Request for Qualifications

Commonwealth of Pennsylvania
Governor’s Office of General Counsel
Mcare – Medical Malpractice Counsel Pool
OGC-2015-09

INTRODUCTION

The Pennsylvania Governor’s Office of General Counsel (“OGC”) has established a Pool of qualified Law Firms to serve as Mcare – Medical Malpractice Counsel in two categories: counsel to defend certain health care providers sued for medical malpractice pursuant to Section 715 of Act 13, 40 P.S. §1303.715 (“Section 715 Defense Counsel”) and counsel to provide advice to the Medical Care Availability and Reduction of Error Fund (“Mcare”) concerning claims for excess coverage under Section 714 of Act 13, 40 P.S. §1303.714 and primary coverage under Section 715 of Act 13, 40 P.S. §1303.715 (“Coverage Counsel”), including provision of coverage opinions, denial letters, reservations of rights, and representation of Mcare in lawsuits involving Coverage matters (each, a “Category” and together, “Categories”).

This Request for Qualifications (“RFQ”) is issued pursuant to Section 518 of the Commonwealth Procurement Code, 62 Pa.C.S. §518, in accordance with Executive Order 2015-2 dated January 20, 2015, to specify a uniform format for Statements of Qualifications to be submitted by Law Firms in order to be qualified in the new Mcare – Medical Malpractice Counsel Pool.

The Commonwealth will consider the Statements of Qualifications submitted in response to this RFQ and will establish a general Mcare – Medical Malpractice Counsel Pool of Law Firms meeting the Minimum Qualifications contained herein. Subject to the exceptions and conditions set forth in Executive Order 2015-2, when a matter requiring services by Mcare – Medical Malpractice Counsel arises, Mcare (or the Commonwealth) will issue a request for proposals ("RFP") with the specific requirements (the "Specific Qualifications") relating to the matter and the timeframe for responses to the Pool. Only Law Firms qualified in the Mcare – Medical Malpractice Counsel Pool may respond to the RFP. Mcare will select the firm determined to be the best qualified based on the evaluation factors set forth in the RFP. The final amount of fair and reasonable compensation shall be determined through negotiation.

ALL Law Firms wishing to participate in any capacity as Mcare – Medical Malpractice Counsel must submit their qualifications pursuant to this RFQ. OGC desires a diverse pool of Mcare – Medical Practice Counsel firms for the purpose of best assisting Mcare with Section 715 Defense Matters and Coverage Matters. Firms of all kinds and sizes, including but not limited to small, diverse and women-owned firms, are
encouraged to apply for admission to the Mcare – Medical Malpractice Counsel Pool. Accordingly, the RFQ application process does not have a deadline. However, a Law Firm must be qualified in the Mcare – Medical Malpractice Counsel Pool in order to submit a proposal for a specific Section 715 Defense Matter or Coverage Matter announced by the Commonwealth. **Although this RFQ does not have a deadline for application, please note that Statements of Qualifications must be received by 7/10/2015, in order for firms determined to be qualified to be considered for selection for RFPs issued prior to 12/31/2015. Law Firms may submit qualifications to either or both Categories.**

Following in this RFQ in Section I, is general information for all applicants. Section II outlines Minimum Qualifications applicable to all applicants seeking to qualify to serve as Mcare – Medical Malpractice Counsel and the applicable Minimum Qualifications for Categories. Section III sets forth a Law Firm’s requirement to maintain continued compliance with the Minimum Qualifications and identifies circumstances under which a firm can be removed from the Mcare – Medical Malpractice Counsel Pool. Finally, Section IV outlines submission procedures and instructions.

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SECTION I  
GENERAL INFORMATION  

1. Mcare – Medical Malpractice Counsel Pool  

OGC will establish a single general Mcare – Medical Malpractice Counsel Pool with two Categories: Section 715 Defense Counsel and Coverage Counsel. Law Firms may seek to establish their qualifications to be considered in the provision of Mcare – Medical Malpractice Counsel services for one or both Categories.  

2. General Information for Applicants  

The purpose of this RFQ is to invite Law Firms to submit Statements of Qualifications, in the form and manner described herein, to establish their basic qualification to participate.  

