

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA  
OFFICE OF THE GENERAL COUNSEL



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## University of California, Office of the General Counsel Litigation Preferred Provider Program Request for Proposals

### RPP Overview

The University of California Office of the General Counsel (“OGC”) seeks a limited number of preferred outside law firms to assist with the majority of our non-insured (“Core”) litigation matters. The types of matters included in this Request For Proposals (“RFP”) are outlined in the Scope section below (collectively, the “Covered Matters”). The firms we ultimately select will be known as OGC Preferred Litigation Counsel (“PLC”) and will represent the University as part of the OGC Litigation Preferred Provider Program (“LPPP”). We anticipate that each Preferred Litigation Counsel will have significant opportunities, subject to performance, to represent the University annually.

OGC is in the process of moving away from the standard billable-hour model, and, unless otherwise approved, all fees under the LPPP will be value-based (see Value-Based Pricing section below). Preferred Litigation Counsel will be able to represent the University across all Covered Matters for which they have qualified and may have the opportunity to bid for work in other practice areas not indicated in the Scope section below. Although we reserve the right to assign Covered Matters work to non-LPPP firms, we anticipate that a significant majority of the Covered Matters work will go to LPPP firms.

Responses to this RFP must be received by OGC by close of business on April 18, 2018, must contain responses to all questions in the general section and the litigation matter-specific sections for which you wish to be considered; and must conform to the formatting requirements set forth below (see also Appendix A for an example). Responding firms must agree to abide by the LPPP Requirements and Terms and Conditions of this RFP as stated below. We plan to select LPPP firms and begin the LPPP by the start of the OGC 2019 fiscal year on July 2, 2018 (see Timeline below).

## RFP Timeline

4/3/2018 - RFP distributed to candidate firms

4/9/2018 – Last day for any questions regarding RFP from candidate firms

4/11/2018 – OGC will post answers to questions by this date at <https://ucop.edu/general-counsel/litigation-panel-recruitment.html>

4/18/2018 - RFP responses due

5/18/2018 - Finalists notified and interview schedules set

5/21/18 – 6/15/2018- Finalist interviews

6/25/2018 - Firms notified of results

7/2/2018 – Case assignments to PLCs begins

OGC does not guarantee the above schedule and reserves the right to modify this schedule at its discretion.

## About UC

The University of California, one of the largest and most acclaimed institutions of higher learning in the world, is dedicated to excellence in teaching, research, health care, and public service. It is a public institution encompassing ten campuses, five medical centers, and a statewide Division of Agriculture and Natural Resources. The University is also involved in the operation and management of three national laboratories for the U.S. Department of Energy.

The Office of the President, based in Oakland, California, provides system-wide management of the University. Its divisions oversee UC's academic mission, budget, external relations, legal matters, and business and financial activities (see <https://www.ucop.edu>). The University is governed by the Board of Regents (see <http://regents.universityofcalifornia.edu>).

## About OGC

The Office of the General Counsel, working collaboratively with our clients, seeks to advance the University's mission through skilled advice, vigorous advocacy, and effective, proactive counsel. Our goal is to be valued and trusted partners, recognized for our creativity, industry-leading expertise, and commitment to client objectives. We are committed to fairness and diversity in all our interactions, and we value a commitment to diversity in our retained counsel. For more information about us and our values, please visit our website at <https://www.ucop.edu/general-counsel/index.html>.

In-house counsel located at the Office of the President and resident at the campuses and medical centers partner with outside counsel to provide legal services in a variety of areas. Covered Matters arising out of this RFP will be supervised by Oakland-based attorneys in OGC's Litigation and Capital Strategies section. Other sections of OGC supervise matters in Business, Finance & Innovation; Health Affairs & Technology Law; and Education, Employment & Governance.

## LPPP Scope (Covered Matters)

The scope of this RFP and the LPPP is for U.S. matters only, which are heavily concentrated in California courts. The litigation matter types are broken into two groups (listed below). Group I litigation matters are high-impact/value matters that present significant operational, reputational, and/or financial (>\$5M) risk to the University. Group II litigation matters are moderate impact/value matters that typically present less risk to the University. You may choose to represent the University in any or all of the litigation matter types listed, but you should only apply for areas in which you have significant demonstrated expertise (in both substance and risk level) and for which you can offer economically practical services. Please respond to the questions for each litigation matter type for which your firm would like to be considered.

