



## **Front Royal Warren County Economic Development Authority**

### **REQUEST FOR QUALIFICATIONS FOR THE PROVISION OF DEBT COLLECTION LEGAL SERVICES**

**ISSUING DATE: December 16, 2019**  
**CLOSING DATE: December 30, 2019**

The Front Royal Warren County Economic Development Authority (“EDA”) is soliciting proposals for debt collection legal services (“Services”). Services will be provided on an “as needed” basis. Sealed proposals for this work will be accepted until Monday, December 30, 2019, at 5:00 p.m.

Please submit one (1) original and three (3) copies of your proposal in a sealed envelope marked “Legal Services, Debt Collection,” with the Proposer’s name and address marked on the outside of the sealed envelope, no later than 5:00 p.m. EST, on December 30, 2019, to:

Front Royal Warren County Economic Development Authority  
P.O. Box 445  
Front Royal, VA 22620  
ATTN: Gretchen Henderson, Administrative Assistant

Questions regarding this Request for Qualifications (“RFQ”) should be directed to:  
Doug Parsons, Executive Director  
Front Royal Warren County Economic Development Authority  
P.O. Box 445  
400 Kendrick Lane  
Front Royal, VA 22630

#### **I. PURPOSE**

The EDA is interested in referring delinquent small business loans, after in-house efforts are exhausted, for additional collection action and/or litigation services to a contract attorney (“Attorney”).

At present, EDA has approximately seven (7) delinquent small business loans ready for referral in a range of \$5,000 to \$125,000. The average age of the accounts being referred is 90+ days.

## **II. SCOPE OF WORK/SPECIFICATIONS**

**A.** Upon referral to the Attorney, collection efforts should include written correspondence to the debtor, negotiating payment arrangements, if appropriate, and litigation of accounts to secure judgments.

The Attorney shall comply with the Fair Debt Collection Practices Act, 15 U.S.C., Section 1692 *et seq.*, as amended, when applicable, the Code of Virginia, the Warren County Code, and any relevant provisions of the particular loan.

Dollar limits on litigated accounts will be established during negotiations with the Attorney.

As an agent for EDA, the Attorney shall be bound by the confidentiality restrictions of Va. Code §58.1-3, as applicable.

**B.** Collection fees will be calculated only on the dollar amount collected and will be charged to the debtor by the Attorney as outlined in Va. Code § 58.1-3958.

**C.** Funds collected should be remitted no less than monthly to the Executive Director of the EDA. Monthly reports from the Attorney must, at a minimum, indicate individual account activity, including the amount referred by the EDA for collection, subsequent payment activity, court and other collection costs incurred, remaining account balance and remittance to the EDA. Collection action taken must also be documented and reflected on the report, with all judgment activity and copies of judgment abstracts reported to the EDA on a monthly basis.

**D.** Prior to referral to the Attorney, EDA will send a letter/billing to the last known address of the debtor, advising them of the referral and additional collection costs if the debt is not paid by a prescribed date.

**E.** Once the debt is referred to the Attorney, EDA will provide to the Attorney reasonably necessary information to perform the services, including the debtor's name, last known address, available identification numbers, contract, contact and payment history, amount owed (including principal, penalty, and interest calculated through the referral date), a general description of the amount owed and original due date.

**F.** The EDA retains the right to withdraw an account at any time. Accounts uncollected and with no legal action pending, after a period of six (6) months from the referral date, should be returned by the Attorney to EDA. Upon request from the EDA, the Attorney shall provide the status of the referred accounts.

### **G. Information Security**

**1.** The Attorney shall take reasonable steps to ensure the physical security of the information under its control and shall destroy unneeded hard copy data.

**2.** The Attorney shall not transfer information to any third party, including subcontractors, without the prior written approval of the EDA.

3. The Attorney may maintain the information obtained in connection with the Contract on its system for as long as relevant or useful to the Attorney for performing services under the Contract. The Attorney shall follow best practices regarding the destruction of electronic media.

4. All information obtained by the Attorney in connection with the Contract shall be delivered to EDA within 30 calendar days after termination or expiration of the Contract or as otherwise directed by EDA.

### **III. REQUIREMENTS OF PROPOSERS**

A. The Attorney must be a licensed attorney in Virginia in good standing and have an active license to practice in the Commonwealth of Virginia.

B. The Attorney must have thorough knowledge of the rules of court, legal procedures, law and regulations pertaining to collections and civil litigation. The Attorney must have an active collections practice.

C. The proposed collection litigation is expected to be in the Circuit Court and District Court of Warren County; therefore, the proposer must be readily accessible to those courts. The ability to handle collection litigation in federal courts, including bankruptcy courts is a plus.

### **IV. ATTORNEY COMPENSATION.**

Compensation will be on a contingent fee basis consistent with VA. Code § 58.1-3958. Compensation will be discussed during the Proposal Selection Process as set forth in Section VIII of this RFQ.

