

**REQUEST FOR PROPOSALS
SPECIAL COUNSEL FOR
THE PONCA TRIBE OF NEBRASKA
(ERISA MATTERS)**

1. Introduction

The Ponca Tribe of Nebraska (“Tribe”) is seeking proposals from qualified, responsible, licensed attorneys/firms specializing in the Employee Retirement Income Security Act (ERISA), with a focus on Indian tribes and tribal governments, to provide legal services related to ERISA and similar specialized, technical legal issues which arise from time to time. The Tribe is a federally recognized Indian tribe with governmental, economic enterprise, and non-profit entities.

2. Background

Currently, the Tribe maintains a non-government 401(k) plan for its government operations and some economic enterprises. The Tribe’s gaming enterprise maintains its own separate non-governmental 401(k) plan and its housing authority maintains its own government plan which was spun off of the Tribe’s plan several years ago. The Tribe also maintains a self-insured health plan subject to ERISA for both its government operations, excepting the housing authority, and all economic enterprises.

The Tribe requires specialized legal expertise to navigate compliance challenges given the Tribe’s governmental status and ensure the effective administration of our employee benefit plans subject to ERISA and similar specialized federal laws.

3. Scope of Services

The selected attorney/firm will provide specialized ERISA legal services to the Tribe, including but not limited to:

- Review and analysis of employee benefit plans, including any restatements, amendments, and the like.
- Guidance on plan design, implementation, and administration, including potential spinning off or combining plans for the Tribe to establish a government plan separate from any non-government plans for purposes of clarifying and simplifying legal compliance, and handling service credit for employees transferring between entities maintaining separate plans.
- Assistance with preparing and reviewing plan documents, summary plan descriptions, and other required disclosures, including for ensuring inclusion and compliance with the laws of the Tribe which may be excluded from prepared plans (e.g., marriage/spouses, dependents, Tribal Court QDROs, etc.), and obtaining any necessary United States Internal Revenue Service (IRS) or Department of Labor (DOL) determinations related to amendments (e.g., Form 5307).
- Advise and consult with and give legal assistance, including legal opinions, to the Tribe on unique issues facing the Tribe as a government with ERISA and other federal law benefits compliance, including controlled group questions and fiduciary duties and responsibilities.

- Legal representation in audits, investigations, and litigation related to ERISA compliance.
- Advise and consult with and give legal assistance, including legal opinions, to the Tribe on compliance with the Affordable Care Act (ACA) and other related laws and regulations, such as Aggregated ALE Groups and Designated Government Entities (DGE).
- Advise, guidance, and consultation on tribal sovereignty considerations related to the Tribe's benefit plans, including multi-employer plan considerations, controlled group issues, and compliance with the laws of the Tribe.
- Specifically assisting with the navigation of the unique aspects of tribal sovereignty and how it interacts with ERISA regulations, particularly as the Tribe maintains government employees on a non-government plan or if it transitions to a government plan separate from non-government plans for its entities not performing what the IRS considers "essential governmental functions."

4. Proposal Requirements

Interested firms are requested to submit proposals that include the following information:

- Name and address of attorney/firm.
- Name and telephone number of person or persons responsible for the response who may be contacted in the event of questions or notification.
- Attorney/firm history and qualifications.
- A specific description of the attorney/firm's qualifications and experience related to the items identified in this RFP, including experience and knowledge of ERISA law and specifically representing tribal governments or enterprises in ERISA matters.
- Name and resume, including jurisdictions of admission to practice law and relevant experience and credentials, of attorney(s) that would be assigned to and/or primarily responsible for the work.
- Names and resumes, including jurisdictions of admission to practice law and relevant experience and credentials, of other attorneys who will assist the primary attorney, if any.
- A description of the firm's understanding of the unique challenges faced by tribal governments and enterprises regarding ERISA compliance.
- Other information which you feel would be of assistance in evaluating the attorney/firm's ability to serve as special counsel for the matters identified in this RFP.
- Ability of the attorney/firm to evaluate legal issues, prepare documents, and complete assigned tasks in a timely manner.
- Proposed fees and costs, which should include information on the hourly billing rates of each attorney or other legal staff who is expected to work on this representation and charges for expenses, if any, such as traveling rate (including whether and to what extent charges are made while in travel status without performing legal work), legal research,

copies, long distance telephone calls, and faxes as well as timekeeping and invoicing practices. Any available or proposed alternative fee arrangements may be included.

- Names and telephone numbers of at least three (3) references that may be contacted by the Tribe for whom you have provided services similar to those described in this RFP with a brief description of the work performed.
- Proof of professional liability insurance.
- A description of any arrangement or representation, formal or informal, that the attorney/firm has with any party that could potentially conflict with your obligation to provide independent and unbiased advice and recommendations to the Tribe for the matters identified in this RFP.
- Disclosure of any other potential conflicts of interest, including representation of clients in opposition to or contrary to the interests of Indian nations, particularly with respect to matters within the scope of work of this RFP.
- A description of any litigation, administrative proceeding, or investigations (actual or pending, or which has occurred in the last five years) in which the attorney/firm, or any attorney with the firm, is involved or to which it is subject, or of which the Tribe should be aware in evaluating the attorney/firm's capacity to undertake this engagement.
- Identification of any proposed issues which may prevent or interfere with any attorney who may provide services becoming admitted to practice law in the Tribe.
- The signature of a responsible official having the authority to bind the responder to the execution of a contract.

