

**STATE OF NEVADA**

**DEPARTMENT OF TRANSPORTATION**

# **REQUEST FOR QUALIFICATIONS**

Instructions for Submitting Qualifications to Furnish

## **LEGAL ADVISOR SUPPORT ON A PUBLIC PRIVATE PARTNERSHIP FOR PROJECT NEON**

In

Clark County, NV



Rudy Malfabon, P.E., Director  
Department of Transportation

## **SECTION I - INSTRUCTIONS TO FIRMS**

The enclosed "Request for Qualifications" (RFQ) is being advertised for use in submitting information that will be used to establish a prequalified list of firms interested in providing legal support services for the Nevada Department of Transportation (DEPARTMENT). The legal support services will be in support of the DEPARTMENT in a Public Private Partnership (PPP) Procurement for Project NEON. Firms interested in providing these services must complete a Statement of Qualifications (SOQ) using the information contained in this RFQ.

This RFQ is part of a two-step procurement process. Step 1 shall include a RFQ submittal, prequalification, a pass/fail evaluation, and establishment of a prequalified list of firms based upon a Review Committee's review of the submitted SOQ. Step 2 shall include a project specific interview, evaluation, selection, negotiation, and award. Selection of a Firm to provide Legal Support Services will be on a qualifications basis in accordance with the evaluation criteria to be set forth in a future Invitation to Interview (ITI) issued by the DEPARTMENT.

Responses to this RFQ must be submitted in a Portable Document Format (PDF). Faxed information will not be accepted. The submittal must be received **NO LATER THAN 3:00 P.M., on Monday, January 7, 2013**, and e-mailed to [agreeservices@dot.state.nv.us](mailto:agreeservices@dot.state.nv.us) with the e-mail subject line addressed **exactly** as follows: **SOQ Submittal to RFQ for Legal Support Services for a Public Private Partnership Procurement for Project NEON.**

SOQs not submitted in strict compliance with these instructions **will not** be considered and will be disposed of in an appropriate manner suitable to the State.

The DEPARTMENT Prequalification Program currently has no discipline for Legal Support Services. SOQs submitted by Firms in response to this RFQ will be reviewed to determine if they meet minimum prequalifications established for the Legal Support Services as described in this RFQ. Any submittals that do not meet the minimum prequalification requirements, as outlined below, will be disposed of in an appropriate manner suitable to the State without further review. The Innovative Transportation Discipline – Legal Support discipline will be a non-engineering discipline. An "NDOT Statement of Qualification" form will be required as part of this RFQ submittal. The Statement of Qualification form for non-engineering disciplines is included as an attachment to this RFQ and may also be obtained by contacting NDOT Agreement Services at (775) 888-7070 or visiting the website at [www.nevadadot.com](http://www.nevadadot.com). (This form is not included in the page limitation for the SOQ submittal.)

### **Innovative Transportation Discipline – Legal Support:**

The DEPARTMENT seeks an experienced and expert law firm which understands and will advise the DEPARTMENT on all legal issues, laws, rules and regulations of any kind (Federal, State, Constitutional, tax, etc.), public-private partnerships, and innovative financial arrangements. The law firm must be able to analyze the legal issues and research, draft, negotiate, and finalize the necessary legal documents related to a Design-Build-Finance-Maintain and Operate (DBFMO) contract transportation project together with the DEPARTMENT staff, a Deputy Nevada Attorney General, engineering service providers, and an experienced consultant financial firm.

Any submittal received prior to the date and time specified above for receipt of SOQs may be withdrawn or modified by written request of the firm. To be considered, however, the modified submittal must be received no later than the time and date specified above.

All materials submitted in accordance with the prescribed deadline become the property of the DEPARTMENT and will not be returned. The DEPARTMENT's selection or rejection of a SOQ does not affect this right. The SOQs will be signed by a person legally authorized to bind the firm. Any request for copies of SOQs must be submitted in writing for further consideration by the DEPARTMENT by utilizing the process on the DEPARTMENT website at [http://www.nevadadot.com/Public\\_Involvement/Public\\_Involvement.aspx#prrequests](http://www.nevadadot.com/Public_Involvement/Public_Involvement.aspx#prrequests).

