Request for Proposals:
Cybersecurity, Data Privacy and Nonprofit Legal Services

REVISED RFP RELEASE DATE: MARCH 20, 2017
PROPOSAL RECEIPT DEADLINE: BY 5:00 PM (EST) ON APRIL 10, 2017
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Request for Proposals (RFP): Cybersecurity, Data Privacy and Nonprofit Legal Services

Proposal Receipt Deadline: 5:00 PM (Eastern Time) on Monday, April 10, 2017

Submit proposals to: Troy Willitt, General Counsel at troy.willitt@aphl.org with a copy to APHL’s Legal Department at legal@aphl.org

Summary Information

The Association of Public Health Laboratories Inc. (APHL or the Association) is a nonprofit organization headquartered in Silver Spring, Maryland representing the non-federal governmental laboratories that protect the health and safety of the public. APHL has issued this RFP to identify outside legal counsel to assist on the matters described in Scope of Legal Service Needs below. The Association has clarified its short-term and anticipated long-term legal service needs and has revised the Anticipated RFP Schedule in this reissued version of the RFP.

In addition to describing the scope of legal work, this RFP provides (1) an overview of the proposal requirements, (2) details on the expected evaluation procedure that will be used to select one or more winning firms and (3) a summary of conditions or restrictions on the work or eligibility criteria that a firm must meet in order to be considered.

Anticipated RFP Schedule

At this time, APHL anticipates the following schedule:

March 20, 2017 – Revised RFP release date
March 27, 2017 – Optional prospective bidder information conference call
<table>
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<tr>
<td>April 3, 2017</td>
<td>Final day to submit RFP-related questions or clarifications</td>
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<td>April 10, 2017</td>
<td>Proposal Receipt Deadline at 5:00pm</td>
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<td>April 17, 2017</td>
<td>Final day of APHL’s evaluation and review of proposals</td>
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<td>April 18, 2017‡</td>
<td>Recommendations of APHL’s Legal Department submitted to APHL’s Executive Director, Chief Operating Officer and Senior Director, Public Health Systems for final decision</td>
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<td>April 20, 2017‡</td>
<td>APHL notifies selected outside legal counsel and selection posted on APHL’s procurement website (<a href="http://www.aphl.org/rfp">www.aphl.org/rfp</a>)</td>
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<tr>
<td>April 27, 2017‡</td>
<td>Draft engagement letters due from selected firm(s) to APHL or draft contracts due from APHL to selected firm, as applicable</td>
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‡ = If APHL elects to conduct the Optional Secondary Evaluation described below, these dates will change.

If APHL makes any modification to this anticipated schedule it will post the change to APHL’s procurement website, www.aphl.org/rfp.

### APHL Background

APHL is a nonprofit corporation organized under District of Columbia law that serves as the national member organization in the United States representing the nation’s public health laboratories (public health labs or PHLs). The Association’s members include all of the country’s state and territorial public health labs, a sizable number of its local PHLs and other affiliated institutional laboratories such as state agricultural, environmental or food safety laboratories. APHL is recognized as tax exempt by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code and its work on behalf of the PHLs spans more than 60 years.

In collaboration with its members, APHL advances laboratory systems and practices and promotes policies that support healthy communities globally. The Association serves as a liaison between the public health labs and federal and international agencies and it ensures that the network of PHLs has current and consistent scientific information in order to be ready for outbreaks and other public health emergencies.

In addition to the PHLs, APHL’s membership includes corporations and individuals with an interest in public health and laboratory science in several non-voting member categories and it currently has more than 800 members. APHL received approximately $37.25 Million in total revenue in 2015, the vast
majority of which was grant funding from several federal agencies—the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), the Health Resources and Services Administration (HRSA) and the Environmental Protection Agency (EPA) – provided through cooperative agreements with APHL.

Interested firms can find additional information about APHL and its work on behalf of the PHLs on the Association’s website, www.aphl.org.

Scope of Legal Service Needs

APHL seeks to identify outside legal counsel to assist with the following:

- The evaluation of new or existing programmatic work (with an initial focus on the work of its Informatics Department) to identify possible legal risks;
  - The creation of risk mitigation or management strategies;
- The review of APHL’s existing compliance and regulatory control measures;
  - The development of needed enhancements or additions to these control programs;
- The monitoring and upkeep of standard operating procedures across the organization and the oversight of international field office operations;
- The internal investigation into an allegation of staff fraud, misconduct or other malfeasance;
- The maintenance of a sound governance structure; and
- The provision of legal advice on other nonprofit matters.

