

## **SOUTH CAROLINA DEPARTMENT OF ADMINISTRATION**

### **Request for Proposals: Legal Services to be provided to the S.C. Department of Administration**

**Deadline: 11:00 AM (EASTERN) MONDAY, JUNE 17, 2019**

#### **Overview: The Santee Cooper Legislation and this Request for Proposals**

In May 2019, the South Carolina General Assembly enacted, and the Governor signed, House bill 4287 (hereinafter referred to as the “Joint Resolution” a copy of which is accompanying this announcement). This complex legislation concerns the future of the South Carolina Public Service Authority, otherwise known as Santee Cooper.

Santee Cooper is a state-owned public utility. Primarily a wholesaler to rural cooperatives (who in turn serve about 770,000 retail customers), Santee Cooper also serves two municipal systems and about 176,000 retail customers, along with about 27 large industrial customers. Directly or indirectly, about 2 million South Carolinians receive their power from Santee Cooper. Its largest customer, Central Electric Cooperative, Inc. (Central), represents 60 percent of Santee Cooper’s revenues. Central’s contract expires in 2058, but has a clause entitling it to terminate the contract with Santee Cooper “if ownership, management or control of the Authority or of all or a majority of its electric system assets is transferred, sold or leased to any person, corporation or other entity.” In 2017, Santee Cooper had a revenue requirement of about \$1.7 billion and assets of about \$13 billion, including about 5100 MW of generation. The utility also operates two wholesale water systems; the associated lakes are used for recreation.

The Joint Resolution requires the South Carolina Department of Administration (the Department) to deliver to the General Assembly three recommendations, one for each of the following categories: (1) a potential acquirer of Santee Cooper, in whole or in part; (2) a company to potentially manage Santee Cooper as a continuing state-owned utility; and (3) a plan to be proposed by Santee Cooper for reforming and restructuring Santee Cooper as a continuing state-owned utility. Regarding acquisition, the Joint Resolution leaves open the possibility that the acquirer would not buy Santee Cooper’s hydroelectric facilities, and the associated wholesale water systems, undeveloped land, other natural resources, and recreational assets. The Joint Resolution also requires bidders, overseen by the Department, to negotiate arrangements with Central.

The Department must deliver its recommendations to the General Assembly by January 15, 2020. Within this short period, the Department must retain multiple consultants, prepare specifications for bidders and for Santee Cooper’s restructuring, provide sufficient time for responses, review responses, conduct negotiations over the proposals, evaluate and recommend

one bid for sale and one management proposal, evaluate Santee Cooper's proposal and make a recommendation, negotiate and prepare final legal documents for each of the options, and present to the General Assembly a written report explaining the Department's three recommendations.

To satisfy its requirements under the Joint Resolution, it is the intent of the Department to contract for the following services:

- 1) the development of a process to solicit and the actual solicitation of competitive bids for the sale of some or all of Santee Cooper; and,
- 2) the development of a solicitation for management proposals that do not involve a sale of Santee Cooper but are designed to improve the efficiency and cost-effectiveness of Santee Cooper's electric operations including, but not limited to, a management arrangement, joint venture, or alternative arrangement; and,
- 3) the development of a process for the receipt of a proposal from Santee Cooper, as an alternative to a sale or management proposal, setting forth its plans for reform, restructuring, and changes in operation; and,
- 4) the evaluation of bids and proposals received pursuant to the criteria set forth in the Joint Resolution; and,
- 5) the conducting of confidential negotiations between Central and each entity that submitted a qualified bid or qualified proposal; and,
- 6) the preparation of a recommendation with justifications for one bid for sale and one management proposal considered to be in the best interests of the State, its taxpayers, and the customers of Santee Cooper, as well as an evaluation and recommendation regarding Santee Cooper's proposal; and,
- 7) the preparation of proposed contracts to execute (a) the recommended sale and (b) the recommended management proposal.

The solicitation and evaluation of bids and proposals and the development of required recommendations must be done in accordance with the criteria established in the Joint Resolution. The Joint Resolution states no preference for any particular option (sale, management proposal, or Santee Cooper restructuring), but the Joint Resolution does make it clear that the objective is to reach an outcome that is in the best interests of the State, its taxpayers, and the customers of Santee Cooper. To meet obligations set forth in the Joint Resolution, the Department will be engaging consulting assistance covering the following areas in addition to legal services:

***Utility policy advice and consulting services:*** Including but not limited to resource planning and procurement, management prudence, finance, revenue requirements, rate design, operational efficiency, utility infrastructure, and market power.

***Merger & acquisition and corporate advisory services:*** Including but not limited to corporate acquisition, finance, governance, tax-exempt financing, competitive bidding and contracting, employee policies (including pensions and other benefits), and business management.

While the Department preliminarily intends to engage utility policy advice and consulting services, merger & acquisition and corporate issues advisory services, and legal services separately, the Department expects advisors and services providers to work closely together. Attached to this document is an Appendix containing a tentative list of roles for utility policy advice and consulting services and merger & acquisition and corporate issues advisory services that was part of RFPs for those services. Also attached to this document is a spreadsheet entitled Assessments and Tasks for Santee Cooper Project which contains a non-exhaustive list of tasks and assessments required by the Joint Resolution.

