



Request for Qualifications & Proposals – Prosecutorial Services

October 2021

I. INTRODUCTION

This request for qualifications and proposals (RFP) is intended to provide the background and format for use by a law firm or individual desiring to provide prosecutorial services for the City of Fargo, North Dakota. The City invites interested law firms and individuals with a minimum of five (5) years of prosecutorial experience to submit a written proposal to provide City Prosecutor services. Municipal experience is defined as representing cities in criminal, non-criminal, and traffic prosecution in misdemeanor cases.

Note: The City of Fargo is conducting a separate Request for Qualifications & Proposals process for Civil Legal Services. Law firms or individuals interested in responding to both the Prosecutorial Services RFP and Civil Legal Services RFP should provide separate responses to each RFP.

Community Data

Fargo's founding dates back to 1871, when the first settlers staked out homestead claims at the point where the Northern Pacific Railroad would cross the Red River. Railroads played a major role in the development of Fargo. In fact, the city was named for William G. Fargo, a director of the Northern Pacific Railroad, and co-founder of Wells Fargo Express Company.

On June 7, 1893, disaster struck the growing city. A fire began on Front Street (now called Main Avenue). Fanned by strong winds from the south, the fire consumed most of the downtown area. By the time it was over, more than 31 blocks were reduced to piles of rubble. Although the fire must have been a stunning blow to the city, Fargoans resolved to rebuild; in less than a year, 246 new buildings had been constructed. The new structures were designed by many fine regional architects; the post-fire city became more attractive and substantial, and many of these buildings survive today.

Today, Fargo is the central city in the vibrant and growing Fargo-Moorhead Metropolitan Area. The metro area is bisected by the Red River of the North, which is also the boundary between North Dakota and Minnesota. The community serves as a regional center for education, commerce, and health care.

Population

Year	Fargo	Growth	Cass Co.	Growth	Metro Area	Growth	State	Growth
1960	47,000	N/A	66,947	N/A	106,027	N/A	632,442	N/A
1970	53,365	14%	73,653	10%	120,261	13%	617,792	-2%
1980	61,383	15%	88,247	20%	137,574	14%	652,717	6%
1990	74,084	20%	102,874	17%	153,296	11%	638,800	-2%
2000	90,599	22%	123,138	20%	174,367	14%	642,200	0.1%
2010	105,549	17%	149,778	22%	208,777	20%	672,591	5%
2020	125,990	19%	184,525	23%	248,594	19%	779,094	16%

Governance

The City of Fargo has a commission form of government organized under North Dakota Century Code (N.D.C.C.) 40-04. The Mayor and four Commissioners are elected at large, meaning that every citizen has an opportunity to vote for each elected official. Rather than representing specific areas of the city, as is done in a council form of government via wards or districts, Commissioners represent the entire city. Commissioners are elected to four-year terms and are limited to three consecutive terms. Any member who has served in the capacity of Mayor, as well as City Commissioner, may serve four consecutive terms. The liaison assignment system was adopted several years ago as a means to provide a link between individual departments and the City Commissioners. With Fargo continuing to grow, and its activities becoming more complex, the assignment of liaison Commissioners to individual departments provides an effective venue for communication between elected and appointed City officials. It also helps citizens decide which Commissioner to contact when they have questions or concerns about a particular City function. The Mayor annually appoints liaison Commissioners.

Current Prosecutorial Services Model

The City of Fargo is currently provided prosecutorial services through its civil legal services agreement with a contracted law firm. The City’s approved 2022 budget for prosecution services is \$390,460. A 5-year cost summary of the City’s Prosecution Services is provided below for background.

Year	Budget	Actual*
2017	\$276,000	\$290,764
2018	\$334,230	\$334,027
2019	\$365,730	\$335,911
2020	\$390,460	\$351,757
2021	\$390,460	\$325,383

**Historical data includes prosecutorial service costs only.*

Any law firm or individual responding to this solicitation is requested to carefully review this Request for Qualifications & Proposals and provide a complete and detailed summary of the method by which they propose to provide prosecutorial services to the City of Fargo with the associated rates, fees, and charges.

II. CITY PROSECUTOR - SCOPE OF SERVICE

Background

Please describe the nature of your practice or your law firm’s practice and your qualifications for providing City Prosecutor services. Include a professional chronology for the individual who will be designated to serve as the City Prosecutor, as well as for others whom you anticipate being involved with providing prosecutorial services to the City. Please include a listing of past and present municipal clients; key responsibilities; and a summary of prosecutorial outcomes.