The services listed above generally fall into three categories of work – Cybersecurity and Data Privacy, Internal Investigations and Compliance Controls, Governance and Other Nonprofit Matters – each described more fully below. While APHL would prefer to identify one firm that could provide the entire range of legal services, the Association recognizes that may not be possible and APHL encourages interested firms to submit proposals for only a portion of the legal services if a firm doesn’t have a practice that cover the entire scope.

APHL’s General Counsel will oversee and manage all outside legal resources and will be the selected firm’s primary point of contact for all services rendered to the Association.

Cybersecurity and Data Privacy

Over the past decade, APHL’s Informatics Program received federal funding through several of its Cooperative Agreements with CDC to assist the PHLs and other public health agencies with data standards development and implementation, public health data messaging and the deployment of novel
tools to simplify data exchange efforts. This work included the development of the APHL Informatics Messaging Service (AIMS) platform. Originally developed to streamline data exchange in connection with flu surveillance efforts, the AIMS platform has grown to facilitate the exchange of other public health data (including incidents of vaccine preventable diseases or other reportable conditions, the exchange of public health vital event or immunization records and the transmission of electronic laboratory reports, among others).

The AIMS platform is currently monitored and maintained by a third-party contractor to APHL and is a HIPAA compliant, FISMA moderate and FEDRAMP certified cloud-computing platform. APHL anticipates that the AIMS platform will soon be utilized to transmit public health data from some commercial laboratories, hospitals and medical providers to the appropriate public health authorities and to transmit health-related data among various public health agencies. For more information on the AIMS platform, interested firms should visit https://www.aphl.org/programs/informatics/Pages/aims_platform.aspx.

The AIMS platform is but one of the areas in which APHL’s programs work with potentially sensitive or protected data. While the Association has developed IT-related agreements and compliance control measures on a project-by-project basis, APHL desires a comprehensive approach and is looking for outside legal counsel to provide the following services:

- Assess and revise APHL and AIMS platform data protection and security policies, procedures and technical practices and develop comprehensive oversight and compliance control programs;
  - Interview key APHL staff and contractors staff;
  - Review details of existing APHL and AIMS platform written policies and procedures as well as the Association’s IT policies and vendor management program and revise when needed to ensure compliance and to promote best industry practices;
  - Provide written report that assesses current policies, outlines legal and regulatory obligations and identifies gaps in policy or process;
  - Draft policies as necessary to address observed gaps; and
  - Develop procedures that allow for ongoing oversight and monitoring of APHL staff and contractors with respect to adherence to data protection policies;

- Review current data breach or incident response plans, assess legal requirements and develop new standard operating procedures;
  - Review and revise APHL and AIMS platform data incident response plans;
  - Develop additional data breach response policies as needed to ensure legal and regulatory compliance; and
  - Train key APHL staff and contractors on incident reporting requirements;

- Review current IT related contracts – including data use or data sharing agreements, service level agreements and business associate agreements – and develop template documents;
• Review current contracts and identify any risks posed by their terms;
• Develop template service level agreements, business associate agreements and data use/sharing agreements;
• Provide training to APHL Legal Department staff on key issues to consider when developing or negotiating these type of contracts; and
• When requested, assist with the negotiation of key IT contracts; and
  ▪ Provide legal guidance as APHL considers additional data projects;
  ▪ Analyze applicable federal, state, local or international data protection law when requested; and
  ▪ Develop written overview of legal risk and other considerations raised by potential new projects.

APHL expects that work will commence in the cybersecurity and data privacy area no more than two weeks after APHL first posts the name of the firm selected to provide these legal services to its procurement webpage.

Internal Investigations and Compliance Controls

APHL sees two subsets of work in this area – one largely reactionary and the other more proactive in nature. APHL would utilize the first subset of legal services in connection with an internal investigation launched in response to an allegation of fraud, dishonesty or misconduct leveled against the Association or one or more of its employees, officers, directors or other key stakeholders. APHL expects to call on the proactive or second subset of legal services to support its efforts to enhance, strength or develop internal compliance control systems and/or auditing programs.

The Association doesn’t have an immediate need for legal services in either of the work subsets discussed above, but it does anticipate using outside legal counsel within the next 12 months to assist in the creation of a compliance control and internal audit program largely as a result of the expansion of APHL’s network of international branch offices and foreign subsidiaries in connection with its global health activities. As the need arises, APHL may request outside counsel to provide services similar to those listed below.

