RFP Overview

The University of California, UC Legal - Office of the General Counsel ("UC Legal") seeks a limited number of preferred outside law firms to assist with the majority of our health law, academic research, and cybersecurity/technology 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 UC Legal Preferred Health Affairs, Research & Technology Law Counsel ("preferred provider panel" or "P3") and will represent the University as part of the UC Legal Health Affairs, Research & Technology Law Preferred Provider Program ("PROGRAM"). We anticipate that each firm will have significant opportunities, subject to performance, to represent the University annually. While a separate litigation panel has been developed to handle most litigated matters, our practice groups work closely on non-litigated and litigated matters of interest to both.

UC Legal is in the process of moving away from the standard billable-hour model, and, unless otherwise approved, all fees under the PROGRAM will be value-based (see Value-Based Pricing section below). P3 firms 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-P3 firms, we anticipate that a significant majority of the Covered Matters work will go to P3 firms.

Responding firms must agree to abide by the P3 Requirements and Terms and Conditions of this RFP as stated below.

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, eighteen health professions schools, and a statewide Division of Agriculture and Natural Resources. The University also is 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. The University is governed by a Board of Regents.

About UC Legal

UC Legal, 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/uc-legal.
In-house counsel located at the Office of the President and resident at the University’s campuses, medical centers, and national laboratories partner with outside counsel to provide legal services in a variety of areas. Covered Matters arising out of this RFP typically will be supervised by Oakland-based attorneys in UC Legal’s Health Affairs, Research & Technology Law (“HATL”) section. Other sections of UC Legal supervise matters in Business, Finance & Innovation; Education, Employment & Governance; and Litigation & Capital Strategies. Smaller matters sometimes are supervised locally at a campus, medical center, or national laboratory.

**PROGRAM Scope (Covered Matters)**

The scope of this RFP and the P3 is, except as otherwise expressly provided, for U.S. matters only, which are heavily concentrated in California. The matter types are broken into the following groups (listed below): Group I matters are high or moderate impact or complexity regulatory/white collar or cybersecurity matters that present significant operational, reputational, and/or financial (>500K) risk to the University and high or moderate impact or complexity corporate transactions (e.g., whole hospital mergers, acquisitions, or affiliations; multi-year system-wide provider agreements with health plans; ancillary provider joint ventures; single-campus health plan agreements). Group II matters are highly specialized and typically (but not consistently) smaller impact/value matters and may include fixed-fee retainers for routine advisory work.

You may choose to represent the University in any or all of the matter types listed, but you should apply only 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 matter type for which your firm would like to be considered. Note that demonstrated expertise in one or more Group II categories may be advantageous in being designated to Group I or in receiving individual case assignments regardless of whether you are selected to the Group I panel.

**Group I (high or moderate impact or complexity regulatory, white collar or cybersecurity matters; high or moderate impact or complexity corporate transactions)**

- Cybersecurity Advice, Breach Response, and Follow-Up Litigation
- Reimbursement/Payer Disputes
- Transactions
- White Collar – Internal Investigations and Defense of Government Investigations (including via *qui tam* complaints)

**Group II (highly specialized, typically smaller, less frequent – but sometimes high-impact/high-risk; deep knowledge of both federal and California regulatory systems generally required)**

- Academic Affairs
  - Faculty-Administration Relations/Shared Governance
  - Faculty Practice Plans (and affiliations with Academic Health Systems)
  - Graduate Medical Education
  - Religious Liberty/Establishment Issues
- Antitrust (healthcare-specific)
- Health Insurance/Health Plans (employer and provider sides)
  - Captive Insurers; Risk Retention Groups
  - Managed Care/Insurance Contracting
  - Managed Care/Insurance Regulation (esp. Knox-Keene; DMHC; CDI)
  - Self-Funded Health Plan Administration
Information Privacy, Confidentiality, and Security
- Cybersecurity and Breach Response
- Federal privacy laws and regulations including HIPAA, FERPA, GLBA, SAMHSA Regulations, human subjects research laws and regulations promulgated by OHRP and FDA, interoperability and information blocking regulations, and related higher education, research, and health privacy rules
- Federal information security laws including HIPAA and FISMA, standards including NIST and ISO, and related higher education, research, and health privacy rules
- California privacy and security laws and regulations including the Information Practices Act, Confidentiality of Medical Information Act, and other health privacy rules
- National and international data breach reporting rules
- The European Union’s General Data Protection Regulation
- Other international privacy and security laws and regulations
- If you are applying for this work, please describe any internal technical experts you employ, specify whether they are attorneys or non-attorneys, and provide their rates

Medical Staff
- PSQIA
- Medical Staff Governance
- Peer Review including Fair Hearings