Confidential Information, Trade Secrets and/or Proprietary Information must be submitted separately and clearly marked "Confidential." The failure to separate and mark this information shall constitute a complete waiver of any and all claims for damages caused by release of the information by the DEPARTMENT.

Issuance of this RFQ shall in no way constitute a commitment by the DEPARTMENT to execute an agreement. The DEPARTMENT reserves the right to reject any or all SOQs received in response to this RFQ, or to cancel this RFQ if it is deemed in the best interest of the State to do so.

The DEPARTMENT reserves the right to issue supplements to this RFQ prior to the closing date. In the event it becomes necessary to supplement any part of this RFQ, the DEPARTMENT will provide copies of the supplements to all who have communicated to NDOT Agreement Services that they received the RFQ.

The DEPARTMENT assumes no financial responsibility in connection with the costs incurred in the preparation and submission of the Firm's submittal packet.

**Contact with any DEPARTMENT personnel, other than Agreement Services, regarding these services will not be allowed during the solicitation period of this Request for Qualifications.** Any questions raised by Firms must be directed to Agreement Services at (775) 888-7070, 1263 South Stewart Street, Room 101, Carson City, Nevada 89712, faxed to (775) 888-7101 or emailed to [agreeservices@dot.state.nv.us](mailto:agreeservices@dot.state.nv.us).

## **SECTION II - DBE REQUIREMENTS**

There are no Disadvantage Business Enterprises (DBE) requirements for this RFQ. DBE requirements for a specific project, if required, will be provided with the Invitation to Interview.

## **SECTION III – NEVADA BUSINESS LICENSE REQUIREMENT**

The Nevada State Board of Examiners (BOE) passed a resolution requiring any vendor entering into an agreement with the State of Nevada to perform any work, is contingent upon verification the vendor has a valid and active Nevada Business License and if they are Nevada corporation, LLC, LP, LLP, or LLLP, or non-profit corporation, that their corporation is active and in good standing with the Nevada Secretary of State. Additionally, if they are a corporation, LLC, LP, LLP, or LLLP, or non-profit corporation based out of state, they must be registered as a foreign business entity equivalent in Nevada, in active status and in good standing.

Each firm shall clearly state, at time of submittal, its willingness to adhere to this requirement by providing a copy of their Nevada Business License, a copy of their application from the Secretary of State Office or provide a print out of entity status that can be obtained

from the Nevada Business Search section found on the homepage of the Secretary of State's website [www.nvsos.gov](http://www.nvsos.gov).

Award of any agreement is contingent on a firm having and holding an active, valid Nevada Business License. A firm must satisfy this requirement before execution of the agreement. If a firm is unable or unwilling to adhere to this requirement, the DEPARTMENT will deem the firm as non-responsive and the DEPARTMENT shall proceed to negotiate with the next most qualified firm and so on until an acceptable agreement is negotiated.

To apply for your Nevada Business license or to file appropriate formation documents with the Secretary of State's office, please visit [www.nvsos.gov](http://www.nvsos.gov). Business licenses can be obtained immediately by applying on-line; paper applications may take 4-8 weeks for processing.

#### **SECTION IV - SELECTION PROCESS**

Submittals meeting the minimum prequalification requirements for the Legal Support Services will be evaluated based on the factors shown in Section VIII by a Review Committee comprised of DEPARTMENT staff and others that shall remain anonymous. The evaluators will use the information submitted to establish a prequalified list of firms for the Innovative Transportation Discipline – Legal Support Discipline. Based on the number of written submittals received, the DEPARTMENT may elect to include all, or just some of the prequalified Firms on the pre-qualified list. The prequalified list of Firms qualified for support services will expire on December 31, 2014.

