

Office of Procurement and Contracts
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Adam Proffitt, Secretary
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Laura Kelly, Governor

April 26, 2023

Senator Rick Billinger
Chairperson, Legislative Budget Committee
Kanas Statehouse
Room 111-N
Topeka, KS 66612

Subject: Legal Services Request for Proposal – Public Hearing Request

Dear Senator Billinger:

In accordance with Kansas Statutes Annotated (K.S.A) 75-37, 135, the attached Request for Proposal (RFP) for legal services is being forward to the Legislative Budget committee. The requesting agency, Office of Attorney General, reasonably believes the contract for these legal services may exceed \$1,000,000.00. Pursuant to statute, the Committee “within 30 days may hold a public hearing and shall issue a report.” The Legislative Budget Committee’s report is to be provided to the Secretary of Administration.

Sincerely,

Todd Herman
Director
Procurement and Contracts

cc: Adam Profitt, Secretary of Administration
Todd Herman, Director of Purchases
Dan Burrows, Chief Deputy Attorney General
Jill Wolters, Office of Revisor of Statutes
Attachment

NATURAL GAS RECOVERY LITIGATION SCOPE STATEMENT

SPECIFICATIONS

The Office of the Attorney General seeks proposals from attorneys and law firms interested in representing the State of Kansas (by and through its Attorney General) in *Kansas ex rel. Kobach v. Macquarie Energy, LLC*, Nos. 2023-CV-000097 and 2022-CV-000677 (Shawnee County District Court) and related investigation and litigation stemming from natural gas pricing during the February 2021 polar vortex commonly known as Winter Storm Uri.

Any attorney or law firm (hereinafter "Contractor") interested in representing the State of Kansas in this matter should submit a response to this proposal. Failure to submit all requested information may result in disqualification from consideration.

Description of Proposed Services

In 2023-CV-000097, the State has sued Macquarie Energy, LLC, and several unknown (John Doe) parties, alleging manipulation and deceptive practices in violation of the Commodity Exchange Act. The complaint is attached for review. As of the date of this RFP, the named defendant has been served, but no answer or other response has been filed.

The second case, 2022-CV-000677, is a related subpoena-enforcement action. As of the date of this RFP, that case is awaiting a decision on a fully briefed motion to dismiss.

Contractor shall furnish legal services as outside counsel/special assistant attorneys general in this litigation. Such services shall be performed in cooperation with and under supervision of attorneys in the Public Protection Division of the Attorney General's Office, the Attorney General, and his executive staff. The precise division of labor shall be determined by the Office of the Attorney General as the case progresses. However, Contractor must be prepared to shoulder the lion's share of the work in this litigation, to include:

- Conducting and responding to discovery
- Drafting and responding to motions and other filings
- Communicating with opposing counsel and negotiating settlement or other potential resolution as necessary
- Trying the case in district court

Discovery or further investigation of circumstances surrounding the alleged manipulation might lead to additional claims, suits, or defendants. Contractors shall review information collected thus far in the investigation and additional information as it comes in and

provide to the Attorney General an assessment of the potential for successful litigation on additional claims, suits, or defendants. The conduct of any entity that may be the subject of potential litigation may include, but is not limited to: charging unlawful prices in contravention of Kansas's anti-profiteering law; making false claims regarding "pass-through" pricing; creating hidden "profit spreads" on costs passed on to consumers; restricting or limiting disclosure and reporting regarding the actual costs of natural gas during February 2021; and manipulating markets and/or participating in illegal market collusion.

Contractor shall be required to comply with the Attorney General's standard terms and conditions for outside counsel and special assistant attorneys general, which are available at request and will be provided at time of appointment.

Scope of Services

Contractor shall provide representation on behalf of the Attorney General and the State of Kansas in the aforementioned litigation. Further, Contractor shall perform all legal services reasonably necessary to bring to a successful conclusion the assessment and appropriate prosecution of any State of Kansas claims related to the unlawful pricing for natural gas in February 2021. Such services shall include, but not be limited to: appropriate factual and legal investigation of claims; filing litigation in court(s) of appropriate jurisdiction upon authorization by the Attorney General; filing and responding to motions and other pleadings; conducting appropriate discovery; engaging appropriate expert, consulting, and litigation-support services; negotiating with defendants; appearing on behalf of the State in hearings and at trial(s); prosecuting or defending appeals; and taking all appropriate steps to collect or enforce any recovery, injunctive relief, or settlement that may be obtained and/or negotiated. In addition to all other appropriate and available relief, Contractor may be required to pursue attorney fees, expenses, and costs as part of any appropriate claim or settlement in the litigation. The Attorney General or his designee will be involved in all stages of any litigation and will have final authority over all aspects of the litigation, including, but not limited to, which claims to assert and whether and on what basis to settle or proceed to trial. Attorneys or firms seeking this appointment should be prepared to go to trial as the Attorney General deems appropriate.

In addition, the Contractor will be required to meet, coordinate with, and submit interim reports to the Attorney General or his designee regarding the nature, progress, costs, and extent of the legal services rendered or remaining to be completed. At a minimum, interim status reports must include current status, any significant events that have occurred since the previous status report, and a prospective analysis of any significant future

events.

