



ERIE COUNTY

REQUEST FOR PROPOSAL (RFP) TO PROVIDE WORKERS' COMPENSATION CLAIMS LEGAL REPRESENTATION SERVICES

September 15, 2016

**Michael A. Siragusa, Esq
Erie County Attorney
EDWARD A. RATH COUNTY OFFICE BUILDING
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**

COUNTY OF ERIE, NEW YORK
REQUEST FOR PROPOSALS (“RFP”)

**TO PROVIDE WORKERS’
COMPENSATION CLAIMS LEGAL
REPRESENTATION SERVICES**

I. INTRODUCTION

The County of Erie, New York (the “County”) is currently seeking Proposal Statements from qualified law firms interested in providing Workers’ Compensation claims legal representation services, on behalf of the Erie County Attorney for the County of Erie and all of its administrative units, including Erie Community College and claims which occurred at the Erie County Medical Center and Erie County Home and Infirmary prior to January 1, 2004. Proposers interested in providing Workers’ Compensation claims legal representation services are invited to respond to this request.

In your response to this RFP you should provide us with pricing for legal representation of the County. The specifications set forth below detail the minimum requirements for services sought. Any modifications, additions or enhancements to the program outlined should be clearly indicated and accompanied by a statement of explanation.

The County’s most recent Workers’ Compensation legal representation history is approximately as follows:

Year	Hearings
2013	355
2014	248
2015	280
2016	227 as of July 31, 2016

It is the County's intent to select the Proposer that provides the best solution for the County's needs.

The County reserves the right to amend this RFP. The County reserves the right to reject any or all of the proposals, or any part thereof, submitted in response to this RFP, and reserves the right to waive formalities, if such action is deemed to be in the best interest of the County. The County reserves the right to request additional information from any proposer. The County reserves the right to award negotiated contracts to one or more proposers.

This RFP is not intended and shall not be construed to commit the County to pay any costs incurred in connection with any proposal or to procure or contract with any firm.

The County will only contract with firms that do not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, citizenship status or any other status protected by New York State and Federal laws.

II. PROPOSAL PROCEDURES

A. ANTICIPATED SCHEDULE OF PROPOSAL

The following schedule is for informational purpose only. The County reserves the right to amend this schedule at any time.

Issue RFP:	September 15, 2016
Proposals Due:	October 6, 2016
Selection Made:	On or before October 28, 2016
Contract Signed:	Following all necessary County approvals

B. GENERAL REQUIREMENTS

1. Each proposal shall be prepared simply and economically avoiding the use of elaborate promotional materials beyond what is sufficient to provide a complete, accurate and reliable presentation. 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.
2. One (1) original and three (3) copies shall be submitted. Proposals **MUST** be signed. Unsigned proposals will be rejected.
3. Submission of the proposals shall be directed to:

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

All proposals must be delivered to the above office on or before October 6, 2016 at 3:00 p.m. Proposals received after the above date and time will not be considered. The County is under no obligation to return proposals.

4. Requests for clarification of this RFP must be written and submitted to Michael A. Siragusa at 95 Franklin Street, Room 1634, Buffalo, New York 14202 no later than 3:00 p.m. on September 26, 2016. Formal written responses will be distributed by the County on or before September 30, 2016. **NO COMMUNICATIONS OF ANY KIND WILL**

BE BINDING AGAINST THE COUNTY, EXCEPT FOR THE FORMAL WRITTEN RESPONSES TO ANY REQUEST FOR CLARIFICATION.

5. Proposers may be required to give an oral presentation to the County to clarify or elaborate on the written proposal. Those proposers will be notified to arrange specific times.
6. No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.
7. Certified Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) proposers should include the Erie County certification letter with the proposal.
8. If proposer is a Veteran Owned Business, proposer should include letter indicating company is 51% or more Veteran-owned.
9. **All proposals must include an annual cost proposal.** Such annual fees are for the services provided shall be inclusive of all proposer's research, postage, telephone, and file delivery charges to and from the third-party administrator. Note and explain any billable hour rates for services not included in the annual fee.

III. SCOPE OF PROFESSIONAL SERVICES REQUIRED

A. Responses to this RFP should address the following questions:

1. **Experience.** Please describe the firm's history and experience providing municipalities with Workers' Compensation claims legal representation services, including NY General Municipal Law and Section 207-c.
2. **Personnel.** Please identify the individuals who would be assigned to provide Workers' Compensation claims legal services, including information about their relevant experience and abilities.
3. **References.** Identify three (3) clients that the County may contact as references. For each reference, include the name, title, address and phone number of the appropriate business contact.
4. Please identify any actual or potential conflicts of interest which may present themselves in the event that your firm is selected to provide legal representation services to the County. Further, please advise how such conflicts would be resolved.