Once a prequalified list of Firms has been identified, the firms on the prequalified list will be provided project-specific information and will be invited to an interview. In connection with such interview, prequalified Firms may also be required to submit supplemental written information about the project, their experience, their rates, and their capabilities. **Interviews are anticipated to be held the first week of February 2013 in Carson City, Nevada.** Interview dates, times, locations, and Evaluation Criteria for the interview will be provided with the Invitation to Interview (ITI). Failure of a firm to respond to the ITI, or to appear at the interview, will be considered non-responsive, and that firm will be eliminated from any further consideration. The Interview Evaluation Committee will be comprised of DEPARTMENT staff and others designated by DEPARTMENT (which may include other public agency personnel and stakeholders).

All evaluators may use the information in the Firm's written submittal package, any supplemental information that may be requested in response to the ITI, and the information presented at the interview to arrive at the final ranking. The Firms will be ranked and an agreement shall be negotiated with the number one ranked firm. If an acceptable agreement cannot be reached with the selected firm, the DEPARTMENT shall proceed to negotiate with the next highest ranked firm and so on until an acceptable agreement is negotiated.

Inclusion on the [Innovative Transportation Discipline – Legal Support](#) discipline prequalified list is not meant to be interpreted as a promise of work or an opportunity to interview. It is a process to facilitate the procurement, as required, for legal support services for the project.

## **SECTION V – BACKGROUND**

The DEPARTMENT intends to make significant improvements to the Interstate 15 (I-15) Corridor from Desert Inn Road on the I-15 to Rancho Drive on US 95 (referred to collectively as Project NEON). The purpose of the project is to address the short term and long term transportation operational and safety needs within this section of I-15.

The DEPARTMENT has obtained the State Transportation Board of Directors' approval to hire legal expertise in support of developing the DBFMO RFP documents for the project. The DEPARTMENT anticipates developing the final RFP documents by December 2013, at which time the DEPARTMENT will request approval from the State Transportation Board of Directors to proceed with issuance of the RFP.

## **SECTION VI – LEGAL SUPPORT QUALIFICATIONS**

The Firm must have counsel directly knowledgeable and experienced in:

(1) Highway design-build, concessionaire/lease agreements, risk mitigation, bonding, insurance, right-of-way, finance, operations and maintenance, procurements and contracting, construction law, public sector contracting, tax law, complex business and financing transactions, and general public sector law;

(2) Federal and State laws regarding transportation issues including highway planning, construction and funding, transit, public-private partnerships, Transportation Infrastructure Finance and Innovation Act (TIFIA) loans, Grant Anticipation Notes (GANs), Private Activity Bonds, and Moving Ahead for Progress in the 21st Century (MAP-21);

(3) Negotiating and executing PPP agreements or other complex, multi-year transactional documents related to transportation projects and involving long-term operations and maintenance; and

(4) Working with Federal agencies, including the Federal Highway Administration (FHWA), Bureau of Land Management (BLM) and Environmental Protection Agency (EPA).

## **SECTION VII - SCOPE OF SERVICES**

The DEPARTMENT desires to be on the cutting edge of innovative methods to develop and complete transportation projects and is looking for experienced and expert legal support in many areas of PPP.

The selected Firm with whom a Service Agreement is successfully entered (hereinafter "Service Provider") will research, analyze, negotiate, draft, and provide legal advice to the DEPARTMENT in specialized areas incident to a PPP and will be a key advisor to the DEPARTMENT for all legal aspects and issues for Project NEON. The Firm will perform a variety of services including some or all of the following activities:

- (1) Advise the DEPARTMENT in structuring financing consistent with applicable constitutional requirements, State and Federal laws and programs, and tax-exempt practices;
- (2) Provide advice regarding legal issues during the development of the procurement documents;

- (3) Assist with the procurement documents and process including drafting contractual terms and provisions included in the procurement documents, as well as, reviewing and evaluating documents and proposals for compliance with legal requirements;
- (4) Support the review of the procurement process, including monitoring compliance with State and Federal laws;
- (5) Prepare and draft all necessary legal documents and contractual agreements required for implementation of the proposal;
- (6) Participate in the industry review process, including proposer workshops, one-on-one meetings, proposer Question & Answer sessions, and procurement document revisions.
- (7) Assist the Department in negotiating complex contracts such as PPP, including the delineation of project development risks;
- (8) Participate in presentations, briefings, and reporting to the DEPARTMENT's decision making body concerning acceptance or rejection SOQs;
- (9) Deliver legal opinions as requested regarding matters affecting or that could potentially affect the project;
- (10) Provide continuing advice to the DEPARTMENT and the Attorney General's Office as requested from time-to-time on issues relating to project transactions;
- (11) Work and liaise with other DEPARTMENT service providers and state, local, and federal agencies regarding the project;
- (12) Advise the DEPARTMENT regarding relevant laws related to the project and the Pioneer Program; and
- (13) Meet with DEPARTMENT personnel and/or consultants and other interested parties to discuss the details of the PPP for the project.