This current request for proposals is for legal services as described in the Appendix attached hereto.

As discussed next, each offeror must submit a substantive proposal and a fee proposal.

## **Requirements for Substantive Proposals**

Firms wishing to respond to this RFP should provide the following:

- A. **Legal Experience.** The Offeror should describe its experience related to the areas outlined in the scope of services in the attached appendix. Additionally, if applicable, provide a description of any experience advising organizations comparable to the Department of Administration that offer similar programs and government-funded services.
- B. **Organization, Size, Structure, and Areas of Practice.** The Offeror should describe its organization in terms of the following:
  - size
  - structure,
  - areas of practice
  - office location(s)
- C. **Attorney Qualifications.** The Offeror should separately attach a description of the qualifications of attorneys to be assigned to the representation. Descriptions should include:

1. Professional and education background of each attorney who would be involved in providing legal services to the Department.
  2. Overall supervision to be exercised.
  3. Prior experience of the individual attorneys with respect to the required experience listed above. Include resumes or biographies only of attorneys likely to be assigned to the representation. Education, position in firm, years and types of experience, and continuing professional education will be considered.
- D. Price. The Offeror must provide price, fee and costs information as set out in the Requirements for Fee Proposals section below.
- E. A statement concerning work done for, or in relation to, any entity that your firm has reason to believe might have an interest in acquiring or managing Santee Cooper.
- F. A list of clients and references for the Department to contact.
- G. A commitment to perform services pursuant to this RFP.
- H. Potential Conflicts of Interest. Offeror/Firm must not have any conflicts that would prevent the Firm from providing the Department of Administration with the anticipated services required. Offeror must describe in detail how your Firm identifies and manages conflicts of interest. If your Firm has any potential conflict of interest that would arise through your provision of legal services to the Department of Administration, you must describe the relevant background and circumstances of the potential conflict of interest in your proposal.
- I. Offeror must describe any restrictions on your Firm's ability to act for us due to possible conflicts with other clients, restrictions on your license to act in a particular jurisdiction, or any issue affecting your Firm which could reasonably reflect adversely on the Department of Administration or the state of South Carolina.
- J. Has anyone at your Firm who would be associated with the provision of legal services to the Department of Administration been involved in legal proceedings or license disciplinary reviews relating to their provision of legal services in the last ten years? If so, provide an explanation and indicate the current status or disposition of the proceedings.
- K. In one page or less, please describe in summary why the Department should hire your Firm. What sets your Firm apart from its competitors?

**The Department will not contract with any firm that has a relationship with Santee Cooper or any potential bidder.**

**The Department cannot contract with any firm with whom the House of Representatives, the Senate, or the Governor has previously engaged to consider the possible sale of Santee Cooper.**

Given the short time allowed for responses to this RFP, the Department is not requesting a detailed work plan, however, the Department is seeking a commitment to perform services pursuant to this RFP as mentioned above. Our immediate focus is on skills, experience, availability, and budget. On receiving responses, we may conduct interviews with offerors. Any in-person interviews will take place in Columbia, South Carolina.

### **Requirements for Fee Proposals**

The Department has not yet created a final budget for this legal work. The Department therefore asks each offeror to propose an estimated total fee for the work the offeror believes will be necessary to carry out the responsibilities required by the Joint Resolution and this RFP. It may be useful to review the attached spreadsheet entitled Assessments and Tasks for Santee Cooper Project and the Appendix containing a tentative list of roles for utility policy advice and consulting services and merger & acquisition and corporate issues advisory services from the RFPs for those services in formulating your fee proposal.

The Offeror's proposed price should include information on the hourly billing rates of each attorney or other legal staff who are expected to work on this representation and charges for expenses, if any, such as legal research, copies, faxes and electronic communication. Offeror should also include a projected total amount of fees estimated to be required for all of the services requested in this RFP. Offeror should also include a description of your firm's billing practices and systems.

In addition, Offerors should provide an estimated cost of total fees anticipated for completing any transaction ultimately approved by the General Assembly (i.e., approval of a sale or of a management proposal).

State law limits the State's ability to reimburse its contractors for travel and subsistence expenses. Please explain how you would address your travel and subsistence expenses.

**NOTE TO OFFERORS:** The Joint Resolution states that the Department "must not utilize the professional services of an individual or entity that would have a financial interest in the outcome of this process, nor may the department contract or otherwise employ an individual or entity based upon a contingency fee due to the outcome of this process."

## **Logistics**

This procurement is not subject to the South Carolina Consolidated Procurement Code. The Department will, however, seek as much competition as is practicable and assess proposals rigorously for skill, experience, and cost-effectiveness.

Offerors must deliver final responses by email, using only Word and unlocked Excel (except that resumes may be in PDF if convenient), to: [santeecooper@admin.sc.gov](mailto:santeecooper@admin.sc.gov) no later than 11:00 am Monday, June 17, 2019. Interviews may be required. Any in-person interviews will take place in Columbia, SC. The Department expects a contract to be awarded no later than July 1, 2019.