Pharmacy Regulation
- Hospital Pharmacy Representation before Board of Pharmacy
- Controlled substances laws and regulations
- Pharmacy laws and regulations including licensing and compounding pharmacy rules

Public/Academic Hospital and Health System Operations and Reimbursement
- Clinical Laboratories – Accreditation and Reimbursement
- Enrollment (Medicare, Medicaid/Medi-Cal)
- FQHCs (Federally Qualified Health Centers)
- Government Health Care Program Reimbursement (including Medicare, California Waiver/Medi-Cal and Supplemental Payment Systems; Intergovernmental Transfers; Certified Public Expenditures)
- Hospital Operations/Regulatory Advice (e.g., CCR Title 22, Medicare COPs, TJC)
- Nonprofit Tax Matters
- VAMC Affiliations

Regulatory/Internal Investigations/White Collar
- Conflicts of Interest/Open Payments
- Controlled Substances Regulation and Diversion
- Corporate Governance (with particular focus in public entities, higher education, and/or health care organizations)
- Fraud and Abuse – Health Care
- Fraud and Abuse – Research
- Government Investigations/Audits (e.g., DOJ, OIG, NIH, NSF, OHRP, FDA, CDPH, CMS)
- Immigration
- Medical Marijuana/Legalization
- Sexual Harassment/Sexual Violence in Academic Medical Centers

Research and Clinical Trials
- Animal Research
- Conflicts of Interest in Research (including NIH, NSF, NASA, DOE, FDA regulations, and undue foreign influence matters)
- Export Controls/Fundamental Research Exclusion/OFAC Sanctions
PROGRAM Requirements

1. Abide by the Health Affairs, Research & Technology Master Retention (Appendix A)
2. Confirm that no conflicts exist (or in response to the General Questions below, specify any that do), and agree that with very limited and narrow exceptions proposals for which must be made as part of your RFP response, UC Legal will not approve advance blanket waiver requests and instead will consider all waivers on a case-by-case basis
3. For Group I matters, agree that, unless otherwise directed or approved by UC, fees will be structured, quoted, and negotiated using value-based pricing arrangements (see Value-Based Pricing section below)
4. For Group II matters only, provide a proposal for a heavily discounted monthly retainer for routine advice in any combination of the practice areas listed (all-in, by group, or individually)
5. Use the UC eBilling system for electronic invoice submittals
6. Provide and update an invoice schedule for all value-based fee arrangements (see Invoice Schedule section below)
7. Participate in the Annual Performance Review (see Annual Performance Review section below)
8. Complete the UC Legal Report Card on Commitment to Diversity, Equity, & Inclusion (see UC Legal Report Card section below)
9. For any firm accepted for Group I matters, provide a copy of the firm’s information security plan (e.g., HITRUST certification, SOC 2 report or equivalent) and make information security leadership available for follow up questions or requests for information
10. No mention of the University of California or use of its marks in any marketing or similar material without prior written approval and then only consistent with the requirements of Cal. Ed. Code §§ 92000 et seq. and applicable University policies
11. Provide at least a 15% discount for any hourly fees (hourly work performed only with prior approval)

Value-Based Pricing
The Health Affairs, Research & Technology Law Group is responsible for regulatory advice, transactions, and internal and government investigations throughout the University’s academic medical centers (which collectively form a $12 billion enterprise) and for other regulatory work throughout the University involving research, technology, and cybersecurity. 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 many of our matters. Our focus is on substantive deliverables and results, not time or effort expended. Unless otherwise approved by UC Legal in advance, all work done by PROGRAM firms will be under value-based fee arrangements. These arrangements usually take the form of fixed fees, success fees, contingent fees, or monthly retainers.

Matter Engagement Process

For most Group I matters in which we intend to engage outside counsel, those firms that have been qualified for that matter type will be given a matter-specific RFP which will include a summary of the matter, copies of relevant materials, a few substantive questions about the specific matter as well as request a list of the attorneys who are proposed to work on it. In addition, the firm will submit either a pricing template or other requested pricing structure with a proposed value-based pricing proposal. We 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 certainly will be a factor, as will the composition of the proposed team.

Invoice Schedules

For each matter engagement, an approved fixed fee 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 on 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 be billed only after the work for that specific phase has commenced.