▪ Internal Investigations/Legal Services in Reaction to Alleged Misconduct
  • Investigation into internal APHL actions, decisions or conduct, including interviews with APHL staff, contractors or volunteers (i.e., the Association’s members) potentially involved in the matter under investigation and the collection and review of related correspondence, documents or materials;
  • Development of an assessment of the legal risks posed by an investigated matter for consideration by the General Counsel, APHL’s Executive Staff and/or its Board of Directors; or
• Preparation of a range of risk mitigation efforts or corrective actions for the Association to consider in response to an investigated matter.

  - **Compliance Control Programs/Legal Services to Proactively Limit Possible Misconduct**
  
  • Development of policies, procedures and standard documents for internal audit and compliance control programs related to APHL’s global operations or other programmatic work; or
  
  • Assessment of the risks posed by existing or proposed programmatic work, association procurement policies and subaward evaluation and monitoring efforts, and development of revised guidelines, policies or procedures to address identified risks.

**Governance and Other Nonprofit Matters**

While APHL doesn’t have a current governance or general nonprofit matter that requires outside legal services, these kind of matters can (and do) arise sporadically and may present themselves over the next year. Given that, APHL’s Legal Department would like to identify outside counsel who could be easily engaged to provide services when the need arises.

This broad category involves the full array of issues that a nonprofit might face (other than employment matters and trademark, copyright or related IP matters, as APHL will continue to use its current counsel in those areas). As a result, the selected firm might be tasked to do one or more of the following:

  - Advise on nonprofit organization legal issues;
  
  - Review governance and membership structure, advise on the risks posed by the current structure and/or recommend modifications to related policies, procedures and practices;
  
  - Advise on risks posed by potential collaborative projects with third parties;
  
  - Advise on government grant and contract issues;
  
  - Advise on responses to subpoenas, court orders, and requests for information from third parties;
  
  - Defend lawsuits, administrative claims, or other legal claims;
  
  - Conduct litigation as necessary; or
  
  - Provide other legal services as requested.

**Funding Availability**

APHL will likely use funding from a variety of sources to pay for legal services. To the extent that federal grant or other restricted funding will be used on a particular matter, APHL will work with the law firm to identify a scope of work that is feasible given the total budget and funding period associated with that
grant funding. For the period through June 30, 2017, APHL has more than $50,000 in available funding to support the initial work discussed in Cybersecurity and Data Privacy above.

Eligibility Criteria

Interested firms must certify in their proposal that they meet the following qualifications:

- The firm is not aware of any potential or existing conflict of interest that would preclude representation of APHL in the matters described in Cybersecurity and Data Privacy above;
- The firm is neither debarred nor suspended from receiving federal funding;
- The firm has an office in the Washington-Baltimore metro area that has the capacity to provide the services contemplated by this RFP;
- All of the firm’s attorneys identified in its proposal are licensed and in good standing in the jurisdiction in which they practice law; and
- The firm maintains sufficient insurance coverage to protect against any liability that may result from or arise out of the services rendered to APHL.

General RFP Information

Examination of Proposal Documents

An Interested firm should examine this RFP and any related material carefully and develop its proposal after examination of the type and nature of the proposed work and the terms, instructions, notices or other conditions noted in this RFP.

Assistance in Proposal Preparation

APHL staff will neither assist a firm or its agent in the actual preparation of a proposal nor reimburse a firm or its agent for the costs or expenses associated with the development of its proposal.

Interpretation or Clarification of RFP Provisions

If an interested firm requires clarification or interpretation of any portion of this RFP, or if it believes that the RFP or related information contains some ambiguity, error, inconsistency or discrepancy, the firm should deliver a written request to APHL by 5:00 PM (Eastern Time) on April 3, 2017. All requests must be submitted to the individual(s) identified in the Additional Information and Optional Conference Call.
section below. If a firm fails to deliver a written request by this deadline, that firm will not be eligible to appeal the RFP outcome based on an alleged error, ambiguity or uncertainty in the RFP.

APHL will deliver a written response to the requesting firm within three business days from its receipt of the request. In addition, APHL will post a redacted version of the request and the response to APHL’s procurement website, www.aphl.org/rfp within one business day of responding to the requesting firm.

Proposal Requirements

An interested firm must provide APHL with the information described in each of the subsections below. If a firm fails to include all of the requested information, APHL will consider the proposal incomplete and may, in its sole discretion, disqualify that proposal from evaluation or further consideration.

Cover Letter

Firms should include an introductory letter stating your firm’s name and address and providing APHL with a primary point of contact for the RFP evaluation process.

Firm Capabilities and Staffing

An interested firm must include a general overview of the firm, specifically addressing the issues identified below.