Prospective offerors may email questions about this document to [santeecooper@admin.sc.gov](mailto:santeecooper@admin.sc.gov). The Department will aim to answer all questions within 24 hours. Prospective offerors wishing to receive answers to questions asked by others may send their contact information to [santeecooper@admin.sc.gov](mailto:santeecooper@admin.sc.gov). The Department is unable to respond to telephone questions.

## **Restriction on Communication**

Offerors are required to comply with all confidentiality obligations contained in the Joint Resolution.

## **Costs of Preparing the Bid Proposal**

The costs of preparation and delivery of the bid proposal are solely the responsibility of the firm submitting such proposal.

## **Rejection of Bid Proposals**

The Department reserves the right to reject any or all bid proposals, in whole and in part, received in response to this RFP. Issuance of this RFP in no way constitutes a commitment by the department to award a contract. This RFP is designed to provide potential offerors with the information necessary to prepare a competitive bid proposal. This RFP process is for the Department's benefit and is intended to provide the Department with competitive information to assist in the selection of a firm to provide services. This RFP is not intended to be comprehensive and each offeror is responsible for determining all factors necessary for submission of a comprehensive proposal.

## **Disqualification**

The department may, in its sole discretion, reject proposals outright if any of the conditions of the RFP are not met.

### **Release of Claims**

By submitting a proposal, offeror agrees that it will not bring any claim or cause of action against the Department and/or the State of South Carolina based on the Department choosing not to engage the Offeror pursuant to this RFP.

### **Compliance with S.C. State Ethics Act**

Offerors are required to comply with applicable provisions of the South Carolina State Ethics Act.

### **Unacceptable Terms and Conditions**

It is expected that the Department and the firm that it selects will work in good faith to reach a mutually acceptable contractual agreement. Offerors should note, however, that there are certain terms and conditions that are unacceptable to the Department. Offerors must ensure the following list of items are not included in their proposed contractual documents prior to submission for the Department's consideration:

- Choice of law provisions applying the laws of any state other than the State of South Carolina
- Forum selection clauses that designate venue or jurisdiction, other than as provided by South Carolina law
- Clauses requiring the State to indemnify, defend, or hold harmless the Offeror or any other party
- Clauses that require binding arbitration of disputes
- Confidentiality requirements that conflict with any applicable disclosure requirements under South Carolina law, including under the SC Freedom of Information Act (SC Code of Laws, Title 30, Chapter 4)
- Clauses that prevent the State's termination of any contract due to non-appropriation of funds
- Clauses that require the waiver of the State's sovereign immunity
- Clauses that are in conflict with any provision of House bill 4287 (S.C. General Assembly H.4287, 123rd Session, 2019-2020).

**The Department has no authority to agree to a contract that contains any of the above "Unacceptable Terms and Conditions."**

## Appendix: Tentative List of Responsibilities for Legal Services

### Legal Services

1. Serve as legal counsel and provide a full range of legal services [transactional; corporate; bond financing; real estate; tax; regulatory; M&A; utility and energy law; labor and employment matters, including pension, retirement, and insurance] to the Department of Administration on all pertinent legal issues related to the tasks and obligations that have been assigned to the Department in the Joint Resolution, including but not limited to, the following:

- a) the development of a process to solicit and the actual solicitation of competitive bids for the sale of some or all of Santee Cooper; and,
- b) the development of a solicitation for management proposals that do not involve a sale of Santee Cooper but are designed to improve the efficiency and cost-effectiveness of Santee Cooper's electric operations including, but not limited to, a management arrangement, joint venture, or alternative arrangement; and,
- c) the development of a process for the receipt of a proposal from Santee Cooper, as an alternative to a sale or management proposal, setting forth its plans for reform, restructuring, and changes in operation; and,
- d) the evaluation of bids and proposals received pursuant to the criteria set forth in the Joint Resolution; and,
- e) the conducting of confidential negotiations between Central and each entity that submitted a qualified bid or qualified proposal; and,
- f) the preparation of a recommendation with justifications for one bid for sale and one management proposal considered to be in the best interests of the State, its taxpayers, and the customers of Santee Cooper, as well as an evaluation and recommendation regarding Santee Cooper's proposal; and,
- g) the negotiation and preparation of proposed contracts to execute (a) the recommended sale and (b) the recommended management proposal.

2. Assist in presenting recommendations to the S.C. General Assembly and appearing before the General Assembly or any legislative committee or subcommittee as may be required by the Department.

3. Other related legal services as directed by the Department of Administration.

**\*If an Offeror does not have expertise available in one or more areas of the law listed above (transactional; corporate; bond financing; real estate; tax; regulatory; M&A; utility and energy law; labor and employment matters), Offeror should provide in its RFP response: 1) a statement of which area(s) it lacks available expertise, 2) and also provide an estimate for what Offeror believes the cost would be for the Department to procure additional legal counsel with expertise in those areas.**