Provide the following for the person whom you propose to designate as City Prosecutor and for each person you propose to designate as a deputy or backup:

- Legal training and number of years of practice, including date of admission to the State Bar Association of North Dakota, number of years of municipal or other public sector law practice as a full-time local government attorney and/or in a private law office specializing in local government.
- Professional affiliations.
- Knowledge of, and experience with, North Dakota Century Code, general municipal law, home rule authority, or other relevant public sector experience in township, county, or state government roles.
- Office location and accessibility to the City and court venues. Describe your office staffing, including all permanent and temporary employees, their general duties, and work schedules. Include any staffing changes you would propose if awarded the City Prosecutor contract to ensure a timely, efficient response to the courts.

If the firm/individual, or any of the attorneys employed by the firm, have ever been sued by cities or other clients for malpractice, been the subject of complaints filed with the State Bar, or had discipline imposed by the State Bar, please provide information about the nature of the incident, the dates of when the matter began and was concluded, and the results of the incident.

Basic Services Requested

Basic services, for the purpose of this proposal, shall include those prosecutor services generally understood within the field of criminal law, and shall include, but not necessarily be limited to, the following:

- The prosecution of all criminal matters on behalf of the City.
- Appearances before the Fargo Municipal Court; District Court; and appeals to the North Dakota Supreme Court, as required.
- Review of cases forwarded to the City Prosecutor for decision-making in consultation with the Fargo Police Department and outside investigatory agencies.
- Assist in all aspects of legal and policy issues concerning prosecution of Fargo Municipal Code provisions, including the preparation and management of all cases concerning violations of the Fargo Municipal Code.
- Providing legal research, training, and assistance to the Fargo Police Department on criminal matters as needed.
- Other duties as assigned.

III. THE PROPOSAL

General Instructions

- A. Responses must provide complete information as described in this request. Three (3) copies shall be submitted by **4:00 p.m. on November 5, 2021**. The proposals shall be marked: “City of Fargo Prosecutorial Services RFP” and sent to:

City of Fargo
Auditor's Office
225 4th St. N.
Fargo, ND 58102

- B. To ensure fairness and uniformity, firms and individuals submitting responses are requested to not contact the Mayor, City Commissioners, or City staff. Questions regarding this RFP should only be directed to:

Michael Redlinger, Assistant City Administrator
Phone: (701) 476-4135
Email: MRedlinger@FargoND.gov

- C. The City will not reimburse any expenses incurred by the firm or individual submitting responses, including but not limited to expenses associated with the preparation and submission of the response and attendance at interviews.
- D. The City reserves the right to reject any and all proposals, to request additional information from any or all Proposers, and to suggest modifications to the terms and conditions or a retainer agreement from that offered by a Proposer.

Proposal Content

Proposals must contain the following elements:

- A. **Title Page** which contains the name of the proposing law firm/individual, its address, telephone number, name of the contact person, and the date of submittal.
- B. **Table of Contents** containing an identification of material by section and page number.
- C. **A Firm/Contractor's Profile** that contains the following information:
1. Firm or individual history.
 2. Number of attorneys.
 3. Number of clerical/support staff.

4. A description of the firm's/individual's library and research capabilities.
5. A single individual submitting a proposal must provide detailed information concerning backup services and a plan to cover multiple, simultaneous appearances in court.

D. ***Scope of Work***

With respect to each of the topics described above, please indicate:

1. The general qualifications of the firm/individual to provide the described services. The firm/individual should expand on each item and describe why the firm/individual is qualified and capable of providing such services. ***Please note that the firm/individual must possess relevant prosecutorial experience.***
2. The individual proposed as the primary responsible person to provide the services, together with a description of their background and experience demonstrating the ability to provide such services.
3. The individuals proposed to assist the primary responsible person together with a description of such person's background and experience demonstrating their ability to assist in providing such services.

E. ***Rates, Fees and Charges***

Proposals must provide a complete description of the rate, fee, and charge structure proposed for the services. Proposers should also indicate whether, and to what extent, they are willing to consider the use of a retainer. Such retainer would be a fixed annual fee covering all services rendered under one or more of the categories described above.

F. ***Conflict Check***

1. Indicate whether Proposer (firm or individual) represents or has represented any client whose representation may conflict with the Proposer's ability to serve as a City Attorney.
2. Does the Proposer currently represent any other local units of government having jurisdiction contiguous to the City of Fargo?
3. What procedures does your firm utilize to identify and resolve conflicts of interest?

IV. EVALUATION AND SELECTION PROCESS

Proposals will be screened and the top candidates selected by the City Commission. Interviews may or may not be held at the discretion of the City Commission. The qualifications for the top firms or candidates will be verified and professional references will be checked.