As consistent with law, the Attorney may include the following proposed charges with respect to collection when bringing proceedings in court: all costs of collection, including court costs, attorney's fee or up to 20% of the outstanding principal and interest at the time of collection, whichever is less, in accordance with Va. Code § 58.1-3958.

### **V. PROPOSAL CONTENT AND FORMAT**

A. Proposers should address, but need not be limited to, all performance requirements listed herein, in their written proposal and should not assume that an opportunity will exist to add such matters after the proposal is submitted.

- Proposer name, address, and telephone number.
- Provide a brief description of your firm, including number of employees and primary officers or partners.
- Identify the attorney(s) or other persons who are being proposed to provide the requested services and provide a current resume and information about their background including relevant education and experience.

- Provide a statement of qualifications and information regarding your firm's relevant experience to the provide the required services in the Scope of Work/Specifications,
- Provide contact information for a minimum of three (3) references in which similar services have been provided within the last five (5) years.
- Any other information that you may deem relevant in consideration of your firm.
- A statement of no conflict of interest with the EDA or in providing the requested services

**B.** Provide a statement acknowledging your opportunity, prior to submitting the proposal, to raise any questions which you might have had about the requirements of this RFQ.

**C.** Trade secrets or proprietary information submitted by the proposer in connection with the procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the proposer must invoke the protections of this section prior to or upon submission of the data and/or other materials included in this proposal and must identify the data or other materials to be protected and state the reasons why protection is necessary.

**D.** All proposals shall be signed in ink by an authorized principal of the firm. The firm shall state that it is authorized to do business within the Commonwealth of Virginia.

## **VI. — GENERAL CONDITIONS**

**A.** It is the responsibility of the proposer to inquire about and clarify any requirements of this RFQ that are not understood.

**B.** Any interpretation relative to interpretation of these specifications shall be requested in writing at least five (5) working days prior to the date set for opening of proposals.

**C.** Any interpretation made to a prospective proposer will be expressed in the form of an addendum to the specifications that will be sent to all known prospective proposers no later than three (3) working days before the date set for opening of proposals. Oral answers will not be authoritative.

**D.** No protests regarding the validity or appropriateness of the specifications or of the RFQ will be considered unless the protest is filed in writing with EDA Executive Director, Doug Parsons, prior to the closing date for proposals.

**E.** The EDA reserves the right to reject any and/or all proposals received and to waive informalities in the proposal process.

F. The EDA will not be responsible for any cost incurred by any proposer who chooses to submit a proposal.

G. No proposals will be accepted or considered after the proposal closing date and time. The date of the postmark will not be considered.

H. Proposals may be withdrawn by written request from the proposer to the EDA prior to the proposal closing date.

## **VII. TERMS AND CONDITIONS OF PROPOSED CONTRACT**

During the performance of the resulting contract, the Attorney agrees as follows:

A. Independent Contractor. The Attorney understands and agrees that its relationship to the EDA arising out of this Contract shall be that of independent contractor. It is understood that the Attorney, or its staff and employees, are not employees of the EDA and are, therefore, not entitled to any benefits provided employees of the EDA. The Attorney shall be responsible for reporting and accounting for all State, Federal, Social Security, and local taxes where applicable.

B. Non-Discrimination. During the performance of this contract, the Attorney agrees that the Attorney will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or natural origin except where religion, sex, or natural origin is a bona fide occupational qualification reasonably necessary for the normal operation of the Attorney. The Attorney agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this non-discrimination clause. The Attorney, in all solicitations or advertisements for employees placed by or on behalf of the Attorney will state that the Attorney is an equal opportunity employer. The Attorney will include the provisions of this paragraph in every sub-contract or purchase order of over \$10,000 so that the provisions will be binding upon each sub-contractor or vendor.

C. Compliance with immigration laws. The Attorney agrees and represents that it does not now, nor will it during the performance of this contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

D. The Attorney is authorized to transact business in Virginia. During the performance of this contract, the Attorney agrees to be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Va. Code Title 13.1 or Title 50 or as otherwise required by law.

E. Drug-free Workplace. During the performance of this Contract, the Attorney agrees to (i) provide a drug-free workplace for the Attorney's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Attorney's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the

contractor that the Attorney maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Virginia Public Procurement Act, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**F. Termination for Cause.** This Contract may be terminated by the EDA upon 14 days written notice to the Attorney in the event of substantial failure or default of the Attorney to perform in accordance with the terms hereof through no fault of the EDA's.

**G. Termination for Convenience.** The obligation to provide further services under this Contract may be terminated by the EDA for its convenience and not for cause upon 14 days written notice. The Attorney shall be compensated for work performed through the date of termination and for termination expenses, including any expenses directly attributable to termination and for which the Attorney is not otherwise compensated. Termination expenses shall not, however, include lost profits on services not performed as a result of such termination for convenience.

**H. Notice.** Any notice which is required to be given, or which may be given under this Contract, shall be sent to those mailing addresses noted in the Contract.