Group I (High impact/value matters with financial risk >\$5M):

- Academic Affairs
- Consumer Class Actions
- Benefits Class Actions
- Cyber/Privacy Class Actions
- Public Records Act Writ Petitions involving significant systemwide issues, such as personal privacy or faculty research
- General Complex Litigation<sup>1</sup>

Group II (Moderate impact/value matters):

- Bankruptcy
- Privilege & Tenure and Other Administrative Hearings
- Probate
- Public Records Act Writ Petitions involving routine requests or request-specific issues such as alleged delays in response
- Construction
- Student Matter Writ Petitions
- General Litigation

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<sup>1</sup> General litigation for Group I and Group II excludes litigation handled through the University's insurance programs covering employment practices litigation, general liability litigation (bodily injury, police practices, non-employee discrimination, etc.), and medical malpractice.

## LPPP Requirements

- Abide by the OGC Outside Counsel Guidelines (Appendix B)<sup>2</sup>
- Confirm that no conflicts exist and agree that OGC will not approve advance waiver requests and instead will consider all waivers on a case-by-case basis
- Agree that all fees will be structured and negotiated using value-based pricing arrangements (see Value-Based Pricing section below)
- **For Group II matters only, agree that all discovery pricing will be preset (see Discovery Pricing below)**
- Use the UC eBilling system for electronic invoice submittals<sup>3</sup>
- Provide and update an invoice schedule for all litigation value-based fee arrangements (see Invoice Schedule section below)
- Participate in the Annual Performance Review (see Annual Performance Review section below)
- No mention of the University of California or use its marks in any marketing or similar material without prior written approval
- Provide at least a 15% discount for any hourly fees (hourly work performed only with prior approval)

## Value-Based Pricing

OGC manages hundreds of litigation matters each year. In order to drive better value per dollar spent and increased budget predictability, we are transitioning away from the standard billable-hour model to value-based fee arrangements in our Core litigation matters. Our focus is on substantive deliverables and results, not time or effort expended. Unless otherwise approved by OGC in advance, all litigation work done by LPPP firms will be under value-based fee arrangements. These arrangements usually take the form of fixed fees, success fees, contingent fees or monthly retainers.

## Litigation Matter Engagement Process

For each new litigation matter in which we intend to engage outside counsel, three LPPP firms that have been qualified for that matter type will be given a copy of the complaint (or other relevant material for affirmative cases) and a Matter Engagement Proposal Form. This form will ask a few substantive questions about the specific matter as well as request a list of the attorneys that will work on the case. In addition, the firm will submit a litigation fixed fee by phase pricing template with a proposed fixed fee for each phase of litigation. Group II matters will have an abbreviated

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<sup>2</sup> The current guidelines are attached. OGC is in the process of revising its guidelines for simplification and clarification but does not anticipate material changes that would affect law firm pricing.

<sup>3</sup> OGC's current billing vendor requires a percentage use fee for billings in excess of \$50,000, up to a maximum fee of \$13,000 per year per firm.

fixed fee pricing template since the discovery work pricing will be preset during this RFP. The OGC litigation team will review the proposals and select a firm to represent the University in that matter. Selection will be weighted heavily on the substantive responses, but the proposed pricing will certainly be a factor.

## Invoice Schedules

For each matter engagement, the approved fixed fee schedule will be converted into an invoice schedule. The invoice schedule will be based upon the expected timeline submitted for each phase (where appropriate). Invoices will be submitted to UC based upon a calculation of 2/3 of the total fixed fee of the respective phase amortized in equal monthly amounts across the estimated timeline with the residual to be invoiced at the completion of the phase. Success fees (where applicable) will be invoiced upon the successful resolution of the matter as defined. An invoice schedule and all individual invoices will be submitted to our e-billing and document management systems. The firm will update the invoice schedule with each invoice submittal. The invoice schedule and the invoice should match. The fee for any phase should only be billed when the work for that specific phase has commenced.