B. SPECIFICATIONS - The successful firm to whom the contract is awarded shall enter into a contract with the County to perform the services described herein. These specifications shall be incorporated in and become a part of the final contract. These specifications detail the minimum requirements for services sought. Any modifications,

additions or enhancements to the program outlined should be clearly indicated and accompanied by a statement of explanation.

1. The firm shall represent the legal interests of Erie County and appear as attorney of record and attend all Workers Compensation Board hearings except as follows:

- a. The firm shall not be responsible for handling claims for discrimination under Section 120 of the Workers' Compensation Law.
- b. The firm shall not be responsible for representing the County in the defense of employer liability claims under *Dole v. Dow*.
- c. The firm shall be responsible for identifying subrogation rights and identifying potential contributions from other parties, including the identification of potential liability on the part of third-parties, but is not responsible for initiating legal action to seek such recoveries.
- d. The Firm shall be responsible for advising the County Attorney of potential loss transfer claims in no-fault cases but is not responsible for initiating legal action to seek such recoveries.
- e. The Firm shall be responsible for appeals to the Workers' Compensation Board, but the Firm is not responsible for appeals to the Appellate Division or the Court of Appeals, unless otherwise agreed upon.

2. The Firm shall agree to handle all open Workers' Compensation cases and any new cases that may arise until such time as the agreement is terminated.

3. The Firm shall agree to cooperate with the County's third-party Workers' Compensation claims administrator and the Erie County Attorney and be able to communicate and schedule electronically with the third-party claims administrator.

4. The Firm agrees to assist in the settlement of litigated cases, including, but not limited to, providing information and participation in the negotiation of settlement. The Firm shall not settle any open case without the prior concurring of the County Attorney. Any settlement over \$5,000 must have the prior written approval of the Erie County Attorney.

5. From time to time, the Firm shall respond to requests for legal opinions from the Erie County Attorney on Workers' Compensation matters and shall be available for consultation upon reasonable notice.

6. The Firm shall assume and review all open cases from the County's current Workers' Compensation Claims Attorney. The cost of take-over shall be included in the firm's price. The firm shall assume all aspects of representation effective January 1, 2017.

7. Any and all files relating to the County's workers' compensation matter will be made available to the County upon request, and will be turned over to the County or a designated representative in an orderly manner.

8. The Firm shall assist with making recommendations regarding: the investigation of claims submitted, fraud and loss prevention, surveillance, and IME referrals.

9. The Firm shall also agree to provide the following services:

- a. Advise on the use and interpretation of data, records and reports provided to the County and make recommendations to facilitate the County's program of employee safety and health.
- b. Coordinate and present a yearly Workers' Compensation seminar to County Department Heads and other County employees responsible for handling Workers' Compensation matters.
- c. Assist and cooperate with loss prevention and safety personnel to reduce the frequency and severity of injuries.
- d. Make recommendations for and assist with the prevention of Workers' Compensation fraud.
- e. Make recommendations regarding surveillance for the prevention of fraud and abuse.
- f. Make recommendations for and assist with the promotion of employee health and a safe-place to work.

10. The Firm shall designate a senior employee or officer as an adviser regarding employee safety and health and shall be available to meet and consult with County representatives during the year.

11. The Firm shall obligate himself to provide information necessary for continuous claims handling after the expiration of the contract to a subsequently successful firm.

12. Firm shall defend, hold harmless, and indemnify the County against any and all liability, claims or damages resulting from any acts, negligence or malpractice of any person or persons who are officials, professionals, employees or persons affiliated with the firm arising out of or from any services relating to the contract.

13. The Firm shall procure insurance no later 14 days after notice of award, and maintained without interruption for the duration of the contract, in the kinds and amounts specified at the time of award. Certificates of insurance shall be furnished by the Firm on the Erie County Standard Insurance Certificate.