Contractor shall timely provide to the Attorney General's Office:

- All relevant case information and documents, including pleadings, discovery requests, and motions;
- Notice of all case activity, including court dates, discovery deadlines, and court rulings;
- Updates of all case activity, including negotiations and appeals;
- Suggestions for case strategy and other information needed to determine other case actions; and
- Settlement offers.

At no time shall Contractor bring, settle or compromise claims in this action without the express written authorization of the Attorney General. At the sole discretion of the Attorney General, attorneys at the Office of the Attorney General may be assigned to work with attorneys assigned by Contractor to this matter and may, or may not, appear in filed litigation.

Proposals should account for potential appeals. However, the Attorney General will retain the right to handle any appeals within the Office itself. Should an appeal become necessary, the Attorney General will determine at that time, in his sole discretion, whether Contractor shall represent the State in the appeal.

Contractor may not subcontract legal work under this contract or otherwise assign work outside the firm without the prior, express, written consent of the Attorney General or his designee. Contractors should be aware that any request for such consent is disfavored.

Required RFP Response Information

Each response to this request for proposal must include the following information:

A. Qualifications

1. For this type of potential litigation, please describe Contractor's knowledge, expertise and experience in:
 - a. Federal and State court litigation, including appeals, with particular emphasis on consumer protection and/or antitrust cases;
 - b. Ability to marshal human and other resources necessary to handle litigation, including the ability to handle large

amounts of documentary discovery/evidence;

- c. Litigation specifically involving commodities, natural gas, and/or the types of conduct described in the "Description of Proposed Services" section above.

- 2. Has Contractor represented the State of Kansas or other governmental entities, including other states, within the past four years?

- a. If yes, please describe the scope of this representation, including the client(s) represented; who can be contacted at each client for references; the type of matter(s) handled; whether Contractor met or exceeded its budget (if any) in the case; and description of the outcome.

B. Contractor (Attorney/Firm) Resources

- 1. How many attorneys and non-attorney staff are available to work on matters assigned under this appointment?
- 2. Please identify the lead attorney expected to work under this contract.
- 3. For each attorney reasonably expected to work under this contract, please provide the following information:
 - a. Current resume or biography.
 - b. A statement regarding (1) whether each attorney reasonably expected to work under this contract is a member in good standing of the Kansas bar; (2) if not a member of the Kansas bar, whether the attorney is eligible for admission without examination (pro hac vice or otherwise) in state and federal court in Kansas; (3) whether the attorney has ever been disqualified from practicing law in any jurisdiction or forum and the details thereon if the attorney has been disqualified.
 - c. A statement of any malpractice claims that have been filed against your law firm or any attorney reasonably expected to work under this contract within the last four years and the status or outcome of each claim.
 - d. A statement describing all ethics complaints filed with appropriate attorney disciplinary authorities against your law firm within the last four years, and any such complaints filed at any time against any attorney reasonably expected to work under this contract, and the status or outcome of any such complaints. If no such complaints exist, the proposal should include a statement affirming that fact.
- 4. Please describe any other staff or resources available to be

utilized for an assignment (i.e. paralegals, legal assistants, IT professionals, document management software, etc.).

5. Describe Contractor's capacity to engage in protracted litigation, including technological and financial resources.

C. Conflicts

Please provide a detailed explanation, if necessary, to the following:

Are you, your firm, or any of your firm's attorneys (whether expected to perform work under this appointment or not) unable to represent any State of Kansas client(s) due to any conflict? A conflict with one or more state agencies or entities will not disqualify the Contractor from consideration for other representation.

If Contractor is representing or has previously represented other clients on matters involving natural gas pricing during the polar vortex of February 2021, known as Winter Storm Uri, such representation must be disclosed in the proposal. Regardless of previous representation activity, the committee assessing proposals will look favorably on an affirmation that, if awarded this contract, Contractor will not represent other clients in the same case and will not represent other governments or government entities on matters related to natural gas prices during Winter Storm Uri without prior, express, written consent of the Attorney General or his designee.

D. Required Fee Structure Information

The Attorney General is interested a range of fee proposals, including hourly, flat-fee, contingency, and hybrid arrangements, both inclusive and exclusive of litigation costs/expenses. Contractors are encouraged to include multiple fee proposals for evaluation. Insofar as contingency-fee proposals are concerned, the committee assessing proposals will look favorably on proposals that ensure fees are not taken out of money set aside for restitution for victims.

Proposals should include an affirmation that Contractor is providing the best pricing terms that are or have been offered to any other governmental client on any matter related to natural gas prices during Winter Storm Uri.

Contractors should be aware that legal services contracts are subject to the Kansas Professional Services Sunshine Act, K.S.A 75-37,130 -75-1,135. Contractor agrees to both comply with this Act and to assist any State agency with their compliance with this Act in a timely manner. Contractors should also be aware that contingency-fee contracts are subject to additional requirements under the Act, including but not limited to the

requirement that they must "be approved by the judge after an evidentiary hearing and prior to final disposition of the case by the district court," K.S.A. 75-37,135(e).

Cost structure shall remain firm for the entire contract period and subsequent renewals.

E. Other Information

Please provide any other information that you would like the Attorney General's Office to consider with respect to this Request for Proposal.