## Discovery Pricing (Group II Matters Only)

Because of reduced variability of discovery items for Group II litigation matters, we will preset fixed fee pricing through this RFP for standard discovery tasks. If you are submitting for Group II litigation matters, please use the attached spreadsheet (Appendix C) to submit a fixed fee for each discreet discovery task described below. Please note that these fixed fees are for each discreet task (e.g., a fixed fee per deposition or per set of written discovery).

- **Supervision of document collection and production** - Supervise UC team or outside vendor regarding collection and production of documents (note this fee is for *supervision*; we intend to have a cost-effective vendor perform actual collection and initial review for production).
- **Secondary review of documents** - Perform secondary/substantive review per set of 5000 documents.
- **Written discovery (offensive)** - Prepare and serve requests for production, interrogatories, and requests for admission, and conduct all related meeting and conferring; fixed fee per set of written discovery (one set = 25 interrogatories + 25 requests for admissions + 50 requests for production).

- **Written discovery (defensive)** - Respond to requests for production, interrogatories, and requests for admission, including all related meeting and conferring, witness interviews, and verification of responses; fixed fee per set of written discovery (one set = 25 interrogatories + 25 requests for admissions + 50 requests for production).
- **Discovery motions (offensive)** - Fixed fee per motion, covers all aspects of the motion, including drafting motion and reply brief, preparing for and arguing at the hearing.
- **Discovery motions (defensive)** - Fixed fee per motion, covers all aspects of the motion including drafting opposition and preparing for and arguing at the hearing.
- **Case management statements and conferences** - For each additional case management statement and corresponding conference not already covered by other fixed fees.
- **Depositions (of named plaintiff(s))** - Fixed fee per deposition, including review of relevant documents, preparation, and attendance.
- **Depositions (other fact witnesses)** - Fixed fee per deposition, including review of relevant documents, witness preparation, other preparation, and attendance.
- **Depositions (30(b)(6) witnesses)** - Fixed fee per deposition, including review of relevant documents, witness preparation, other preparation, and attendance.
- **Expert (defensive)** - Fixed fee per expert, including review and analysis of opposing expert's report, preparation and attendance at deposition.
- **Expert (offensive)** - Fixed fee per expert, including expert retention, consulting, report preparation, deposition and witness preparation, and deposition attendance. Does not include expert fees.

## Annual Performance Review

As a means to enhance communication and provide feedback to LPPP firms, OGC will schedule an annual performance review with each LPPP firm at the OGC office in Oakland. We may request the firm's managing partner or executive committee member and/or the LPPP relationship partner to attend. Attendees from OGC may include the General Counsel, Deputy General Counsel and Managing Counsel of Litigation, other OGC lawyers, and/or representatives from the campuses. The annual performance review will include a review of the matters, substantive issues, results, financials and any other topics requested by either party. LPPP firms will not charge for time or expenses to attend the annual performance review. Results of these reviews will determine continued participation in the LPPP.

## Engagement Requirements

Upon acceptance into the LPPP, OGC will provide selected firms with an engagement letter indicating agreement to abide by the LPPP Requirements and Terms and Conditions as stated in this RFP. Each engagement letter will be valid for at least three years or until an individual firm is released from the LPPP. After the engagement letters are signed and approved, each subsequent matter assigned to a LPPP firm under the LPPP will require only an approved pricing template and a reference to the approved engagement letter.

## General Questions - Responses Required

Please provide succinct responses that clearly answer each question.

1. Provide the name and contact information of the attorney with primary responsibility for the overall relationship with OGC.
2. Provide the following information (you may attach your current NALP form to this application if the information requested is contained therein, but all points below must be addressed in your response):
  - Location of offices
  - Number of attorneys firmwide
  - Number of equity partners/members, non-equity partners/members, associates, counsel, non-traditional track/staff attorneys, and summer associates in total and in each NALP-designated population (gender identity, race/ethnicity, disability status, and openly LGBTQ) as well as for veterans
  - Number of new “homegrown partners” (i.e., associates in U.S. offices who were promoted to partner within the past three years) in total and in each NALP-designated population (gender identity, race/ethnicity, disability status, and openly LGBTQ), as well as for veterans
  - The name and contact information for your diversity chair
  - Information about your firm’s recruitment methods
  - Information about diversity fellowships or scholarships offered by your firm
  - Information about any other initiatives sponsored or supported by your firm aimed at promoting diversity within your firm, both generally and in leadership positions
  - Information about any other initiatives sponsored or supported by your firm aimed at promoting diversity within the profession
  - Information about any other initiatives sponsored or supported specifically by the proposed relationship attorney identified in your response to Question No. 1 aimed at promoting diversity within your firm and the profession