As described in Section II, Minimum Qualifications have been established for all applicants and for both Categories. Statements of Qualifications received in response to this RFQ shall specify the Categories for which Applicant is seeking inclusion. Submissions will be reviewed to determine whether the Minimum Qualifications and the applicable Minimum Qualifications for Categories have been satisfied. Applicants meeting the Minimum Qualifications and the Applicable Minimum Qualifications for Categories will be included in the Categories for the Mcare – Medical Malpractice Counsel Pool for which the firm is qualified.  

Inclusion in the Mcare – Medical Malpractice Counsel Pool commences on the date the parties fully execute the Contract for Legal Services (the “Contract”). Please note, however, that inclusion in the Mcare – Medical Malpractice Counsel Pool does not provide assurance that a Law Firm will receive an appointment to any matter. Any Law Firm selected for inclusion in the general Mcare – Medical Malpractice Counsel Pool may, at any time, be selected to provide counsel in a particular Matter based on specific need, capacity, qualification or such other circumstances as the General Counsel shall determine. Nothing herein shall in any way be deemed to limit the discretion of the General Counsel to make such appointments to serve the needs of the Commonwealth as deemed appropriate.  

Mcare will issue RFPs, as needed, for each specific matter. Specific Qualifications related to a given matter will be identified by Mcare. Approved law firms with qualifications in the particular Category will then be invited to submit their Specific Qualifications in accordance with the RFP. Specific Qualifications may include technical expertise, cost and other factors included in the RFP. An appointment will be made to the Mcare – Medical Malpractice Counsel firm determined to be the best qualified based on the evaluation factors set forth in the RFP. The final amount of fair and reasonable compensation shall be determined through negotiation.
The RFQ qualification process and the approved Mcare – Medical Malpractice Counsel Pool will remain in effect at the discretion of the General Counsel. OGC may determine, at any time, to amend, modify, or discontinue this RFQ and the process described herein at any time. It is currently expected that Mcare – Medical Malpractice Counsel for each Category and matter will be selected from the approved Mcare – Medical Malpractice Counsel Pool; however, this may change at any time, without notice in the discretion of the General Counsel.

Any information provided in response to this RFQ may be considered (but is not required to be considered) in making appointments of outside counsel to serve in capacities other than as Mcare – Medical Malpractice Counsel. Accordingly, OGC appointments of outside counsel to serve in capacities other than as Mcare – medical malpractice counsel may or may not be made from the approved Mcare – Medical Malpractice Counsel Pool. OGC reserves the right to make counsel appointments as may be deemed necessary or desirable, in the sole judgment of OGC, for all other aspects of, or roles within, a Mcare medical malpractice matter.

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SECTION II
MINIMUM QUALIFICATIONS FOR ALL APPLICANTS

In order to qualify for inclusion in the Mcare – Medical Malpractice Counsel Pool, a Law Firm’s Statement of Qualifications must demonstrate the firm’s ability to meet each of the Minimum Qualifications set forth below in paragraph 1 and all Minimum Qualifications under the applicable subparagraph in paragraph 2 for which the firm intends to prequalify. Responses must be provided addressing each Minimum Qualification in paragraph 1 in the order set forth below and each type of service set forth under the subparts to paragraph 2 in the order set forth below. If the firm is not prequalifying for a particular service set forth in subparts to paragraph 2 below, identify the subpart and state “not applicable.” OGC will not generally accept a co-counsel, joint venture, or subcontracting relationship to satisfy the Minimum Qualifications.

1. Minimum Qualifications

   a. Confirm that at least one member of the Law Firm’s counsel team is admitted to practice law before the Supreme Court of Pennsylvania and is a member in good standing. Identify the member or members of the team and provide resume(s) outlining each member’s medical malpractice background and expertise, if any.

   b. Confirm that the Law Firm has and will maintain in full force and effect, during the duration of its participation in the Pool, professional liability insurance through an A- Best-Rated (or better) insurance carrier in an aggregate amount usual and customary for firms of its size and practice areas, subject to normal deductibles, and covenants. The professional liability insurance will include coverage for practice in the field of federal and state securities and tax law. Please note that RFPs issued by Mcare will require an aggregate amount of insurance as a minimum technical proposal requirement commensurate with that RFP’s terms.

