

Title Insurance Bureau, New Mexico Office of Superintendent of Insurance
REQUEST FOR QUALIFICATIONS AND STATEMENT OF INTEREST (RFQ/RSOI)
FOR PROFESSIONAL SERVICES

The Title Insurance Bureau implements and enforces the Insurance Code provisions relating to all aspects of title insurance regulation. The Title Insurance Bureau's work includes the biennial setting of uniform premium rates and the promulgation of all policy forms, including endorsement forms. The Title Insurance Bureau also fields title insurance-related complaints from both consumers and the insurance industry.

The New Mexico Office of Superintendent of Insurance (OSI), through its Title Insurance Bureau, is soliciting proposals from attorneys/law firms to provide legal services for the Title Insurance Bureau specifically related to the biennial setting of uniform premium rates and the promulgation of all policy forms, including endorsement forms. The biennial setting of premium rates is mandated by Section 59A-30-6(A) of the New Mexico Title Insurance Law. Section 59A-30-8(A) of the New Mexico Title Insurance Law requires the Superintendent of Insurance ("Superintendent") to commence a hearing during November of each odd-numbered calendar year to consider the promulgation of premium rates of title insurers and title insurance producers for title insurance policies, the percentage of premium to be retained by title insurers under agency agreements, and any other matters related to the regulation of the business of title insurance deemed necessary by the Superintendent.

One or more attorneys may be selected pursuant to this RFQ/RSOI. Selected applicant(s) will serve as staff attorney(s) for the Title Insurance Bureau and will work closely with the Office of Legal Counsel, OSI Title Staff expert witnesses, and others in accordance with the following Scope of Services.

SCOPE OF SERVICES

The selected attorney(s) or law firm will perform all tasks necessary to serve as the OSI Title Bureau's staff attorney in OSI's 2023 Title Insurance Rate Case (Rate Case) and, potentially, any title insurance Rulemaking proceedings. Please note that the OSI may select separate attorneys for the Rate Case and any Rulemaking proceedings. The scope of work could, but might not, be limited to the tasks described below for the Rate Case and any Rulemaking proceedings. Any attorney not licensed in New Mexico will need to be admitted *pro hac vice* in the Rate Case and any Rulemaking proceedings.

A. Pre-Hearing:

i. Review applicable statutes, rules and case decisions applicable to the Rate Case and any Rulemaking Case, as appropriate.

ii. If retained for the Rate Case, review the record of the 2013, 2015, 2017, 2019 and 2021 Biennial Title Insurance Rate and related Rulemaking dockets.

iii. Research and advise the OSI Title Staff on all issues that are likely to and do arise regarding the negotiations described below.

iv. Negotiate on behalf of OSI Title Staff with parties or potential parties to the Rate Case and any Rulemaking Case to which the attorney is assigned regarding procedures for the Rate Case and, as applicable, the Rulemaking Case and potential settlement of any substantive issues arising therein.

v. Prepare recommendations for OSI Title Staff expert witnesses' testimony, assist OSI Title Staff expert witnesses, including actuarial testimony, in the preparation of that testimony and prepare OSI Title Staff expert witnesses for cross-examination. Coordinate with the in-house OSI Staff Attorney assigned to the Rate Case and any Rulemaking Case.

vi. Review all testimony filed in the Rate Case by other parties and prepare for cross-examination of those witnesses as necessary. Review all comments presented orally or in writing in a Rulemaking Case and assist the in-house OSI Staff Attorney in preparing oral and written comments in such case.

viii. Draft any necessary pre-hearing pleadings; including but not limited to, motions, responses or replies, and coordinate filing and service of all such pleadings with the licensed New Mexico attorney assigned to the Rate Case and any Rulemaking Case on behalf of OSI.

ix. Assist OSI Title Staff expert witnesses with responses to any discovery requests in the Rate Case and any Rulemaking Case.

x. Attend, by telephone or video conferencing, any pre-hearing matters scheduled by the Hearing Officer in the Rate Case and any Rulemaking Case.

B. Hearing:

i. Attend the Rate Case and any Rulemaking Case, in person if required, in Santa Fe, New Mexico, unless the Hearing Officer orders the parties to appear at another location in New Mexico.

ii. Perform Direct and Cross-Examinations as necessary and defend OSI Title Staff's expert witnesses during cross-examination in the Rate Case and any Rulemaking Case.

iii. Respond to any requests by the Hearing Officer for legal argument or analysis and assist OSI Title Staff's expert witnesses in responding to any requests by the Hearing Officer for additional information during the Rate Case and any Rulemaking Case.

iv. Negotiate on behalf of OSI Title Staff during any settlement discussions requested by a party or by the Hearing Officer during the course of the hearings in the Rate Case and any Rulemaking Case.

v. Present opening and closing arguments at the Rate Case and any Rulemaking Case as necessary.

