



BUNCOMBE COUNTY

Request for Proposal

Land Use Attorney

Date of Issue: August 24, 2023

Proposal Submission Deadline: September 14, 2023

At 2:00PM ET

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1.0 PURPOSE AND BACKGROUND

Buncombe County seeks services for a land use attorney on an as needed basis. Due to the County's proximity to the City of Asheville and natural beauty and resources, Buncombe County continues to urbanize and attract new residents from across the country. In FY2023, the Board of Commissioners voted to adopt a new comprehensive plan that guides the vision for growth in the county. Implementation of the plan requires legal analysis and review of potential text amendments and their compliance with Federal, State, and local regulations. Additional needed services could include representation of staff for appeals to the BOA, multi-departmental code enforcement cases, and general land use counsel.

Proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto.

2.0 GENERAL INFORMATION

2.1 REQUEST FOR PROPOSAL DOCUMENT

The RFP is comprised of the base RFP document, any attachments, and any addenda released before Contract award. All attachments and addenda released for this RFP in advance of any Contract award are incorporated herein by reference.

2.2 NOTICE REGARDING RFP TERMS AND CONDITIONS

It shall be the Vendor's responsibility to read the Instructions, the County's terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP and comply with all requirements and specifications herein. Vendors also are responsible for obtaining and complying with all addenda and other changes that may be issued in connection with this RFP.

If Vendors have questions, issues, or exceptions regarding any term, condition, or other component within this RFP, those must be submitted as questions in accordance with the instructions in Section 2.5 PROPOSAL QUESTIONS. If the County determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an RFP addendum. The County may also elect to leave open the possibility for later negotiation and amendment of specific provisions of the Contract that have been addressed during the question and answer period. Other than through this process, the County rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's proposal. This applies to any language appearing in or attached to the document as part of the Vendor's proposal that purports to vary any terms and conditions or Vendors' instructions herein or to render the proposal non-binding or subject to further negotiation. Vendor's proposal shall constitute a firm offer. **By execution and delivery of this RFP Response, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's proposal as nonresponsive.**

2.3 RFP SCHEDULE

The table below shows the *intended* schedule for this RFP. The County will make every effort to adhere to this schedule.

Event	Responsibility	Date and Time
Issue RFP	County	8/22/2023
Submit Written Questions	Vendor	8/31/2023 5:00PM
Provide Response to Questions	County	9/7/2023
Submit Proposals	Vendor	9/14/2023 2:00PM
Contract Award	County	10/01/2023

2.4 PROPOSAL QUESTIONS

Upon review of the RFP documents, Vendors may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Vendors shall submit any such questions by the above due date.

Written questions shall be emailed to Nina.Alexander@buncombecounty.org by the date and time specified above. Vendors should enter "RFP Land Use Attorney Questions" as the subject for the email. Questions submittals should include a reference to the applicable RFP section.

Questions received prior to the submission deadline date, the County's response, and any additional terms deemed necessary by the County will be posted in the form of an addendum. No information, instruction or advice provided orally or informally by any Buncombe County personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding.

2.5 PROPOSAL SUBMITTAL

Proposals will be received until 2:00PM, September 14, 2023. All proposals may be submitted electronically submitted via email and properly identified with the title RFP Land Use Attorney Proposal.

Proposals may be emailed to:
Nina Alexander, Procurement Agent

E-mail: Nina.Alexander@buncombecounty.org

The County's capacity for email attachments is 9mb. It is the bidder's responsibility to ensure the proposal is received prior to the proposal acceptance time. Late proposals will not be accepted. The County reserves the right to accept or reject all or any part of any proposal, waive informalities and award the contract to best serve the interest of the County. It is the responsibility of the applicant that their proposal is received. Receipt of proposals can be verified by calling 828-250-4154.

2.6 PROPOSAL CONTENTS

Vendors shall populate all attachments of this RFP that require the Vendor to provide information and include an authorized signature where requested. Vendor RFP responses shall include the following items and those attachments should be arranged in the following order:

- a) Cover Letter
- b) Title Page: Include the company name, address, phone number and authorized representative.
- c) Describe the background, experience, and capabilities of your firm as it relates to the Scope of Work outlined in the RFP.
- d) Identify all subcontractors you intend to use for the proposed scope of work. For each subcontractor listed, proposers shall indicate 1.) What products and/or services are to be supplied by that subcontractor and 2.) What percentage of the overall scope of work that subcontractor will perform.
- e) List at least 3 client references public and private of similar size for whom you have provided services in the past three years. Provide telephone numbers and contact names for references.
- f) Provide specific costs for services.
- g) Each Vendor shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.