IV. STATEMENT OF RIGHTS

UNDERSTANDINGS

Please take notice, by submission of a proposal in response to this request for proposals, the proposer agrees to and understands:

- that any proposal, attachments, additional information, etc. submitted pursuant to this Request for Proposals constitute merely a suggestion to negotiate with the County of Erie and is not a bid under Section 103 of the New York State General Municipal Law;
- submission of a proposal, attachments, and additional information shall not entitle the proposer to enter into an agreement with the County of Erie for the required services;

- by submitting a proposal, the proposer agrees and understands that the County of Erie is not obligated to respond to the proposal, nor is it legally bound in any manner whatsoever by submission of same;
- that any and all counter-proposals, negotiations or any communications received by a proposing entity, its officers, employees or agents from the County, its elected officials, officers, employees or agents, shall not be binding against the County of Erie, its elected officials, officers, employees or agents unless and until a formal written agreement for the services sought by this RFP is duly executed by both parties and approved by the Erie County Legislature and the Office of the Erie County Attorney.

In addition to the foregoing, by submitting a proposal, the proposer also understands and agrees that the County of Erie reserves the right, and may at its sole discretion exercise, the following rights and options with respect to this Request for Proposals:

- To reject any or all proposals;
- To issue amendments to this RFP;
- To issue additional solicitations for proposals
- To waive any irregularities in proposals received after notification to proposers affected;
- To select any proposal as the basis for negotiations of a contract, and to negotiate with one or more of the proposers for amendments or other modifications to their proposals;
- To conduct investigations with respect to the qualifications of each proposer;
- To exercise its discretion and apply its judgment with respect to any aspect of this RFP, the evaluation of proposals, and the negotiations and award of any contract;
- To enter into an agreement for only portions (or not to enter into an agreement for any) of the services contemplated by the proposals with one or more of the proposers;
- To select the proposal that best satisfies the interests of the County and not necessarily on the basis of price or any other single factor;
- To interview the proposer(s);
- To request or obtain additional information the County deems necessary to determine the ability of the proposer;
- To modify dates;
- All proposals prepared in response to this RFP are at the sole expense of the proposer, and with the express understanding that there will be no claim, whatsoever, for reimbursement from the County for the expenses of preparation. The County assumes no responsibility or liability of any kind for costs incurred in the preparation or submission of any proposal;
- While this is a RFP and not a bid, the County reserves the right to apply the case law under General Municipal Law § 103 regarding bidder responsibility in determining whether a proposer is a responsible vendor for the purpose of this RFP process;

- The County is not responsible for any internal or external delivery delays which may cause any proposal to arrive beyond the stated deadline. To be considered, proposals MUST arrive at the place specified herein and be time stamped prior to the deadline

EVALUATION

The following criteria, not necessarily listed in order of importance, will be used to review the proposals. The County reserves the right to weigh its evaluation criteria in any manner it deems appropriate:

- Proposer's demonstrated capability to provide the services.
- Evaluation of the professional qualifications, personal background and resume(s) of individuals involved in providing services.
- Proposer's experience to perform the proposed services.
- Proposer's financial ability to provide the services.
- Evaluation of the proposer's fee submission. It should be noted that while price is not the only consideration, it is an important one. Proposer's prices are to be no higher than those offered to any other governmental or commercial consumer. If a proposer has a New York State or a Federal GSA contract for any of the services covered in this RFP, proposer shall so indicate that he has said contract and supply a copy of the contract(s).
- A determination that the proposer has submitted a complete and responsive proposal as required by this RFP.
- An evaluation of the proposer's projected approach and plans to meet the requirements of this RFP.
- The proposer's presentation at and the overall results of any interview conducted with the proposer.
- Proposers MUST sign the Proposal Certification attached hereto as Schedule "A". Unsigned proposals will be rejected.
- Proposers may be required to give an oral presentation to the County to clarify or elaborate on the written proposal.
- No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.

CONTRACT

After selection of the successful proposer, a formal written contract will be prepared by the County of Erie and will not be binding until signed by both parties and, if necessary, approved by the Erie County Legislature and the Office of the County Attorney. **NO RIGHTS SHALL ACCRUE TO ANY PROPOSER BY THE FACT THAT A PROPOSAL HAS BEEN SELECTED BY THE COUNTY FOR SUBMISSION TO THE ERIE COUNTY LEGISLATURE FOR APPROVAL. THE APPROVAL OF SAID LEGISLATURE MAY BE NECESSARY BEFORE A VALID AND BINDING CONTRACT MAY BE EXECUTED BY THE COUNTY.**

The term of the contract shall be for a three (3) year period commencing January 1, 2017 and terminating December 31, 2019. The County, in its sole discretion may extend the agreement beyond its initial term for up to two (2) additional one-year periods at the same prices and conditions.

INDEMNIFICATION AND INSURANCE

The proposer accepts and agrees that language in substantially the following form will be included in the contract between the proposer and the County:

“In addition to, and not in limitation of the insurance requirements contained herein the Consultant agrees:

(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Consultant shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the acts or omissions hereunder by the Consultant or third parties under the direction or control of the Consultant; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

Upon execution of any contract between the proposer and the County, the proposer will be required to provide proof of the insurance coverage described in Schedule “B”.