C. Post-Hearing:

If the budget allows:

i. Draft any post-hearing pleadings, including, but not limited to, briefs-in-chief and response and reply briefs and/or proposed findings of fact and conclusions of law as necessary and as requested by the Hearing Officer in the Rate Case and any Rulemaking Case.

ii. Review the Recommended Decisions issued by the Hearing Officer in the Rate Case and any Rulemaking Case and prepare a Brief on Exceptions as well as responsive pleadings to other parties' briefs on exceptions on behalf of OSI Title Staff. Coordinate the filing of all such pleadings with the OSI Staff Attorney assigned to the Rate Case and any Rulemaking Case.

D. Ex Parte Prohibitions:

The Title Rate Case and any Rulemaking Case shall be conducted in accordance with the Administrative Procedures Act (“APA”), Sections 12-8-1 through 12-8-25 NMSA 1978 (1969). Section 12-18-13 of the APA states:

No party or representative of a party or any other person shall communicate off the record about the case with any agency member who participates in making the decision in any adjudicatory proceeding unless a copy of the communication is sent to all parties to the proceeding. No agency member or representative of the agency shall communicate off the record about the adjudicatory proceedings with any party or representative of a party or any other person unless a copy of the communication is sent to all parties in the proceeding.

Those members of the agency who will participate in making the decision in the Rate Case include the Hearing Officer and the Superintendent. Therefore, applicants should recognize that their obligations as attorneys pursuant to any contract that may arise pursuant to this Request for Qualifications and Statement of Interest (RFQ/RSOI) shall be to the Title Insurance Bureau and its in-house counsel and not to the Hearing Officer, the Superintendent, or any other member of the agency unless so specified in writing and approved in writing by the Bureau and its in-house counsel.

In the event that an applicant is selected for work in a Rulemaking Case, the ex parte prohibitions that apply to such rulemaking shall be observed.

INVITATION TO SUBMIT PROPOSALS

Attorneys and law firms with title insurance regulation expertise, or other rate setting matters such as utility ratemaking, are invited to submit proposals containing their qualifications to provide the requested services. Applicants must also demonstrate through their answers and documentation that they have sufficient capacity to provide a high level of service and expertise on title insurance regulation or other rate setting legal matters.

Applicants are asked to submit an hourly rate for the requested services, and any other fees associated with providing legal services including travel, copies, carrier service, etc. Proposed rates will only be considered after an applicant has first been determined to be qualified. The selected applicant will be required to provide a monthly, detailed, and itemized billing for its services and other fees. Please provide hourly rates for the individuals who would be providing legal services to the OSI and any paralegals or other staff. Hourly rates and other fees could be subject to future negotiation.

The OSI reserves the right not to select any of the submitted proposals. The OSI may select separate attorneys for the Rate Case and any Rulemaking cases. The OSI also reserves the right to hire other outside counsel for special purposes.

Any questions regarding this RFQ/RSOI should be addressed to:

Michelle Lopez, Chief Purchasing Officer
Office of Superintendent of Insurance
PO Box 1689 (Mailing Address)
1120 Paseo de Peralta, Room 414 (Physical Address)
Santa Fe, New Mexico 87504-1689

DEADLINE: To be considered, proposals must be received no later than **5:00 pm on May 26, 2023**. Proposals received after this deadline will not be accepted.

Submission may be in the form of either or both of the following:

A hard copy in a sealed envelope addressed to Michelle Lopez at the address provided above,

-Or -

An electronic version in Microsoft Word sent to the following e-mail address:

MichelleJ.Lopez@osi.nm.gov

Please note on the cover of the envelope or in the subject line of the email: PROFESSIONAL SERVICES RFQ/RSOI – TITLE INSURANCE ATTORNEY SERVICES - (Attorney/Firm Name)

Whichever method is chosen, the proposal must be received by the same deadline provided above.

Upon selection, it is anticipated that the OSI and the selected attorney/law firm will enter into a contract subject to the information contained in the RFQ/RSOI and the proposal.

Reasonable costs associated with the services will be reimbursed. However, total compensation, costs, and expenses for the contracted legal services shall not exceed \$60,000.00, excluding New Mexico Gross Receipts Tax.

STATEMENT OF QUALIFICATIONS – PROPOSAL

Each applicant should provide a proposal, no more than 15 pages long including attachments, that addresses each of the following items:

1. name of firm, year organized, brief history of the firm, and any title insurance regulation or title insurance rate setting or other rate setting experience;
2. address, email, and telephone number of the applicant;
3. the name of the principal attorney, and any other attorneys, who will provide services to the OSI;
4. a description of each attorney's education, years of legal experience, years of title insurance regulation or title insurance rate setting experience, or other rate setting experience, and information on any legal specialties;
5. provide a list of up to three past clients, a contact person for each, and an email and telephone number for the contact person;
6. for each former client identified, please summarize the type of services provided;
7. a summary of your legal philosophy and how you can help the OSI achieve the statutory mandate to promulgate rates that are not excessive, inadequate or unfairly discriminatory and contain an allowance permitting a profit that is not unreasonable in relation to the risks incurred in the business of title insurance;
8. a statement of whether the attorney or firm has represented or sued, or represented a third party in any administrative proceedings before the Superintendent during the last five years and if so the outcome;
9. a summary of the three largest projects and/or cases in the past five years led by the principal attorney assigned to this contract and the outcome;