In reviewing proposals, the City will carefully weigh the following utilizing quantitative evaluation criteria:

- Depth and breadth of experience in prosecuting local government cases.
- Capability to perform services promptly and in a manner that complies to the rules and regulations of the various court venues the City appears in.
- Degree to which firm and individual attorneys stay current through continued professional development and active communication with other prosecutors in the criminal law field.
- Communication skills.
- Cost of services.

The prosecutorial services contract will require that the firm or individual selected as City Prosecutor maintain general liability, automobile, workers' compensation, and errors and omissions insurance. The contract will also contain provisions requiring the selected firm or individual to indemnify the City and provide that the City Prosecutor is an independent contractor serving at the will of the City Commission. Other required provisions will include the City Commission's right to terminate the agreement, at its sole discretion, upon the provision of notice.

In the event the City elects to engage a firm or individual to provide prosecution services, the City intends to enter into a contract with the selected firm/individual. Based upon a review of the proposals and such other evaluation as may be necessary, the Assistant City Administrator will request that the City Commission approve the appointment of the firm/individual(s) judged to be the most responsive and responsible. Approval of the recommendation and authorization of the execution of the contract for prosecution services lies within the sole discretion of the City Commission. Should the City and the selected Proposer be unable to mutually agree on the entire contract, the City reserves the right to discontinue negotiations, select another Proposer, or reject all proposals received.

V. SCHEDULE

Commission Approval of RFP	October 4, 2021
Distribute/Advertise RFP	Published October 13 & 20, 2021
RFP Submittals	DUE November 5, 2021 by 4:00 p.m.*
Interviews (<i>to be scheduled</i>)	Completed by November 12, 2021
City Commission Appointment & Approval of Contract	November 15, 2021 or November 29, 2021

**Proposals received after November 5, 2021 at 4:00 p.m. will be considered non-responsive and rejected.*

EVALUATION METHOD – City Prosecutor

All proposals by selected City Prosecutor finalists will be evaluated based upon the following factors:

	<u>Point Range</u>
1. Prior City Prosecutor or closely related/equivalent legal experience.	(0 - 25)
2. Qualifications of law firm selected to provide full-time City Prosecutor services. <i>or</i> Qualifications of individual and backup selected to provide full-time City Prosecutor services.	(0 - 25)
3. Costs for City Prosecutor proposal.	(0 - 25)
4. Organization and structure of firm or methodology of individual proposed for delivery of full-time City Prosecutor services.	(0 - 15)
5. Firm's or individual's understanding of City Prosecutor services to be provided.	(0 - 10)
Total maximum points	100

ASSESSOR'S OFFICE

- Interpreting NDCC Via Research
- Provide Guidance for Complicated Assessment Issues (i.e. Exemptions Application and Enactment)

AUDITOR'S OFFICE

- Bid Openings (Contract and Bond Review, Along with Participation in the Proposal Opening Process).
- Election Issues (initiated Measures, Timelines, Candidacy Eligibility, etc.)
- Ensuring Ordinances are Codified in MuniCode
- Licensing Ordinance Changes (Taxi, etc.)
- Liquor License Issues (Process Issues, New Licenses, General Counsel on Liquor-Related Items)
- Records Retention Issues
- Research History of Issues/Agreements/Committees
- Special Assessments Assistance

CITY ADMINISTRATION

- First Amendment Issues
- Monitor, Review, and Advise City Staff and Elected Officials on Pending Legislation (Includes Drafting Legislative Bills and Testifying)

CITY COMMISSION

- Serve as a Resource for Commissioners on a Variety of Issues, Including the Drafting of Proposed Ordinances (and Amendments) for Consideration

CITY PROSECUTION

- Prosecute Cases in Municipal and District Courts

COMMUNICATIONS & GOVERNMENTAL AFFAIRS

- Advise on Copyright Issues, Customer Use Policies and Intellectual Property Rights
- Contract Drafting and Review
- Lease Agreement Drafting and Review
- Major Collaboration on Open Records and Open Meeting Issues (Daily)
- Photo and Video Release Language and Implementation/Defense Services
- Social Media Policies and Evolving Legalities Intellectual property rights
- Television Broadcast Policies
- Trademark Registrations and Renewals