Insurance coverage in amount and form shall not be deemed acceptable until approved by the County Attorney.

NON-COLLUSION

The proposer, by signing the proposal, does hereby warrant and represent that any ensuing agreement has not been solicited, secured or prepared directly or indirectly, in a manner contrary to the laws of the State of New York and the County of Erie, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the agreement by any conduct, including the paying or the giving of any fee, commission,

compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any County employee, officer or official.

CONFLICT OF INTEREST

All proposers must disclose with their proposals the name of any officer, director or agent who is also an employee of the County of Erie. Further, all proposers must disclose the name of any County employee who owns, directly or indirectly, an interest of ten percent or more in the firm or any of its subsidiaries or affiliates.

There shall be no conflicts in existence during the term of any contract with the County. The existence of a conflict shall be grounds for termination of a contract.

COMPLIANCE WITH LAWS

By submitting a proposal, the proposer represents and warrants that it is familiar with all federal, state and local laws and regulations and will conform to said laws and regulations. The preparation of proposals, selection of proposers and the award of contracts are subject to provisions of all Federal, State and County laws, rules and regulations.

CONTENTS OF PROPOSAL

The New York State Freedom of Information Law as set forth in Public Officers Law, Article 6, Sections 84 et seq., mandates public access to government records. However, proposals submitted in response to this RFP may contain technical, financial background or other data, public disclosure of which could cause substantial injury to the proposer's competitive position or constitute a trade secret. Proposers who have a good faith belief that information submitted in their proposals is protected from disclosure under the New York Freedom of Information Law shall:

a) insert the following notice in the front of its proposal:

“NOTICE

The data on pages ___ of this proposal identified by an asterisk (*) contains technical or financial information constituting trade secrets or information the disclosure of which would result in substantial injury to the proposer’s competitive position.

The proposer requests that such information be used only for the evaluation of the proposal, but understands that any disclosure will be limited to the extent that the County considers proper under the law. If the County enters into an agreement with this proposer, the County shall have the right to use or disclose such information as provided in the agreement, unless otherwise obligated by law.”

and

b) clearly identify the pages of the proposals containing such information by typing in bold face on the top of each page " * **THE PROPOSER BELIEVES THAT THIS INFORMATION IS PROTECTED FROM DISCLOSURE UNDER THE STATE FREEDOM OF INFORMATION LAW.**"

The County assumes no liability for disclosure of information so identified, provided that the County has made a good faith legal determination that the information is not protected from disclosure under applicable law or where disclosure is required to comply with an order or judgment of a court of competent jurisdiction.

The contents of the proposal which is accepted by the County, except portions "Protected from Disclosure", may become part of any agreement resulting from this RFP.

PAY EQUITY

The successful proposer shall comply with Erie County Executive Order 13 (2014) and agrees to complete the County's Equal Pay Certification. The successful proposer shall make such records available, upon request, to the County's Division of Equal Employment Opportunity for review. The County shall have the right, upon reasonable notice and at reasonable times, to inspect the books and records of the successful proposer, its offices and facilities, for the purpose of verifying information supplied in the Erie County Equal Pay Certification and for any other purpose reasonably related to confirming the successful proposers compliance with Erie County Executive Order 13 (2014). Notwithstanding the termination provisions contained in the resulting contract, violation of the provisions of Executive Order 13 (2014), may constitute grounds for the immediate termination of the contract and may constitute grounds for determining that the successful proposer is not qualified to participate in future County contracts.

EFFECTIVE PERIOD OF PROPOSALS

All proposals must state the period for which the proposal shall remain in effect (i.e. how much time does the County have to accept or reject the proposal under the terms proposed). Such period shall not be less than 180 days from the proposal date.

SCHEDULE "A"

PROPOSER CERTIFICATION

The undersigned agrees and understands that this proposal and all attachments, additional information, etc. submitted herewith constitute merely an offer to negotiate with the County of Erie and is NOT A BID. Submission of this proposal, attachments, and additional information shall not obligate or entitle the proposing entity to enter into a service agreement with the County of Erie for the required services. The undersigned agrees and understands that the County of Erie is not obligated to respond to this proposal nor is it legally bound in any manner whatsoever by the submission of same. Further, the undersigned agrees and understands that any and all proposals and negotiations shall not be binding or valid against the County of Erie, its directors, officers, employees or agents unless an agreement is signed by a duly authorized officer of the County of Erie and, if necessary, approved by the Erie County Legislature and the Office of the County Attorney.

