

Best Practices Checklist for Engaging and Managing Legal Counsel

The following checklist provides guidance to local government units (LGUs) for engaging and managing legal counsel. These best practices are divided into four categories: (1) developing policies and procedures, (2) conducting a competitive procurement, (3) drafting written contracts with legal counsel, and (4) managing legal counsel contracts.

1. Developing Policies and Procedures

Developing policies and procedures regarding the procurement, use and management of legal counsel can help reduce legal costs, ensure transparency and promote accountability. Specifically, we highlight the following best practices:

- ✓ *Establish policies and procedures for procuring legal counsel.* Determine who is responsible for developing the Request for Qualifications, what evaluative criteria will be used, who will participate in the evaluation of the responses and how scoring will be documented. Ensure that the procurement process complies with state and local pay-to-play laws.
- ✓ *Develop clearly defined job descriptions and job duties for in-house counsel.* Ensure appropriate supervision of those attorneys.
- ✓ *Determine who is responsible for delegating work to outside counsel or determining whether work should be performed in-house.* Clearly distinguish between services that should be provided by in-house counsel as opposed to those to be provided by outside counsel.
- ✓ *Establish processes for requesting legal advice.* Determine who is authorized to contact outside counsel to request legal advice and what internal documentation should be maintained reflecting those contacts. School districts should further ensure that their internal policies and procedures comply with the requirements of N.J.A.C. 6A:23A-5.2(a)(2).
- ✓ *Periodically review operating practices to ensure that those practices are in compliance with stated policies and procedures.*

2. Conducting a Competitive Procurement

The following best practices for procuring legal services are designed to promote public confidence in the public contracting process and ensure that LGUs are obtaining the most cost-effective services:

- ✓ *Ensure the pool of potential law firms or attorneys submitting proposals is as expansive as possible.* Broadly advertise legal services contracts on websites, in newspapers and through other available media. Endeavor to secure proposals from numerous law firms for each area of expertise sought.
- ✓ *Draft clear and unambiguous solicitations.* Solicitations for legal services should contain a clear and unambiguous statement of the work to be performed by the attorney or the area of law in which the attorney will be delegated work. The solicitation should clearly distinguish which services, if any, will be covered under a retainer and which services the attorney may bill for at an hourly rate.
- ✓ *Judge proposals based on pre-determined, merit-based criteria made known to vendors in the Request for Proposals (RFP) or Request for Qualifications (RFQ).* If certain criteria are more important to the LGU than others, consider assigning different weights to each criterion based on its relative importance. If the LGU uses an RFQ process to establish a pool of pre-qualified law firms or attorneys to perform services in a particular area of law, the LGU should specify in the RFQ how work will be delegated among the attorneys in that pool. For example, the LGU may select from the pool based on price quotations, on a rotating basis or based on other evaluative criteria specified in advance by the LGU.
- ✓ *Establish a qualified evaluation committee.* Ensure that the members of the evaluation committee are qualified to judge the strengths and weaknesses of the proposals. Carefully screen potential committee members to ensure that they are impartial arbiters in compliance with the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., and the School Ethics Act, N.J.S.A.18A:12-21.
- ✓ *Use a scoring process understandable to evaluators and vendors and maintain appropriate documentation.* Provide the criteria upon which proposals will be judged in writing to members of the evaluation committee prior to judging the proposals to allow for fully informed decision making. Members of the evaluation committee should provide written comments explaining the score they give to each proposal. This ensures a record of the decision-making process and a basis for review in the event of a legal challenge. Document every step of the evaluative process.

3. Using Formal Written Contracts with Legal Counsel

Contracts with outside legal counsel should address, at a minimum, the following topics related to billing and fee arrangements:

- ✓ *Scope of services/retainer arrangement:* The scope of work and the scope of the retainer should mirror the scope of work and scope of retainer included in the RFP or RFQ. Ensure there is no overlap between services to be covered by the retainer and those that can be billed hourly.
- ✓ *Billing rate and terms:* Set forth the approved billing rates for attorneys for the term of the contract.
- ✓ *Administrative work and secretarial services:* The contract should make clear that administrative work and secretarial services may not be billed at an hourly rate.
- ✓ *Expenses and disbursements:* Pay only for actual expenses incurred. The contract should set forth which expenses are reimbursable and should require itemized bills that detail disbursements.
- ✓ *Billing for travel time:* Set forth whether travel time is billable and at what rate.
- ✓ *Staffing expectations:* Designate a primary contact person at the LGU for the law firm. Address staffing expectations with regard to legal matters including conferences, court appearances and external meetings.
- ✓ *Detailed billing invoices:* Ensure that billing invoices include: (1) matter name, (2) date of service, (3) attorney's name or identification number, (4) attorney's hourly rate, (5) total charge for each task or billing entry, (6) a detailed description of the services provided or tasks performed and all individuals involved, (7) the amount of time spent on each particular service or task, and (8) an itemized list of any expenses or disbursements. Non-descriptive entries should not be accepted.
- ✓ *Block billing:* Require individualized, separate billing entries for each task performed. Do not allow block billing.

4. Managing Legal Counsel Contracts

With proper management of legal services contracts, LGUs can avoid excessive, unauthorized or fraudulent charges and can improve the quality of the legal services they receive.

The following have been identified as best practices in this regard:

- ✓ *Designate one employee who will have primary responsibility for reviewing the LGU's legal bills.* The designated employee should conduct a detailed and thorough review of all legal billing on a monthly basis to determine whether the billing complies with contractual requirements and whether all entries are appropriate. For example, the employee should confirm that all billing entries are individualized (i.e., not block billed) and sufficiently detailed, that the appropriate billing rate has been applied, that expenses have been itemized and that the monthly charges have been correctly calculated.
- ✓ *Periodically review the structure of legal counsel arrangements to determine whether costs savings or other improvements can be achieved.*
- ✓ *If the LGU has established a cap on legal services fees, the LGU should monitor those fees and ensure compliance with the cap.* If the cap must be exceeded, ensure there is appropriate written authorization to do so.