Annual Performance Review

As a means to enhance communication and provide feedback to PROGRAM firms, UC Legal may, at its discretion and as necessary, schedule an annual performance review with each PROGRAM firm at the UC Legal office in Oakland or via videoconference at the firm’s discretion. We may request that the PROGRAM relationship partner(s) attend. Attendees from UC Legal may include the General Counsel, Deputy General Counsel and Managing Counsel of Health Affairs, Research & Technology Law, other UC Legal lawyers, and/or representatives from our clients. The annual performance review will include a review of the matters, substantive issues, results, financials, and any other topics requested by either party. PROGRAM firms will not charge for time or expenses to attend the annual performance review. Results of these reviews may influence continued participation in the PROGRAM.
UC Legal Report Card

Each PROGRAM firm will be required to complete the UC Legal Report Card on Commitment to Diversity, Equity, & Inclusion (“Report Card”) each year. The Report Card does not assess a firm’s demographics; it is an assessment of the efforts a PROGRAM firm has made to foster diversity, equity, and inclusion. PROGRAM firms will not charge for time or expenses to complete the Report Card. Report card results will be reviewed annually and will influence continued participation in the PROGRAM.

Engagement Requirements

Upon acceptance into the PROGRAM, UC Legal will provide selected firms with an engagement letter indicating agreement to abide by the PROGRAM Requirements and Terms and Conditions as stated in this RFP. After the engagement letters are signed and approved, each subsequent matter assigned to a PROGRAM firm under the PROGRAM will require only an approved Retention Schedule and a reference to the approved engagement letter.

General Questions – Responses Required

Please provide succinct responses that clearly and directly answer each question below.

1. **Contact Information/Relationship Partner(s).** Provide the name and contact information of the attorney with primary responsibility for the overall relationship with UC Legal (note: more than one attorney may be named; for example, if you are the relationship partner for the Litigation Team, you may name a different relationship partner for the Health Affairs, Research & Technology Law Team, and within HATL, you may name more than one relationship partner – e.g., one for transactional matters and one for regulatory matters or one for California and one for Washington, DC/Federal matters).

2. **Firm/Office Demographics.** The following information will not affect evaluation of a firm’s application. Please 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 firm wide and number in California offices by location
   - 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, openly LGBTQ, and military 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, openly LGBTQ, and military veterans)
   - The name and contact information for your diversity chair

3. **Recruitment/Hiring Practices.** Please provide the following:
   - Information about your firm’s recruitment practices and how they address historic underutilization of NALP-designated populations
• 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, or in the profession
• Information about any other initiatives sponsored or supported specifically by the proposed relationship partner(s) identified in your response to Question No. 1 aimed at promoting diversity within your firm or in the profession

4. **UC Matters.** Describe how UC matters and credit for working on UC matters are assigned to partners, associates, and other staff.

5. **Associate Development Opportunities.** This question must be completed by any firm submitting a proposal for Group I work. Please state whether your firm would be willing to use best efforts to provide for each calendar year quarter of the PROGRAM at least one high-visibility opportunity in connection with UC Legal to an associate as part of a program to promote diversity, equity and inclusion. The high-visibility opportunity could include a presentation before University senior leadership, an MCLE presentation before UC Legal attorneys, a substantive presentation to an audience of University substantive experts such as the Health Chief Compliance Officers or co-presenting at a legal association conference (e.g., AHLA, CSHA, NACUA). The goal of this initiative is to contribute to the University’s teaching and public service missions, and to increase diversity in the legal profession. Please describe how you would propose to implement this initiative including a description of any similar initiative at your firm, a list of any other high-visibility opportunities to which your firm would be willing to commit and whether the associate participating in the program should be the same associate or a different associate each calendar year or different time period.

6. **Scenario.** During a client conference, an equity partner makes sexist, culturally insensitive, racist, homophobic, ableist, or otherwise discriminatory remarks. How would the firm handle the situation? Please include descriptions of any policies and procedures, committees, or trainings currently in place at the firm that would apply to this situation.

7. **Diversity Efforts.** Describe where you think your firm needs to improve the most in creating a more diverse, equitable, and inclusive workplace.

8. **Program/Matter/Knowledge Management.** 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 UC Legal. These may range from client extranets to billing/reimbursement dashboards to access to educational presentations, for example.

9. **Personal Conflicts of Interest.** Describe any business or personal relationships your firm or proposed members of your panel team have with any UC Legal attorney or staff member, or with other senior leaders of the University of California or UC Health (e.g., Board of Regents, Regents committee members, Regents Officers, President, Vice Presidents, Chancellors, Vice Chancellors, Deans, CEOs, CFOs, CMOs, COOs, CSOs).

10. **Value-Added Services.** Describe any additional services that you would provide UC Legal at no cost to enhance the value of your service overall (e.g., in-service training, access to extranets, etc.).

11. **Firm Conflicts.** Describe any conflicts your firm has with the University as a result of your
representation of other clients for which you will require a waiver (e.g., as a result of pending litigation or transactions). Also describe any (narrowly tailored) blanket or future waivers you would like us to consider should we choose you for our panel.