10. a list of any clients that you currently represent that may cause a conflict of interest with your responsibilities for the OSI. Describe how you plan to resolve these or any future conflicts of interest;
11. proof of a malpractice policy in an amount of \$1 million aggregate and an agreement to keep such policy in effect while representing the OSI; or upon a showing of adequate financial reserves satisfactory to OSI;
12. Proof of all of the following:
 - a) that the firm and its attorneys have a current license and are in good standing with the New Mexico Supreme Court (or if out of state, proof of pro hac vice admission in New Mexico);
 - b) that the firm is registered to do business in this state with the New Mexico Secretary of State; and
 - c) a tax identification number issued by the New Mexico Department of Taxation and Revenue;
13. a list of grievances filed with the New Mexico Supreme Court, or any other State Bar, against any of the attorneys who would be providing services to the OSI; and
14. a list of any lawsuits filed against the attorneys who will be providing services to the OSI or against the law firm.

SELECTION OF PROFESSIONAL SERVICES PROVIDER

The following factors will be considered when selecting a qualified applicant to provide legal services for the OSI:

1. a complete proposal that includes responses to all the items listed in this RFQ/RSOI (must be complete to be considered);
2. experience working on title insurance regulation or title insurance rate setting or other rate setting experience; and
3. demonstrated proficiency working on title insurance regulation or title insurance rate setting or other rate setting matters.

Applicants that are determined to be qualified will be further evaluated based on the proposed cost of service.

This RFQ/RSOI does not constitute a commitment by the OSI to enter into any agreement or contract, or to pay any costs associated with the preparation of responses, submittals or other documents or any related work by any applicant. The OSI reserves the right to interview or call for a presentation from, any applicant submitting a response. The OSI also reserves the right to discuss the proposals with any or all applicants. A selection or designation of a successful applicant shall not be construed as an offer of engagement until and unless a contract is fully

negotiated, and the OSI may request additional submission of information during the negotiations of the contract.

Right to Withdraw Proposal.

Applicants will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The applicant must submit a written withdrawal request signed by the applicant's duly authorized representative(s) addressed to the OSI at the address provided on page 5 of this RFQ/RSOI.

Revisions to this RFQ/RSOI.

In the event that it becomes necessary to clarify or revise this RFQ/RSOI, such clarification or revision will be made by written addendum, which will be published by posting on the OSI website and shared with all applicants

Applicant's Responsibility.

The applicant assumes sole responsibility for the complete effort required in this RFQ/RSOI. No special consideration shall be given after proposals are opened because of applicant's failure to be knowledgeable of all the requirements of this RFQ/RSOI. By submitting a proposal in response to this RFQ/RSOI, the applicant represents that it has satisfied itself, from its own investigation, of all the requirements of this RFQ/RSOI.

Contents of Proposals.

All materials submitted in accordance with this RFQ/RSOI will become and remain the property of the OSI and will not be returned.

Public records.

All proposals shall be considered public records. The OSI cannot guarantee confidentiality of any materials during the evaluation process or at any other time. Thus, proposals and communications exchanged in response to this RFQ/RSOI should be assumed to be subject to public disclosure.

No Obligation.

This RFQ/RSOI in no manner obligates the OSI to the eventual purchase of services offered until confirmed by an executed written agreement approved by the Superintendent. Progress toward this end is solely at the discretion of the OSI and may be terminated at any time prior to the signing of an agreement.

Termination.

This RFQ/RSOI may be canceled at any time and any and all proposals may be rejected, in whole or in part, when the OSI determines it is in the best interest of the OSI.

Contract Terms and Conditions. The contract between OSI and the selected applicant will follow the format specified by OSI and will contain the terms and conditions set forth in the attached Draft Contract. However, OSI reserves the right to negotiate provisions in addition to those contained in this RFP/RSOI Draft Contract with any applicant. The contents of this RFP/RSOI, as revised and/or supplemented, and the successful applicant's proposal will be incorporated into and become part of any resultant contract.

The OSI discourages exceptions from the contract terms and conditions as set forth in the RFP/RSOI Draft Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of OSI (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an applicant object to any of the terms and conditions as set forth in the RFP Draft Contract strongly enough to propose alternate terms and conditions in spite of the above, the applicant must propose specific alternative language. The OSI may or may not accept the alternative language. General references to the applicant's terms and conditions or attempts at complete substitutions of the Draft Contract are not acceptable to the OSI and will result in disqualification of the applicant's proposal.

The applicant must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If an applicant fails to propose any alternate terms and conditions during the procurement process (the RFP/RSOI process prior to selection as successful applicant), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP/RSOI process prior to selection as successful applicant) constitutes an explicit agreement by the applicant that the contractual terms and conditions contained herein are accepted by the applicant.

Applicants must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the OSI.

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP/RSOI process prior to selection as successful applicant), will be discussed only between the OSI and the applicant selected and shall not be deemed an opportunity to amend the applicant's proposal.