement entry. For example, the following format is not acceptable:

- 10/2/00 Phone conference with Hargrove re deposition; conference with client re same; prepare substantive changes to Answer; attend deposition of Hargrove.
    - 8.00 Hours

The following example represents an acceptable breakdown of those activities and disbursements:

10/2/00	J.A.	Phone conference with witness Hargrove re deposition (.20); conference with client re same (.60); prepare substantive changes to Answer (3.2); attend deposition of Hargrove (3.00); Pre-approved travel, one hour, to Rochester (.5); Pre-approved travel, one hour, from Rochester to Buffalo (.5);	Hours 8.0	Charge $1600.00

Outside counsel should clearly show the total of the current bill and also include a running total for the matter to date. Prior balances or payment history should be shown, if at all, on a separate page. Outside counsel must include with the statement both time sheet or diary detail for time charges and copies of invoices or internal data compilations for all disbursements. The following are examples of inadequate time descriptions:

- "Conference regarding case and issues";
- "Review and conference regarding documents";
- "Telephone re documents and various issues";
- "Conference re strategy"; and
- "Review papers".

Submission of bulk time entries that are not sufficiently itemized per time unit and per assigned staff will be returned for correction and resubmission. Reported failure to comply may result in non-payment of charges.

Each invoice must contain:

i. the County assigned file number;
ii. the matter name or description;
iii. a unique invoice number;
iv. the law firm's taxpayer identification number;
v. the inclusive dates covered by the bill;
vi. the date of the invoice;

vii. the date(s) of service;
viii. hourly rate for each attorney, paralegal, expert or other professional;
ix. Contain the individual itemized activity(ies) as set forth above;
x. Separately itemize the court filing fees and costs, witness fees, court reporter fees, advances and previously approved out-of-county travel; and
xi. List the time keepers on a separate sheet.

e. Approval

All charges, expenses, and costs incurred in performing the legal services as described herein and in the Agreement are subject to approval by the County Attorney.

V. Conflict of Interest

Where outside counsel is retained because the County Attorney has declared a conflict of interest, the Guidelines must be complied with, but the entity/person to whom such reporting shall be made shall be the party(ies) represented by outside counsel or, at the discretion of the County Attorney, a third-party administrator selected by the County Attorney (with copies to the represented party).

The County Attorney does not routinely waive conflicts of interest. Counsel who request a conflict of interest waiver must do so in writing. Such a request must include an identification of the cases or matters that create a conflict and the reasons why counsel believes that a waiver is appropriate, including an analysis of the applicable ethical rules and guidelines.

Appendix A: Invoice Format

LAW FIRM NAME

County of Erie
Attn.: Michael A. Siragusa
Erie County Attorney
95 Franklin Street, Suite 1634
Buffalo, NY 14202

Invoice # 99999
Attorney Name
Invoice Date

Matter Name: Important County Matter
County Attorney File #: 99-20110001
August 2011 Invoice

Date	Int	Description	Hours	Value
8/1/2011	SL	Phone conference with witness Hargrove re Deposition (.2); Conference with client re Same (.5).	.7	$122.50
8/15/11	AL	Prepare substantive changes to Answer (3.2).	3.2	$400.00
8/31/11	SL	Attend deposition of Hargrove (3.0); Pre- approved travel, one hour, to Rochester (.5); Pre-approved travel, one hour, from Rochester to Buffalo (.5).	4.0	$700.00
		Services Rendered	**7.9**	**$1,222.50**

Costs

8/1/11	SL	Long distance telephone charge	$ 3.21
8/15/11	AL	Copying Fee- Answer	$ 2.10
		Costs	**$ 5.31**

Services and Cost Summary

Professional	Rate	Hours	Value
Lawyer, Senior	175.00	4.7	$822.50
Lawyer, Associate	125.00	3.2	$400.00
Services		**7.9**	**$1,222.50**
Costs			**$ 5.31**
Current Invoice Total			**$1,227.81**

Fed. Tax I.D. 99-9999999