DIVERSITY, EQUITY AND INCLUSION

- *--no assistance needed--*

ENGINEERING

- Advise on Public Improvement Bidding Law (Attend All Bid Openings)
- Assist and Advise on Easement and Right of Way Acquisitions to Support Capital Improvement Projects, Special Assessments and Deferral Agreements, Developer Agreements, Contract Liquidated Damages, Policies, Shared Use, Access and/or Utilities Agreements
- Attend PWPEC
- Coordinate Communication Between Litigation Counsel and Staff
- Daily Advice & Communication on Projects, Easements, Acquisitions, Agreements, Construction and Right of Way Issues
- Draft, Advise and Review:
 - Bidding and Contract Documents – General Instructions to Bidders, Certificate of Insurance, Proposals, Bidder's Bond, Contract, Contract Bond, Contract Compliance with WIFIA and SRF Funding Requirements, MSA Consultant Contract
 - Easements and Agreements – Street and Utility Easements, Developer Agreements, Encroachment License/Agreement, Park and/or other Government Entity Agreements, Right of Way Maintenance and Use Agreements.
 - Ordinance and Resolution Revisions
- Flood Issues - Acquisitions (5), Necessary Easements, Eminent Domain, Floodplain Administration, Property Owner Relations, Setback Ordinance
- Private Utilities (Power, Gas, Telecommunications)
 - Franchise Agreements
 - Telecommunications Technology Issues – Master Attachment Agreements, Site Licenses, Small Cell, etc.

FACILITIES MANAGEMENT

- City/Private Shared Spaces
- Contracts/Agreements for the Skyway System and City Centre Lofts
- Noise or Visual Complaints on COF Facilities
- Provide Guidance on Individual ADA Complaints Related to City Services and/or Facilities
- Public Requests to Use City Facility Spaces and Parking Lots

FARGO CASS PUBLIC HEALTH

- Advise Health Inspections Division
- Advise on City/State Law as it Pertains to Health and Authority for Public Safety
- Advise on Interpretation of Federal EO's
- Advise on Procurements and Contracts
- Assist with Open Record Requests
- Chicken Ordinance
- Code Enforcement Task Force
- Environmental Health:
 - Assist with Policy
 - Draft Ordinances
- Originate Civil Nuisance Abatement Lawsuits

FARGODOME

- Advise FARGODOME Authority and Attend Meeting on Request
- Advise on Procurements (Bid Format, Document Review, Bid Dispute Resolution and RFP Review)
- Bond Accounting
- Building Expansion Plans:
 - Vote Procedures
 - Ordinance Language Review/Interpretations
 - Necessary Agreements Between City/FDA/FM Convention & Visitors Bureau Regarding Taxing Proceeds
- Employment Issues Not Already Handled by City Human Resource Department
- Major Contract Reviews (NDSU Operating Lease, Ticketing Agreements and Management Agreements)

FINANCE

- Abstracts for Land Transactions (City Projects)
- Assist and Interpret FEMA Issues
- Assist in Enacting New Provisions of Local, State and Federal Laws
- Assist in Resolving Complicated Insurance Claims
- Detailed Drafting and Codification of Development Agreements, including P3's
- Interpret City Ordinances and Home Rule Charter
- Interpreting North Dakota Century Code
- Land Transactions and Review of Settlements (City Projects)
- Occasional Support of Finance Committee Issues
- Rendering Opinion on Certain Employee Matters Impacting Payroll
- Research Review During Legislative Sessions
- Review Certain RFP's
- Review Contracts for Appropriation Legal Content for Protection of the City
- Serve Demand Letters for Insurance Claims
- Serve on City Employee Pension Board
- Sort Public Data Requests for Appropriate Content
- Update City ordinances or Home Rule Charter

FIRE

- Consultations on Codes and Policies
- Review Contracts and Advise on Procurements
- New World Software Issues (Fire, Police, IS Department and RRRDC)
- Prosecute Fire Code Violations

HUMAN RESOURCES

- ADA Compliance issues
- Advise on Employment Policies
- Attend Unemployment Claims Hearings
- Attend Civil Service Commission Hearings and Meetings
- Daily Interaction on Employment issues & Discipline Matters
- FMLA
- Hiring Laws
- Wage & Hour
- Work Environment Issues
- Workers' Compensation

INFORMATION SERVICES

- Contract Review
- Discussion Regarding Cybersecurity-Related Incidents
- Information Requests to the City – Clarification on Response or Reviewing Results
- Open Records / FOIA Request Review

INSPECTIONS

- Code Enforcement/Junk Accumulation
 - Civil Lawsuits to Abate Nuisances
 - Dangerous Building Designations
- Code Enforcement Task Force

LIBRARY

- Advise on Procurements & Contracts
- Advise Open Record Requests
- Attend Board Meetings
- Review and Draft policies
- Warranty Arbitration (As Needed)