3. Describe your firm’s information security infrastructure including, without limitation, data security, document security and safeguards against release of confidential information.
4. Describe your firm’s processes and systems for both program and knowledge management, and explain how these processes and systems will be used to benefit OGC.
5. Describe any potential or planned changes that, in the next 12-24 months, could significantly change any of the information provided in your response to this RFP.
6. Describe any business or personal relationships your firm has with OGC or any other employees of the University of California.
7. Has your firm or any firm attorney been a named defendant in a legal malpractice case during the past 10 years, or has any firm attorney been sanctioned by a court or regulatory authority or otherwise disciplined by the California Bar? If so, please provide details.
8. Describe any additional services (at no cost) that you would provide OGC to enhance the value of your service.
9. Discuss any other issues or considerations that you believe are relevant as a candidate for the LPPP.
10. For situations where OGC approves hourly work, please provide your proposed hourly rate for partners, associates, and paralegals.

## Litigation Matter Type-Specific Questions - Responses Required

For each litigation matter type for which you wish to be considered, please provide:

1. A brief description of your relevant litigation practice and how this practice differentiates itself from similar practices at other firms.
2. The name, contact information and background information of the attorney proposed to have primary responsibility for the specific area of litigation for UC as well as of all other members of the proposed team. Explain why each individual has been proposed and his/her specific area of work or specialty, including any trial and appellate experience.
3. A description of at least three similar matters worked in the past year along with the final disposition.
4. Written answers to each question listed for the litigation matter type in Appendix D.

Per the formatting instructions below, please create a separate PDF document for each of your litigation matter types and submit them in a PDF Portfolio.

## Terms and Conditions

OGC will accept proposals responding to the requests contained in this document until close of business on April 18, 2018. Please email your proposal to OGC at [LitPanel2018@ucop.edu](mailto:LitPanel2018@ucop.edu) with the subject line “OGC Core Litigation RFP.” To facilitate our review, please provide your response in the form of a PDF Portfolio – with answers to the General Questions in one document, each matter-



specific section in a separate document (see example Appendix A), and the Group 2 discovery pricing spreadsheet (if applicable) as a separate Excel spreadsheet – and entitle the PDF Portfolio file in the following format: FirmName\_UCLitigationRFPResponse.PDF. If you are submitting for Group 2 matters, please submit your completed discovery pricing spreadsheet in native Excel format. We do not intend to look at extraneous marketing material during this process.

All information provided by OGC in connection with this RFP shall be considered proprietary information of OGC. All documentation and/or ideas submitted by your firm shall also become the property of OGC.

If your firm has a question during this process, please send it to [LitPanel2018@ucop.edu](mailto:LitPanel2018@ucop.edu). All such questions or requests must be received by close of business on April 9, 2018, and all such questions or requests received after such date will be answered, if at all, by OGC, in its sole discretion. You are not authorized to contact any other OGC employee concerning this RFP. Failure to adhere to this requirement will be grounds for disqualifying your proposal.

Following review of the written proposals, OGC may ask firms in which it continues to have an interest to travel to OGC's Oakland office at their own expense for an interview. In no event will OGC schedule meetings in advance of receipt of your RFP response, and the only meetings OGC intends to hold, if any, are with the finalist law firms. If your firm is invited to an interview, only the individuals being proposed to work as part of the LPPP should attend. OGC may award a position as a Preferred Litigation Counsel without further negotiations or discussions or further interviews with the finalist law firms.

This RFP does not bind OGC to any obligations or impose liability for any costs or expenses incurred by your firm in responding to the proposal or traveling to an interview in connection with this RFP. OGC, in its sole discretion, may or may not make an award, and reserves the right to reject any and all responses received. OGC also reserves the right to terminate a retention at any time in its sole discretion.

## Evaluation Criteria

OGC will award the matter to the bidder in its sole discretion based upon a combination of experience, expertise, proposed team and the greatest overall value.