12. **Ethical Walls.** Describe the arrangements you are willing and able to make to assure that confidential client information is not inadvertently released or otherwise utilized when the University has waived a conflict.

13. **Information Security.** Describe your firm’s information security infrastructure including, without limitation, data security, document security, safeguards against exposure of confidential information, and measures to ensure information integrity and availability and otherwise prevent information compromise. Confirm your CISO’s willingness to confer with our security experts during the RFP process and occasionally thereafter on issues of common interest or concern. Successful firms who will be handling protected health information or personally identifiable information will be required to complete a detailed security questionnaire—or a simplified version depending on the size of the firm—prior to engagement and must accept [Appendix DS](#) or a simplified or negotiated version—as part of their panel engagement letter. For any firm bidding for Group I matters, confirm your willingness to provide a copy of the firm’s information security plan (e.g., HITRUST certification, SOC 2 report, or equivalent) and, if your firm is selected as a Group I Program firm, to confer on follow up questions or requests for information.

14. **Value-Based Pricing/Alternative Fee Arrangements.** Describe your experience with value-based pricing and other alternative fee arrangements in each area where you are applying. Be as specific as possible. A general “we are open to alternative fee arrangements” or “we have worked under alternative fee arrangements” is not a useful response.

15. **Hourly Rates.** For situations where UC Legal approves hourly work, please provide your current rack rates and rates expected for CY 2022-24 for all attorneys and other billing staff you propose to work on PROGRAM matters. Also provide your proposed hourly rate for partners, senior counsel/of-counsel, associates, and non-attorney billing staff (e.g., paralegals and crisis communications experts). We strongly prefer standardized rates in each class but will accept proposals by practice group or, if absolutely necessary, by individual. Provide a proposal that will be good for at least three years (whether one fee good for the entire period or a fee plus a defined escalator).

16. **Professional Misconduct/Professional Malpractice.** 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.

17. **Major Expected Changes.** 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.

18. **Additional Considerations.** Discuss any other issues or considerations that you believe are relevant as a candidate for the PROGRAM.

**Group-Specific Questions – Responses Required**

For each matter group or specific matter type for which you wish to be considered in Group I, please
provide:

1. A brief description of your relevant 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 practice for UC as well as of all other members of the proposed team. Explain why each individual has been proposed and their specific area of work or specialty, including any relevant experience with government agencies regulating health care, academic research or teaching, or cybersecurity.

3. A description of at least three similar matters handled in the past year along with the final disposition as applicable.

For Group II matters, please respond to at least the first two questions.

Terms and Conditions

Applications must be submitted through the Smartsheet form available at https://www.ucop.edu/uc-legal/hatl-rfp.html. We strongly recommend preparing your responses before filling out the submission form in Smartsheet. Smartsheet does not have an option to save your progress through multiple sessions. UC Legal will accept submissions no later than 5:00 p.m. on Tuesday, November 30, 2021.

We do not intend to look at extraneous marketing material during this process. ALSO, DO NOT SEND PAPER. IT WILL BE RECYCLED WITHOUT REVIEW AND ITS CONTENT WILL NOT BE CONSIDERED IN THIS PROCESS. WE LIKE THE TREES AND DO WHAT WE CAN TO SAVE THEM.

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

If your firm has a question during this process, please send it to Hoyt.Sze@ucop.edu with a copy to Brigid.Saulny@ucop.edu. All such questions or requests must be received by close of business on November 30, 2021, and all such questions or requests received after such date will be answered, if at all, by UC Legal, in its sole discretion. You are not authorized to contact any other University employee concerning this RFP. Failure to adhere to this requirement will be grounds for disqualifying your proposal.

Following review of the written proposals, UC Legal may ask firms in which it continues to have an interest to participate in an interview by videoconference. In no event will UC Legal schedule meetings in advance of receipt of your RFP response, and the only meetings UC Legal intends to hold, if any, are with the finalist law firms. In no event should any firm bill any time in connection with the videoconference interview or in preparation of any materials in response to this RFP. If your firm is invited to an interview, only the individuals being proposed to work as part of the PROGRAM should attend. This means, for example, that you should not send an employment lawyer to represent your firm on the HATL P3 just because that person happens to have a pre-existing relationship with the University; doing so will be counterproductive. UC Legal also may award a position as a Preferred HATL Counsel without further negotiations or discussions or further interviews with any given finalist law
This RFP does not bind UC Legal 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. UC Legal, in its sole discretion, may or may not make an award and reserves the right to reject any and all responses received. UC Legal also reserves the right to terminate a retention at any time in its sole discretion.

Evaluation Criteria

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

Appendices

Appendix A: Health Affairs, Research & Technology Law Group Master Retention