   c. Describe the Law Firm and its capabilities, including the size of the firm, its practice group areas, the size of its Medical Malpractice Group and the composition of the types of expertise within the current law firm rosters on Section 715 Defense Matters and Coverage Matters.

   d. Separate and apart from c above, describe the qualifications and experiences of all attorneys within the Law Firm who are expected
to work as part of the team. Provide resumes of each Mcare – Medical Malpractice team member. Provide acknowledgement that partners experienced in medical malpractice will be committed to Mcare matters. Describe the anticipated division of duties among partners, associates, and paralegals. If any additional lawyers within the Law Firm may be available for consultation, even though they are not assigned to work with the Mcare – Medical Malpractice team, identify them and their specialized expertise.

e. Provide detailed descriptions of: (a) any litigation or administrative proceeding in which the Law Firm was a party in any matter related to the professional activities of the Law Firm during the five years prior to the date of this RFQ; (b) any pending litigation, investigation, or proceeding in which a court or administrative agency is addressing any question relating to the professional activities of the Law Firm; (c) any litigation or threatened litigation in connection with any services rendered by the Law Firm in medical malpractice matters within the last seven years. (This information may be submitted under a confidential label.)

f. Provide a written acknowledgment that the Law Firm will comply with OGC’s Conflict Waiver Policy, which is attached to the form Contract for Legal Services. The Law Firm shall represent and warrant at the time that it submits a proposal to act as counsel for a specific matter that it has no conflicting representation that has not been fully disclosed to and waived by both the client in the conflicting representation and the General Counsel and shall not undertake any representation that conflicts with the performance of the services or obligations under this Contract, unless any and all such conflicting representations have been disclosed and so waived by all affected parties. Once a Law Firm is engaged by the General Counsel to act as counsel for a specific matter, such Law Firm may not during such engagement take on a conflicting representation without first disclosing such conflicting representation to the General Counsel and obtaining appropriate waivers from both the General Counsel and the prospective client in the conflicting representation. The Law Firm may not, without the prior written consent of the General Counsel, withdraw from an ongoing engagement as counsel for a specific matter in order to take on a conflicting representation respecting which waivers from all affected parties cannot be obtained. The process for obtaining conflict waivers is more fully described in the Office of General Counsel Conflict Waiver Procedure, which is attached to the Contract.
g. Law Firms selected for inclusion in the approved Mcare – Medical Malpractice Counsel Insurance Pool through this RFQ must agree to receive fees at the rates or rate structures as determined and approved by OGC and must further agree to perform legal services in accordance with the OGC Contract for Legal Services, a copy of which may be obtained at the OGC website, and must be appended as an exhibit to the submission. A fee structure (or fee determination methodology) will be established for each RFP and included in the Specific Qualifications.

2. Minimum Qualifications for Categories of Mcare – Medical Malpractice Counsel

To be considered for a specific type of work as Mcare – Medical Malpractice Counsel, applicants may apply for one or both of the following specific Categories.

a. Section 715 Defense Counsel

The firm should have a specific practice area or group of counsel whose specialty is the defense of medical malpractice claims, with at least one, but preferably more, experienced partners who have represented health care providers at trial in excess of fifty (50) medical malpractice cases, with sufficient additional counsel to ensure that the handling of the case will not be negatively impacted by unavailability of counsel. Counsel should have proven experience with successfully defending complex and severe medical malpractice claims with damages above $5 million, such as fetal injury, severe neurological damage, delayed diagnosis or mistreatment of cancer, paralysis or death.

Counsel should have proven experience in successfully defending cases with multiple defendants which provided overlapping medical treatment. Counsel will be expected to have successfully negotiated settlement of medical malpractice cases. Counsel should have experience utilizing alternative dispute resolution in appropriate medical malpractice cases and have sought resolution on a unified healthcare community approach, in appropriate cases.

Counsel should be familiar, and preferably experienced, with Mcare’s current and prior statutes. Counsel should be familiar with the requirements of Mcare with regard to payment timing, final release documents and policies and procedures.
Counsel should be experienced with case law and procedural rules exclusive to medical malpractice cases in the Commonwealth of Pennsylvania. Counsel should also be familiar with other state and federal statutes impacting the defense of medical malpractice claims, such as the Emergency Medical Treatment and Active Labor Act.