It is understood and agreed that the County of Erie reserves the right to reject consideration of any and all proposals including, but not limited to, proposals which are conditional or incomplete. It is further understood and agreed that the County of Erie reserves all rights specified in the Request for Proposals.

It is represented and warranted by those submitting this proposal that except as disclosed in the proposal, no officer or employee of the County of Erie is directly or indirectly a party to or in any other manner interested in this proposal or any subsequent service agreement that may be entered into.

Proposer Name

By: _____
Name and Title

SCHEDULE "B"

STANDARD INSURANCE PROVISIONS

INSTRUCTIONS FOR COUNTY OF ERIE STANDARD INSURANCE CERTIFICATE

- I. Insurance shall be procured and certificates delivered before commencement of work or delivery of merchandise or equipment.
- II. **CERTIFICATES OF INSURANCE**
 - A. Shall be made to the "County of Erie, 95 Franklin St, Buffalo NY, 14202"
 - B. Coverage must comply with all specifications of the contract.
 - C. Must be executed by an insurance company, agency or broker, which is licensed by the Insurance Department of the State of New York. If executed by a broker, notarized copy of authorization to bind or certify coverage must be attached.
- III. Forward the completed certificate to: County of Erie, (Department or Division) responsible for entering into the agreement for construction, purchase, lease or service.
- IV. Minimum coverage with limits are as follows:

Vendor Classification	A Construction and Maintenance	B Purchase or Lease of Merchandise or Equipment	C Professional Services	D Property Leased To Others Or Use Of Facilities Or Grounds	E Concessionaires Services	F Livery Services	G All Purposes Public Entity Contracts
Commercial Gen. Liab.	\$1,000,000 per occ.	\$1,000,000 CSL	\$1,000,000 CSL	\$1,000,000	\$1,000,000 CSL	\$1,000,000	\$1,000,000 CSL
General Aggregate	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
Products Completed Operations Liability	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
Blanket Broad Form Contractual Liability	INCLUDE						
Contractual Liability		INCLUDE	INCLUDE	INCLUDE	INCLUDE	INCLUDE	INCLUDE
Broad Form P.D.	INCLUDE						
X.C.U. (explosion, collapse, Underground)	INCLUDE						
Liquor Law				INCLUDE	INCLUDE		
Auto Liab.	\$1,000,000 CSL		\$1,000,000 CSL	\$1,000,000 CSL	\$1,000,000 CSL	\$1,000,000 CSL	\$1,000,000 CSL
Owned	INCLUDE		INCLUDE	INCLUDE	INCLUDE	INCLUDE	INCLUDE
Hired	INCLUDE		INCLUDE	INCLUDE	INCLUDE	INCLUDE	INCLUDE
Non-Owned	INCLUDE		INCLUDE	INCLUDE	INCLUDE	INCLUDE	INCLUDE
Excess/Umbrella Liab.	\$5,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$5,000,000	\$1,000,000
Worker's Compensation & Employer's Liability	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY
Disability Benefits	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY	STATUTORY
Professional Liability			\$5,000,000				
Erie County, To Be Named Add'l Insd.	Gen. Liab., Auto Liab., & Excess	Broad Form Vendors May Be Required	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess	Gen. Liab., Auto Liab., & Excess

- V. Construction contracts require excess Umbrella Liability limits of \$5,000,000.
- VI. Coverage must be provided on a primary-noncontributory bases.
- VII. Designated Construction Project General Aggregate Limit Per Project Endorsement CG 25 03 is required.
- VIII. If the concessionaire is required to have a N.Y.S. license to dispense alcoholic beverages an endorsement for liquor liability is required.
- IX. Waiver of Subrogation: Required on all lines unless noted.
- X. Transportation of people in buses, vans or station wagons requires \$5,000,000 excess liability.
- XI. Workers Compensation: State Workers' Compensation / Disability Benefits Law — Use Applicable Certificates Below:

Form	Exemption
CE-200	Exemption
C105.2	Commercial Insurer
SI-12	Self Insurer
GSI-105.2	Group Self Insured
U-26.3	New York State Insurance Fund

Form	Exemption
CE-200	Exemption
DB-120.1	Insurers
DB-155	Self Insured

- XII. The "ACORD" form certificate may be used in place of the County of Erie Standard Insurance Certificate, provided that all of the above referenced requirements are incorporated into the "ACORD" form certificate.