**I. Non-Assignability.** The Attorney understands that this Contract is a contract with the personal services of the Attorney and that it is made by the EDA in reliance on the Attorney's personal skills and knowledge in the activity to be conducted and as represented by the Attorney. Accordingly, this Contract is non-assignable by the Attorney.

**J. Insurance and Amount of Insurance Required:**

**Comprehensive General Liability:**

- i. Bodily Injury = \$1,000,000 each occurrence
- ii. Annual Aggregate = \$1,000,000
- iii. Property Damage = \$1,000,000 each occurrence
- iv. Annual Aggregate including completed operations/products = \$1,000,000

**Automobile Insurance:**

- i. Bodily Injury = \$1,000,000 each occurrence
- ii. Annual Aggregate = \$1,000,000
- iii. Property damage = \$1,000,000 each occurrence

**Workers Comp: Virginia statutory requirements**

- i. Coverage A = Statutory Virginia limits

- ii. Coverage B = \$100,000 each occurrence
- iii. Coverage C = \$100,000/\$100,000 accident and/or disease
- iv. All States Endorsement

Professional Liability:

- i. \$1,000,000 each occurrence
- ii. \$2,000,000 aggregate

All policies must name the EDA as an Additional Insured, and must contain provisions preventing cancellation, non-renewal or expiration unless written Notice is given to the EDA at least 30 days in advance.

**K. Indemnification.** In matters concerning professional liability, the Attorney shall indemnify and hold the EDA harmless with respect to the Attorney's work. In lieu of a contractual obligation to defend the EDA, the Attorney will pay reasonable attorney's fees.

**L. Entire Contract.** The Contract constitutes the entire agreement between the parties pertaining to the subject matter of the Contract and supersedes all prior or contemporaneous agreements and understandings of the parties in connection with the subject matter. No modification of the Contract shall be effective unless made in writing and signed by both parties.

**M. Standard of Care.** The Attorney shall perform the Services expeditiously and diligently and in accordance with the standard of care and skill ordinarily exercised under similar conditions by reputable members of its profession or trade practicing in the same or similar locality within the Commonwealth of Virginia existing as of the date the Services are provided and in accordance with all applicable laws, codes, and regulations in effect as of the date the Services are provided.

**N. Enforcement.** This Contract shall be governed by the laws of the Commonwealth of Virginia. Any action maintained by either party for the enforcement or interpretation of the terms of this Contract shall be filed in the courts of Warren County, Virginia.

**O. Examination of Records:**

The Attorney agrees that the EDA, or any duly authorized representative, shall, until the expiration of three (3) years after final payment hereunder, have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Attorney involving transactions relating to this Contract.

The Attorney shall include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the EDA, or any duly authorized representative, shall until the expiration of three (3) years after final payment under the Contract have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of such subcontractor involved in the transactions related to such subcontract or this Contract. The term "subcontract" as used

herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the public.

The period of access provided in subparagraphs 8.9.1 and 8.9.2 above for books, documents, papers, and records which may relate to any arbitration, litigation, alternative dispute resolution (“ADR”), or the settlement of claims arising out of performance of this Contract or any subcontract shall continue until any arbitration, appeals, litigation, ADR or claims have been finally concluded.

## **VIII. PROPOSAL SELECTION PROCESS**

### **A. Proposal Review.**

A Review Committee will review all proposals received and select qualified individuals or firms to be interviewed in person or by phone.

### **B. Oral Presentation/Interviews**

The Committee ~~may~~ engage in individual discussions with proposers deemed fully qualified and suitable based on initial responses and with emphasis on professional competence to provide the required services. Repetitive informal interviews may occur. The proposers are encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the scope of services requested, as well as, alternative concepts, if any. At this discussion stage, the Review Committee may discuss nonbinding estimates of price or rates for services.

### **C. Evaluation Phase**

At the conclusion of the discussions and interviews, the Review Committee will select, in the order of preference, proposers whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the proposer ranked first. Negotiations may also include, at no additional cost to EDA, an oral presentation of the proposal to the Review Committee and/or the EDA Board, and may include submission of additional or clarifying written information. If a contract that is satisfactory and advantageous can be negotiated at a price considered fair and reasonable, the award shall be made to that proposer. Otherwise, negotiations will continue with the proposer ranked second, and so on, until such a contract can be negotiated at a fair and reasonable price.

### **D. The EDA reserves the right to enter into more than one contract for the Services.**

**E.** Should the EDA determine in writing and in its sole discretion, that only one proposer is fully qualified to provide the Services, or that one proposer is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that proposer.

## **IX. TERM OF CONTRACT**

The EDA intends to memorialize the relationship with the Attorney in the form of a contract. The term of the contract shall be negotiated with the selected proposer.

The offeror should propose specific payment terms and arrangements. During the negotiation phase, the EDA and the proposer will agree on a mutually agreeable payment arrangement and fee structure.