MUNICIPAL COURT

- Assist When Clarification is Needed On Procedures.
- Assist With Interpretation of Ordinance and Laws.
- Contract Drafts and Review (i.e. Defense Attorney, Centre, Alternative Corrections, etc.)
- Provide Assistance and Guidance of Legislative Changes Affecting Court Procedures
- Provide Backup Services for the City Prosecutor
- Update Ordinances (i.e. Offenses Change Class/Level)

PLANNING & DEVELOPMENT

- Advise the Human Relations Commission, Native American Commission and the Arts and Culture Commission (As Necessary Related to Initiatives)
- Attendance of Board of Adjustment and Planning Commission
- Contract Review and Advise
- Development Agreement Coordination and Drafting
- Draft Memorandums of Understanding and Partnership Agreements
- Draft Zoning Ordinances
- Due Process and Nuisance Land Use Law (Advise and Defense)
- Easement Drafting and Advise
- First Amendment Review and Advise
- Housing Project and Land Ownership Contracts Related to CDBG and HOME Funds for HUD
- Land Development Code Interpretations
- Municipal Code Drafts and Revisions
- Ordinance Review and Resolution Review (For Each Case)
- Parking Agreements
- Real Estate and Land use Law Consultation (Daily)
- Real Estate Contractual Drafting and Advise
- Sign Ordinance Interpretation and Advise
- Support and Advise Zoning Administrator, Building Official and City Engineer Related to Building and Construction and Civil Matters Related to Owner and Builder Complaints

POLICE

- Advise on Leases and Purchases (i.e. Border States Electric Facility)
- Advise on Legislative Changes (i.e. Medical Marijuana)
- Civil Litigation Defense and Preparation
- Consult on NDSU Jurisdictions via Joint Powers Agreements
- Draft Ordinances and Amendments (i.e. Traffic Issues and Crimes)
- Municipal Prosecutorial Issues
- Ordinance / Law Interpretation
- Provide General Legal Counsel Services
- Records and Evidence Issues
- Review and Modification of Memorandums of Understanding, JPAs and Vendor Contract Language
- Search & Seizure Matters
- Training Employees/Sworn Staff Members on Legal Matters (Attend Executive Leadership Meetings as Requested)

PUBLIC WORKS

- Advise on Procurement and Contract Draft/Review
- Code Enforcement (Dutch Elm Disease)
- Draft and Revise Ordinances
- MOU Agreements
- Personal Injury Litigation
- Supervise Litigation Issues (i.e. Warranty Claim on Equipment)

SOLID WASTE

- Landfill Expansion
- Land Lease Agreements
- Methane Gas Collection (Financing/Loans)
- Private Hauler ordinances-amendment
- Recycling Agreement Reviews
- Regional Landfill Contracts
- SRF Loans
- Waste Hauling Agreements

STRATEGIC PLANNING & RESEARCH

- Condo Documents for Developments with Public and Private space
- Contract Creation for the Sale or Purchase of Real Property
- Lease Agreements for City Space in Private Developments
- Preparation and/or Review of Agreements for Economic Development Projects
- Preparation of Agreements for Development of Public-Private Partnerships
- Preparation of Developer Agreements for Renewal Plans and Preparation of Tax Increment Notes
- Review Contracts for Professional Services (i.e. Consultants, Engineers and Architects)
- Review Requests for Proposal (i.e. Sale of Property for Development)

TRANSIT (MATBUS)

- Advise on Procurement & Contract Review (RFP's/RFQ's for Services, Equipment and Capital).
- Federal Transit Administration (Municipal Court Building Re-Use Issue with Lengthy Negotiations/Resolution)
- Joint Powers Agreements – Metro Transit Garage & GTC
- Joint Powers Agreements – The City of Fargo with City of Moorhead
- Miscellaneous Passenger Issues (ADA, Title VI and Trespassing)
- Regular Advice on Varied of Issues, Including Accidents, Injuries and Policies

WATER TREATMENT

- Advise on Procurement and Contract reviews, RPPs and Public Bidding Law
- Cost-Share (Grant) Agreements
- Engineering Contracts
- Lease and Purchase Agreements (Wireless, Property)
- Regional Water Contracts
- Regulatory Topics and Permits
- SRF Loans

WATER RECLAMATION

- Contract and Bond Review for Contractors
- CWSRF Application /Bonding for Projects
- EPA Audit (Pretreatment)-x2
- Public Bidding Law/Procurement of Projects
- Public Notices for NDPDES Permit Renewal
- Public Notices for Ordinance Changes
- Regional Wastewater Contracts
- RO Plant - New Skid Issue - '17
- Sump Pump Program Enforcement
- Tharaldson Ethanol Plant Project Agreement