Description of the Firm

An interested firm must include in its proposal an overview or background information on the firm as a whole. The firm should include information on items such as (1) the size of the firm, (2) the number and location of firm offices, (3) the ratio of partners to associates, (4) a summary of policies regarding supervision of legal assistants and associates and (5) a description of how the firm is managed.

The firm is strongly encouraged to include (1) a separate description of its office (or offices) in the Washington-Baltimore region, (2) a summary of the practice areas present in the office(s) and (3) a list of representative clients associated with those practice areas.

Staffing and Team to Be Used

A firm must generally describe how the firm staffs matters. The firm must also provide detailed information (including educational background and prior experience) on the specific personnel that are likely to be involved in matters described above in Cybersecurity and Data Privacy and potential proposed personnel for the future scope of work discussed in the Internal Investigations and Compliance Controls and Governance and Other Nonprofit Matters sections above. If a firm is only applying for a portion of the work discussed in this RFP, the firm need only provide this detailed information for the work that is of
interest to the firm. The firm should provide copies of the named personnel’s current resumes in an exhibit or appendix to its proposal.

Law Firm Liaison

APHL’s General Counsel or, at the request of the General Counsel, one of the other lawyers in APHL’s Legal Department, will work with a counterpart from the selected firm(s) to manage the overall relationship between the Association and each selected firm. An interested firm must identify one or more individuals who would serve in the counterpart role for the firm and should provide information on (1) how the firm defines this liaison role, (2) any additional cost that would be associated with this role, (3) where the identified liaison(s) currently practice and (4) what qualifications the liaison(s) would bring to the role.

Similar Experience and/or Current and Past Work for APHL

If an interested firm has previously worked with or for APHL, or has been involved on transactions involving the AIMS platform discussed in the Cybersecurity and Data Privacy section above, the firm must provide a summary of that prior work. All interested firms should provide APHL with a description of similar or relevant experience that best demonstrates the firm’s ability to perform the work described in this RFP (or, if a firm is only applying for a portion of the work described in this RFP, the work described in the relevant portion of the RFP).

Temporary Assignment of Personnel (if needed)

An interested firm should indicate whether the firm would be able to loan lawyers and/or paralegals to APHL on short to medium term basis (ranging from one month to twelve months) if there was a need for these services to address staffing needs or temporary demands at APHL. If a firm would be able to do so, the firm should include an overview of its secondment or temporary assignment policies and the anticipated costs associated with a temporary placement.

References

Interested firms must provide at least three references in their proposals, with each reference listing a business name, address, phone number and the name of a person that APHL may contact regarding the firm’s work for that client.

Costs and Invoicing

A firm must provide hourly rates for all personnel that are likely to be involved in performing the work described in this RFP. Interested firms must also provide information on any alternate fee arrangements that the firm utilizes in connection with the performance of a specific service and must indicate whether the firm would be able, upon reasonable APHL request, to provide an advance estimate of expense or a budget on a given matter. In addition, firms must provide a per unit amount charged to their clients for miscellaneous expenses such as long-distance telephone calls, photocopies, delivery fees, etc.
Each firm must indicate the size of the retainer fee, if any, that it anticipate APHL will need to provide before the firm begins any substantive work. In addition, a firm must note the frequency with which it expects to invoice APHL (note that APHL will not accept invoicing more frequently than monthly).

Submission of Proposals

APHL must receive all proposals by the Proposal Receipt Deadline (see Anticipated RFP Schedule above).

An interested firm should email a PDF of its proposal to APHL’s General Counsel at troy.willitt@aphl.org, with a copy to its Legal Department at legal@aphl.org. Please use “Proposal for Legal Services from [insert name of firm]” as the subject line of your email. APHL’s Legal Department will acknowledge receipt of proposals within two business days.

Firms may also submit two physical copies of their proposal to the following:

Association of Public Health Laboratories
Attn: Legal Department
8515 Georgia Avenue, Suite 700
Silver Spring, MD 20910

Evaluation of Proposals

While overall legal cost will be an important factor in considering proposals, APHL will look at other factors and may select a firm that did not submit the lowest priced proposal. APHL’s General Counsel, in collaboration with APHL’s Director, Informatics will conduct an initial evaluation of complete proposals received by the Proposal Receipt Deadline. During this period, APHL may contact interested firms to discuss their proposal in more detail, and will reach out to a firm’s references as part of the evaluation process. APHL’s General Counsel will prepare a summary evaluation and will rank the proposals (base on the Evaluation Criteria listed below) and will transmit that to APHL’s Executive Director, Chief Operating Officer and Senior Direction, Public Health Systems for final consideration and review.