3.0 METHOD OF AWARD AND PROPOSAL EVALUATION PROCESS

3.1 METHOD OF AWARD

All qualified proposals will be evaluated, and awards will be made to the Vendor(s) meeting the RFP requirements and best fits the needs of the County.

Buncombe County reserves the right to reject any and/or all submittals, and to waive defects, technicalities and/or irregularities in any submittal. The County reserves the right to finalize a contract with one or more firms based on all factors involved in the written qualification submittal without further discussion or interviews.

Proposals will generally be evaluated according to completeness, content, and experience with similar projects, ability of the Vendor and its staff, and cost.

Vendors are cautioned that this is a request for offers, not an offer or request to contract, and the County reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the County.

3.2 EVALUATION CRITERIA

Following the deadline for submittals, a selection committee will review the submitted proposals. The selection committee will review, analyze, and rank all submittals based on their response to the information requested. The selection process will include the following criteria in the evaluation of proposals. These criteria are not necessarily listed in order of importance.

- Experience with land development ordinances
- Knowledge of Federal, State, Local regulations
- Availability
- Cost

4.0 REQUIREMENTS

4.1 CONTRACT TERM

The County intends to award and start the contract as soon as possible. The Contract shall be on an as needed basis and the number of years may be negotiated.

4.2 PRICING

Proposal price shall constitute the total cost to Buyer for complete performance in accordance with the requirements and specifications herein, including all applicable charges handling, administrative and other similar fees. Vendor shall not invoice for any amounts not specifically allowed for in this RFP.

4.3 VENDOR EXPERIENCE

In its Proposal, Vendor shall demonstrate experience with public and/or private sector clients with similar or greater size and complexity to Buncombe County. Vendor shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including citing experience with similar projects and the responsibilities to be assigned to each person.

4.4 VENDOR'S REPRESENTATIONS

- a) Vendor warrants that qualified personnel shall provide Services under this Contract in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the industry. Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of the County under this Contract. Vendor will serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all subcontractor(s) that may be approved by the County. Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).
- b) If any Services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the service and deliverables under this Contract, or are an

inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the contract to the same extent and in the same manner as if specifically described in the contract. Unless otherwise expressly provided herein, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables.

- c) Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

5.0 SCOPE OF WORK

- Provide Pro Re Nata legal representation for staff during times when County Legal staff has to represent an appeal board or committee. For example, if staff has an administrative decision appealed to the Board of Adjustment, County Legal typically represents the Board of Adjustment which leaves staff without representation.
- Provide Pro Re Nata support and legal auditing for upcoming text amendments in support of the goals of the recently adopted comprehensive plan. Proposed text amendments will focus heavily on land development ordinances but will likely impact other antiquated sections of existing ordinances contained within the Buncombe County Code of Ordinances. This will include, but is not limited to, the NC Building Code, Environmental Health, Erosion Control, Floodplain, Stormwater, Solid Waste, Fire Prevention and traditional land use ordinances including Zoning, Subdivision and other related development codes. Staff is seeking assistance with reviewing and auditing proposed changes in order to stay compliant with Federal, State and local regulations.

6.0 GENERAL TERMS AND CONDITIONS

1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this RFP document.
2. **LATE PROPOSALS:** Late proposals, regardless of cause, will not be considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure the timely submission of proposals.
3. **ACCEPTANCE AND REJECTION:** Buncombe County reserves the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the Vendor, to accept any item in the proposal.
4. **INFORMATION AND DESCRIPTIVE LITERATURE:** If required elsewhere in this proposal, each Vendor shall submit with its proposal any sketches, descriptive literature and/or complete specifications covering the products and Services offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Failure to comply with these requirements shall constitute sufficient cause to reject a proposal without further consideration.
5. **SUSTAINABILITY:** To support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all print responses submitted meet the following:
 - All copies of the proposal are printed double sided.
 - All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
 - Unless absolutely necessary, all proposals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
 - Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.

6. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Buncombe County is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the County encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on County contracts.
7. **INELIGIBLE VENDORS:** As provided in G.S. 147-86.59 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State: a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81. A contract with the Buncombe County by any company identified in a) or b) above shall be void *ab initio*.
8. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the County will maintain as confidential trade secrets in its proposal that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked as confidential, the County will notify Vendor of such action and allow Vendor to defend the confidential status of its information.
9. **MISCELLANEOUS:** Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.
10. **INFORMAL COMMENTS:** Buncombe County shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the County during the competitive process or after award. The County is bound only by information provided in writing in this RFP and in formal Addenda issued through IPS.
11. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; Buncombe County will not reimburse any Vendor for any costs incurred or associated with the preparation of proposals.
12. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds to the agency for the purpose set forth in The Contract.
13. **SITUS AND GOVERNING LAWS:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.
14. **PAYMENT TERMS:** If a payment schedule is not part of The Contract then payment terms will be Net 30 days after receipt of a correct invoice or acceptance of goods, whichever is later.
15. **NON-DISCRIMINATION:** The Vendor will take necessary action to comply with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination on the basis of any prohibited grounds as defined by Federal and State law.
16. **ADVERTISING:** Vendor agrees not to use the existence of The Contract or the name of Buncombe County as part of any commercial advertising or marketing of products or Services. A Vendor may inquire whether the County is willing to act as a reference by providing factual information directly to other prospective customers.

17. INSURANCE:

COVERAGE - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

Commercial General Liability insurance in an amount not less than \$1,000,000 each occurrence/\$2,000,000 annual aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability.

Business Automobile Liability insurance covering all owned, non-owned, and hired vehicles with a minimum combined single limit of \$1,000,000 each occurrence and shall include uninsured/underinsured motorist coverage per NC General Statute 20-279-21.

Workers Compensation coverage at the statutory limits in compliance with applicable State and Federal laws. Supplier shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

Employer's Liability coverage with minimum limits of \$500,000 each accident and \$500,000 each employee disease.

Vendor shall agree these General Conditions constitute an insured contract and shall name Buncombe County as an additional insured under the Commercial General Liability policy. Before commencing work and for any subsequent renewals, Vendor shall furnish the County with certificates of insurance evidencing the above coverages and amounts on an approved form. Vendor hereby grants the County a waiver of any right of subrogation which any insurer of said Vendor may acquire against the County by virtue of payment of any loss under such insurance. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the County and delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina and in a form acceptable to the County. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Supplier's liability and obligations. Nothing in this section is intended to affect or abrogate Buncombe County's governmental immunity.

- 18. GENERAL INDEMNITY:** The Vendor shall hold and save Buncombe County, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of The Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of The Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days from the date that the County has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the County's agents who are involved in the delivery or processing of Vendor deliverables or Services to the County. The representation and warranty in the preceding sentence shall survive the termination or expiration of The Contract.

- 19. CONFLICT OF INTEREST:** Per N.C. General Statute 14-234, no public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract.

The statute defines "public officer" as an individual who is elected or appointed to serve or represent a public agency, other than an employee or independent contractor of a public agency.

A public officer or employee is involved in administering a contract if he or she oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract; or if he or she participates in the development of specifications or terms or in the preparation or award of the contract. A public officer is also involved in making a contract if the board, commission, or other body of which he or she is a member takes action on the contract, whether or not the public officer actually participates in that action, unless the contract is approved under an exception to this section under which the public officer is allowed to benefit and is prohibited from voting.

There is a conflict of interest when a public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract.

- 20. CONFIDENTIALITY:** Any County information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under The Contract shall be kept as confidential, used only for the purpose(s) required to perform The Contract and not divulged or made available to any individual or organization without the prior written approval by Buncombe County.
- 21. COMPLIANCE WITH LAWS:** Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with The Contract, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 22. ENTIRE AGREEMENT:** This RFP and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This RFP, any addenda hereto, and the Vendor's proposal are incorporated herein by reference as though set forth verbatim.
- All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
- 23. AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the County and the Vendor.
- 24. NO WAIVER:** Notwithstanding any other language or provision in The Contract, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the County under applicable law. The waiver by the County of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
- 25. FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 26. SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in The Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or state or federal constitutional provision or principle that otherwise would be available to the County under applicable law.