We invite submission of a narrative outlining the specific experience of your firm in defending medical malpractice cases, in particular with respect to the handling of cases that qualify for defense by Mcare under Section 715 of the Act, 40 P.S. §1303.715. Resumes of the members of your firm with the indicated level of medical malpractice expertise should be provided. In addition, a chart or spreadsheet detailing in which counties within the Commonwealth of Pennsylvania members of the firm have such experience is requested.

b. **Coverage Counsel**

From time to time, Mcare may have need for coverage counsel. Services may include advice to Mcare concerning whether or not a particular claim triggers statutory coverage under the Act, i.e., whether or not the claim involves the furnishing of medical services, or whether the challenged actions by a health care provider entailed the use of medical skill attained with specialized training. Coverage counsel may be called on to issue coverage opinions, draft denial letters or reservations of rights or to represent Mcare in litigation involving coverage matters.

Coverage counsel will be expected to be knowledgeable concerning the Mcare Act and its predecessors, and any caselaw interpreting them. Counsel should be knowledgeable concerning professional liability insurance coverage for health care providers and the differences from and similarities to statutory Mcare coverage. Counsel should have experience defending lawsuits against government agencies before the Commonwealth Court.

We invite the submission of a narrative outlining the specific expertise or your firm in providing services as coverage counsel, in particular with respect to representation of government agencies. Additionally, experience advising insurers in coverage matters and representing insurers in coverage disputes should be outlined. Resumes of the members of your firm with expertise in this area should be provided.
SECTION III
ONGOING COMPLIANCE WITH MINIMUM QUALIFICATIONS; REMOVALS

To remain in good standing in the approved Mcare - Medical Malpractice Counsel Pool, a Law Firm must meet the provisions of Section II, Minimum Qualifications, at all times. Each Law Firm is responsible for notifying the General Counsel in writing if it no longer meets the Minimum Qualifications. The General Counsel reserves the right to reconfirm Minimum Qualifications from time to time.

Any Law Firm may be removed or suspended from the approved Mcare - Medical Malpractice Counsel Pool for reasons that include, but are not limited to, the following:

1. Disqualification because of legal proceeding;

2. Unacceptable performance in any Mcare – Medical Malpractice matter as determined by an evaluation by the General Counsel;

3. Being the subject of disciplinary action by Commonwealth or federal regulatory authorities;

4. Filing for protection under federal or state bankruptcy laws;

5. Failure to continue to meet the Minimum Qualifications listed in Section II; (This includes changes in personnel to perform Mcare – Medical Malpractice Counsel services identified in the RFQ process.)

6. Undisclosed conflict of interest.

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OGC must receive an electronic copy of each submission. The submissions must be delivered via email (RA-GC-RFQBC@pa.gov) to the attention of: Ms. Jordan M. Wagner.

Submissions which do not meet the above-described requirements will be rejected as non-responsive. OGC is not responsible for any expenses that Law Firms may incur in preparing and submitting responses to this RFQ. All materials submitted in response to this RFQ will become the property of the Commonwealth of Pennsylvania and may become public information.

Any questions regarding this RFQ must be submitted via email (RA-GC-RFQBC@pa.gov) to the attention of: Ms. Jordan M. Wagner.

By submitting a response to this RFQ, the Law Firm accepts all of the terms and conditions as set forth herein and in the abovementioned Contract for Legal Services. Complete execution and delivery of a final and definitive Contract, including all appendices, is a condition to the Law Firm’s inclusion in the general Mcare - Medical Malpractice Counsel Pool and will be required prior to participation in any RFP for Mcare – Medical Malpractice Counsel services and appointment as Mcare - Medical Malpractice Counsel for a specific Section 715 Defense or Coverage Matter, if such an appointment is made.

The Advertisement Information on www.emarketplace.state.pa.us and any subsequent addendum(s) identify that only hard copies of the bids will be accepted. Due to system limitations this information cannot be removed and shall be disregarded. Responses to the RFQ will only be accepted as an electronic copy as outlined in Section IV – Additional Submission Instructions.