The Firm will perform some or all of those legal services listed above and will be required to work at the direction and supervision of DEPARTMENT's Project Manager. The Office of the Attorney General is the State legal counsel for the DEPARTMENT and the Service Provider will also work closely with the Attorney General's staff that must ultimately approve all DEPARTMENT contracts as to form and legality. In addition, the Service Provider will be required to work cooperatively with other consultants serving the DEPARTMENT, including but not limited to, the outside engineering service provider and financial advisors.

### **SECTION VIII – SUBMITTAL CONTENT**

Submittals shall be brief and to the point. One (1) section shall be devoted to each topic listed below with each section separated by a header. The cover letter must not exceed one (1) single-spaced, single-sided 8½" x 11" page and must include the firm's contact person relative to the submittal. The submittals shall include:

#### **A. SUBMITTAL ITEMS**

Submittals shall include the items listed below. Any submittals that do not contain these items ***will not*** be considered and will be disposed of in an appropriate manner suitable to the DEPARTMENT, in its sole discretion.

1. RFQ Submittal meeting the requirements of this Section VIII;
2. Statement of Qualifications Form;
3. Reference Questionnaires; and
4. Nevada Business License Information outlined in Section III.

**B. PASS/FAIL CRITERIA ITEMS**

**1. Qualifications:**

- a. Identify qualifications and experience with respect to execution of the Legal Support Services, as described in Sections VI and VII.

**2. Key Personnel and Organization:**

- a. Provide evidence of no fewer than three (3) current staff members, their qualifications, and abilities, and their documented experiences as legal counsel for a public agency during a PPP, through to financial close on no fewer than two (2) projects each.
- b. Provide an organizational chart identifying key program management and lead attorneys.
- c. Submit resumes containing the names, educational background, geographic location, and experience of those key attorneys and supervisory attorneys that would be assigned to or are available to serve the DEPARTMENT. Please Note: Persons listed shall be required to be available to and regularly perform related services for the DEPARTMENT during the term of the Service Agreement. Furthermore, the DEPARTMENT reserves the right to request changes in the assigned personnel if necessary, in its sole discretion, to further its interests.

**3. Experience and Past Performance of the firm:**

- a. Describe and list at least three (3) relevant PPP infrastructure development projects accomplished by the Firm including the nature of the work performed for those related clients.
- b. Using the enclosed Reference Questionnaire Form, provide a minimum of three (3) references from similar projects performed by the firm for state and/or local government clients. The Reference Questionnaire Form attached to this RFQ must be submitted to the business references listed within the submittal. The business references must submit the completed Reference Questionnaire **directly to the DEPARTMENT**, Agreement Services. The Questionnaires can be sent either by mail to: Agreement Services, Nevada Department of Transportation, 1263 South Stewart Street, Room 101, Carson City, NV 89712, or by e-mail to: [agreeservices@dot.state.nv.us](mailto:agreeservices@dot.state.nv.us). It is the Firm's responsibility to ensure the completed forms are received by the DEPARTMENT on or before the submittal submission deadline for inclusion in the evaluation process. Failure to provide three (3) references may result in the firm being disqualified. The DEPARTMENT may contact any or all business references for validation of the information submitted.

**C. SUBMITTAL LIMITATIONS**

The written submittals shall be limited by the following:

- 1. The total submittal package shall not exceed ten (10) double-spaced, single-sided, 8½" x 11" pages, which does not include the cover letter.
- 2. Statement of Qualifications Form, Nevada Business License, Reference Letters, and section dividers without text or graphics do not count towards the page limitations.