The final review team may accept the General Counsel’s summary evaluation or may ask APHL’s Legal Department or Informatics Program for more information on the firms identified in the summary evaluation. The final review team will be entitled to select one of the alternate firms identified in the summary memorandum if the following conditions are true:

- The selected alternate firm has an overall evaluation score that is similar to that of the top ranked firm; and
The final review team members believe, in good faith, that the additional information demonstrate a better organizational fit with APHL, its staff or members, or the mission, vision or values of the Association.

If the final review team accepts the summary evaluation as prepared by the General Counsel, APHL’s Legal Department will notify the top firm (or firms, if no one firm is selected for the entire scope of work) of the outcome and will begin working with the firm(s) on the terms of a letter of engagement or contract. If the final review team selects the second or third top firm (or firms, if applicable) from the summary evaluation, APHL’s Legal Department will notify the firm(s) selected by the final review team and will begin working with that firm on the terms of a letter of engagement or contracts.

Evaluation Criteria

APHL will use a 20-point scale, based on the following criteria, to evaluate each firm’s proposal:

Cost

APHL will look at the relative costs of a particular firm’s proposal against the costs proposed by the other applicants. The proposals will be grouped in 5 categories:

- Lowest 20% of costs (5 points)
- Second lowest 20% of costs (4 points)
- Middle 20% of costs (3 points)
- Second highest 20% of costs (2 points)
- Highest 20% of costs (1 point)

Responsiveness

APHL will look at how responsive a firm’s proposal is to this RFP. The proposals will be grouped in 5 categories:

- Fully responsive, meaning the proposal fully covers the RFP’s main points (5 points)
- Highly responsive, meaning the proposal addresses between 75% and 99% of the RFP’s main points (4 points)
- Responsive, meaning the proposal addresses between 50% and 74% of these points (3 points)
- Marginally responsive, meaning the proposal addresses between 25% and 49% of these points (2 points)
- Unresponsive, meaning the proposal addresses less than 25% of these points (1 point)

## Prior Experience

APHL will look at the relative prior experience of a particular firm’s proposal against the experience indicated by the other applicants. The proposals will be grouped in 5 categories:

- Highest 20% of experience (5 points)
- Second highest 20% of experience (4 points)
- Middle 20% of experience (3 points)
- Second lowest 20% of experience (2 points)
- Lowest 20% of experience (1 point)

## Professional Qualifications

APHL will look at the relative qualifications of a particular firm’s personnel when compared to the personnel listed by the other applicants. The proposals will be grouped in 5 categories:

- Highest 20% of qualifications (5 points)
- Second highest 20% of qualifications (4 points)
- Middle 20% of qualifications (3 points)
- Second lowest 20% of qualifications (2 points)
- Lowest 20% of qualifications (1 point)

## Optional Secondary Evaluation

If two or more firms have similar evaluation scores, APHL may solicit supplemental information or may request interviews with the firms whose scores are similar. In this event, APHL’s General Counsel will notify the final review team discussed in Evaluation of Proposals above that a secondary evaluation is needed and the final review team will receive a summary report for consideration only after APHL completes the optional secondary evaluation. APHL’s Legal Department will also contact each of the firms involved in the secondary evaluation and will provide them with the guidelines and anticipated schedule for this optional evaluation process.

APHL will notify all submitting firms by email that it has extended the evaluation period and will provide an updated review schedule. APHL will post the revised RFP schedule to [www.aphl.org/rfp](http://www.aphl.org/rfp) on the same day it sends the notices to the submitting firms.
Post-Evaluation Procedures

APHL will send written notification to unsuccessful applicants by email or by U.S. mail within 30 days of the date the name of the winning firm is (or winning firms are) posted. All applicants will be entitled to utilize APHL’s RFP Appeals Process to formulate a protest regarding alleged irregularities or improprieties during the procurement process. Specific details of this policy are located on APHL’s procurement website (www.aphl.org/rfp).

Additional Information and Optional Conference Call

Interested firms should direct any question on this RFP to Troy Willitt, General Counsel at troy.willitt@aphl.org with a copy to APHL’s Legal Department at legal@aphl.org.

APHL will hold an optional informational conference call on Monday, March 27, 2017 at 2:00 PM (Eastern Time). APHL will provide a brief overview of the expected scope of legal services and will discuss potential medium- to long-range matters on this call. Interested firms will have an opportunity to ask questions about this RFP. APHL will post a summary of the questions asked and answers provided during the conference call to www.aphl.org/rfp within five business days.

The dial in information for this optional conference call is as follows:

Phone number: 1.240.485.3919

Conference ID: 890138