5. Selection Criteria

The Tribe will evaluate proposals based on the following criteria:

- Experience and expertise in ERISA law and other matters similar to those described in this RFP, particularly with tribal governments and enterprises.
- Past working experience with Indian tribes.
- Qualifications and experience of the assigned attorneys.
- Accessibility of key personnel to the Tribe's staff during engagement.
- Understanding of the Tribe's needs and proposed approach to service delivery.
- Fee structure/costs, including reasonableness.
- Client references.
- Demonstrated understanding of tribal sovereignty.
- Quality of proposal and responsiveness to this RFP.

- **Ponca Preference:** In accordance with the Ponca Tribe of Nebraska's policies, preference will be given to Ponca Tribal members and Ponca-owned and Ponca-managed/operated businesses who meet the minimum qualifications, consistent with the standards for quality in the delivery of services and applicable licensing requirements.
- **Indian Preference:** In the absence of qualified Ponca Tribal members or Ponca-owned and Ponca-managed/operated businesses, preference will be given to other enrolled members of federally recognized Indian tribes and Indian-owned and Indian-managed/operated businesses who meet the minimum qualifications, consistent with the standards for quality in the delivery of services and applicable licensing requirements.

6. Insurance Requirements

The selected attorney/firm shall be required to maintain professional liability/malpractice insurance, workers' compensation insurance, and other insurance required by applicable law or generally expected of firms or person providing comparable services.

7. Compensation

The Tribe intends to execute a contract which provides set fees for each position providing services and expenses for specific items subject to charge or reimbursement. Such fees and expenses shall be set in the contract and not subject to increase without written agreement or approval of the Tribe.

The selected attorney/firm will invoice no more frequently than monthly with detailed descriptions of work performed and the time on such work billed in increments of no more than one-tenth (1/10) of an hour. Time spent in travel status while not performing legal work for the Tribe, if charged, may not be billed at more than one-third (1/3) of the set fees. Invoices must be due no sooner than thirty (30) days after receipt to ensure time for administrative processing.

8. Submission Instructions

Proposals must be submitted electronically to:

hr@poncatrIBE-ne.gov

Deadline for Submission: Friday, April 4, 2025

9. Questions

All questions regarding this RFP must be submitted in writing to hr@poncatrIBE-ne.gov by Friday, March 21, 2025. Responses to questions will be provided to all prospective firms.

8. General Information

- All responders are responsible for determining any Tribal laws that may affect the scope of work in this RFP. The Tribe's statutory laws are set forth in the Ponca Tribe of Nebraska Code and publicly available on the Tribe's website for review.

- No attorney/firm which has been suspended, debarred, or otherwise excluded from participation in any federally funded program or from contracting or employment with the Tribe may apply or be selected.
- The Tribe reserves the right to reject any or all proposals and to waive all informalities and minor irregularities in receiving proposals.
- The Tribe reserves the right to reject all attorneys/firms, to select multiple attorneys/firms for various aspects of the proposed work, to select an attorneys/firms for only some of the proposed work, or some other arrangement.
- The Tribe reserves the right to cancel, amend, modify, or otherwise change this RFP at any time if it deems it to be in the best interests of the Tribe. The Tribe will endeavor to inform potential responders of any cancellation, amendment, modification, or other change.
- The Tribe reserves the right to accept, reject, or negotiate specifics of any proposal. A proposal response does not constitute a binding contract, such contract to be separately entered into by the selected party and the Tribe. A contract is not awarded until approved by the Tribe and signed by an authorized official of the Tribe.
- No additions or changes to any proposal will be allowed after the proposal due date unless such addition or change is specifically requested by the Tribe.
- All material submitted regarding this RFP shall become property of the Tribe and will not be returned to the responder. The Tribe has no obligation to return any proposals received in response to this RFP.
- All costs incurred in the preparation and transmittal of a proposal responding to this RFP will be the responsibility of the responder and will not be reimbursed by Tribe.
- The Tribe does not guarantee any work or billable hours.
- Any fees/price offerings from responders must be valid for a period of at least 30 days from the due date of the proposals.
- By submitting a proposal in response to this RFP, the responder understands and agrees that the Tribe does not waive, alter, or otherwise diminish its sovereign rights, including immunities, whether expressed or implied, by virtue of this RFP or the evaluation process.
- In providing services and while present within the territory of the Tribe, the selected attorney/firm and its employees shall comply with all provisions of the laws of the Tribe and applicable federal laws.
- Any awarded contract will be deemed entered into, the services provided, and the contract performed in the territory of the Tribe. The contract shall be governed by and construed in accordance with the laws of the Tribe. The Tribe is not subject to taxes for activities within its territory imposed by any state of the United States or any of their local governments unless otherwise expressly permitted under federal law. The selected attorney/firm shall not include any state or local taxes in their compensation except with the express authorization of the Tribe.

- The award and continuation of any contract is contingent upon the availability and appropriation of government funds. If for any reason the Tribal Council fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, a contract will not be awarded or, if already awarded, will be terminated by the Tribe. Such a termination will not prevent payment for services actually performed prior to such termination.

We appreciate your interest in providing legal services to the Ponca Tribe of Nebraska.

Sincerely,

Jonathan Robinson

Chief Human Resources Officer

Ponca Tribe of Nebraska