3. Pages contained within the submittal that are size 11" x 17" will be counted as two (2) pages.

## **SECTION IX – PROTEST PROCEDURE**

Protests may be filed only with respect to:

1. Allegations that the terms of the RFQ are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed the DEPARTMENT's authority; and/or
2. A determination as to whether a submittal is responsive to the requirements of the RFQ or failed any Pass/Fail criteria, as applicable; and/or
3. Determination of the prequalified list.
4. Award of an Agreement

### **A. DEADLINES FOR PROTESTS**

Protests concerning the issues described in Section IX(1) and contained in the RFQ must be filed no later than ten (10) calendar days prior to the submittal due date, and those contained in any supplemental notice to the RFQ must be filed no later than three (3) business days after the DEPARTMENT distributes the related supplemental notice.

Protests concerning the issues described in Section IX(2) must be filed within ten (10) calendar days after the DEPARTMENT issues its notice to a Firm that its submittal was deemed nonresponsive or failed any pass/fail criteria.

Protests concerning the issues described in Section IX (3) must be filed within ten (10) calendar days after the DEPARTMENT issues the notification of the prequalified list.

Protests concerning the issues described in Section IX (4) must be filed within ten (10) calendar days after the DEPARTMENT issues the Notice of Award.

The DEPARTMENT will not accept any protests received after the above-stated deadlines for receipt of such protests

### **B. PROTEST CONTENTS**

Protests shall include Information about the protesting firm, including Firm name, mailing address, phone number, and name of the individual responsible for submission of the protest. Protests shall completely and succinctly state the grounds for protest, its legal authority, its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Statements shall be sworn and submitted under penalty of perjury.

### **C. FILING OF PROTEST**

Protests shall be in writing and filed by hand delivery on or before the applicable deadline to:

Nevada Department of Transportation  
ATTN: Administrative Services/Dispute Resolution Office  
1263 South Stewart Street, Room 101  
Carson City, NV 89712

The Firm filing the protest shall concurrently submit a copy of the protest to the other Firms involved in this procurement whose addresses may be obtained from the DEPARTMENT.

**D. COMMENTS FROM OTHER FIRMS**

Other Firms may file statements in support of or in opposition to the protest within seven (7) calendar days of the filing of the protest. The DEPARTMENT shall promptly forward copies of all such statements to the protester. Any statements submitted by other Firms shall be sworn and submitted under penalty of perjury.

**E. BURDEN OF PROOF**

The protester shall have the burden of proving the basis of its protest. The DEPARTMENT may, in its sole discretion, discuss the protest with the protester and other Firms. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

**F. DECISION ON PROTEST**

The DEPARTMENT's Director or designee shall issue a written decision regarding the protest within thirty (30) calendar days after the filing of the detailed statement of protest. If necessary to address the issues raised in a protest, the DEPARTMENT may, in its sole discretion, make appropriate revisions to the RFQ by issuing a Supplemental Notice.

**G. PROTESTER'S PAYMENT OF COSTS**

If a protest is denied, the Firm filing the protest shall be liable for the DEPARTMENT 's costs reasonably incurred to defend against or to otherwise resolve the protest, including attorney's fees, consultant fees and costs, and any reasonably unavoidable damages sustained by the DEPARTMENT as a consequence of the protest.

**H. RIGHTS AND OBLIGATIONS OF FIRMS**

Each firm, by responding to the RFQ, expressly recognizes the limitation on its rights to protest provided in this Section IX and expressly waives all other rights and remedies and agrees that the decision on the protest is final and conclusive. If a firm disregards, disputes, or does not follow the exclusive protest remedies provided in this section, it shall indemnify and hold harmless the DEPARTMENT and its officers, employees, agents, and service providers from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such firm's actions. **Each Firm, by responding to the RFQ, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.**

No Stay Pending Final Determination: Agreement negotiations with the selected Firm shall not be stayed during the pendency of any protest. Any agreement with the selected Firm shall be made contingent upon the outcome of any pending protest.

Attached separately:  
Reference Questionnaire