

Request for Qualifications

Commonwealth of Pennsylvania Governor's Office of General Counsel Bankruptcy Counsel Pool OGC-2015-14

INTRODUCTION

The Pennsylvania Governor's Office of General Counsel ("OGC") is establishing a general pool of qualified law firms ("Law Firms") to serve as Bankruptcy Counsel ("BC"), from time to time, to agencies and authorities ("Agency") subject to the General Counsel's authority.

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 a new BC Pool.

The Commonwealth will consider the Statements of Qualifications submitted in response to this RFQ and will establish a BC 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 specific matter requiring services of BC is identified, the Agency (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 BC Pool. Only Law Firms qualified in the BC Pool may respond to the RFP. The Agency 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 BC to the Commonwealth of Pennsylvania must submit their qualifications pursuant to this RFQ. OGC desires a diverse pool of BC firms for the purpose of best assisting an Agency in meeting its goals. 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 Pool. Accordingly, the RFQ application process does not have a deadline.

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 BC and the applicable Minimum Qualifications. 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 BC Pool. Finally, Section IV outlines submission procedures and instructions.

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SECTION I GENERAL INFORMATION

A. Bankruptcy Counsel Pool

OGC will establish a single Bankruptcy Counsel Pool (“BCP”) and Law Firms may seek to establish their qualification to be considered in the provision of Bankruptcy Counsel services.

B. 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 in the BCP.

As described in Section II, Minimum Qualifications have been established for all applicants. Statements of Qualifications received in response to this RFQ will be reviewed to determine whether the Minimum Qualifications have been satisfied. Applicants meeting the Minimum Qualifications will be included in the BCP.

Inclusion in the BCP commences on the date the parties fully execute the Contract for Legal Services (the “Contract”). **Please note, however, that inclusion in the BCP does not provide assurance that a Law Firm will receive an appointment to any matter.** Any Law Firm selected for inclusion in the BCP may, at any time, be selected to provide specific counsel to a particular Commonwealth entity based on specific need, capacity, qualification or such other circumstances as the General Counsel shall determine and to which the Law Firm agrees. 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.

The Commonwealth Agencies expect to issue RFPs, as needed, when a specific matter requiring services of BCP is identified. Specific Qualifications related to a given litigation matter will be identified by the Agency and qualified BCP 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. Appointment to the specific matter will be made to 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.

The RFQ qualification process and the approved BCP 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 BC will be selected from the approved BCP; 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 BC. Accordingly, OGC appointments of outside counsel to serve in capacities other than as BC may or may not be made from the approved BCP. 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 bankruptcy counsel matter.

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SECTION II MINIMUM QUALIFICATIONS FOR ALL APPLICANTS

In order to qualify for inclusion in the Bankruptcy Counsel Pool (“BCP”), a Law Firm’s Statement of Qualifications must demonstrate the firm’s ability to meet all of the Minimum Qualifications set forth below in paragraph A. Responses must be provided addressing each Minimum Qualification in paragraph A. OGC will not generally accept a co-counsel, joint venture, or subcontracting relationship to satisfy the Minimum Qualifications of section A.

A. Minimum Qualification

1. Identify each member of the Law Firm’s Bankruptcy team that is admitted to practice law before the Supreme Court of Pennsylvania and confirm that those members, if any, are members in good standing. Identify all courts that the counsel(s) that will be providing the main representation of the Agency are admitted in and confirm whether those counsels are members in good standing of those courts. Identify the member or members and provide resume(s) outlining each member’s bankruptcy background and expertise, if any.
2. Confirm that the Law Firm has and will maintain in full force and effect, during the duration of its participation in the approved BCP, 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. **Please note that future RFPs may request an aggregate amount of insurance as a minimum technical proposal requirement commensurate with the size of that RFP’s case.**
3. Describe the Law Firm and its capabilities, including the size of the firm, its practice group areas, the size of its bankruptcy group. Specifically, the Law firm must provide the following minimum information/qualifications:
 - i. A general description of the legal services proposed to be provided by the firm.
 - ii. Identification of the number of employees in the firm by category (licensed attorneys, legal support staff, and other support staff).
 - iii. Must be familiar with general rules regarding Bankruptcy practice and fundamental legal principles of Chapters 7, 11 and 13.
 - iv. Must be familiar with Bankruptcy petitions, filing and objecting to plans, filing and defending adversary proceedings, objecting to free and clear property sales, objecting to relief from stay petitions, attending creditors’ meetings, moving to convert or dismiss, and such concepts as lien stripping, lien avoidance, adequate

protection, secured claims, claim priorities, automatic stay, discharge exceptions, property of the estate, statutory liens, fraudulent transfers, voidable transfers, and carve-outs.

- v. Must be admitted to the District Court for one or more of the three federal districts in Pennsylvania.
 - vi. Experience representing creditors in Bankruptcy, particularly government creditors, is desirable.
 - vii. Experience in business bankruptcies, rather than consumer bankruptcies, is desirable.
 - viii. The resumes of the attorneys in the firm who would be directly responsible for handling the Agency's Bankruptcy matters; the name of the lead attorney who would handle such matters; and the name of a day-to-day contact person.
 - ix. Three client references in the area of bankruptcy counsel services.
 - x. A description of any special training or experience members of the firm possess that may assist in providing the requested services.
 - xi. Identification and detailed description of any indictments, convictions or civil offenses during the past 10 years arising directly or indirectly from the conduct of business of the firm or any of its partners, associates, employees or agents.
 - xii. Identification of any and all adverse determinations against the firm or any of its partners, associates including but not limited to any court or administrative tribunal imposed sanctions.
 - xiii. Identification of any material arrangements, relationships, associations, employment or other contacts that may create a conflict of interest or the appearance of a conflict of interest if the firm acts as bankruptcy counsel for the Agency (including representation of any client in a matter adverse to the Commonwealth or any Commonwealth agency).
 - xiv. Identification of any other matters of any type in which the firm is representing the Commonwealth of Pennsylvania or any of its agencies.
4. 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.

5. Law Firms selected for inclusion in the approved BCP 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) may be established for each RFP and may be included in the Specific Qualifications. The Commonwealth may use various methodologies for establishing compensation for bankruptcy counsel work. Responses to each RFP should include a typical fee proposal. Contingency fee proposals should reflect differences based on timing and size of settlement, complexity of the case, and difficulty of recovery. Alternatives to a contingency fee may be presented. Selection by the Agency is not limited to those proposing the lowest cost, and many other criteria will be considered by the Agency in making its selections. At the time a Law Firm in the BCP is selected to handle a particular matter, the actual fee arrangement will be negotiated and incorporated into the engagement letter on such matter for which appointment is made. Any fee information submitted must be arrived at independently and without consultation, communication or agreement with or disclosure to any other firm responding to the RFP.
6. All Law Firms must possess sufficient technical capacity to provide electronically stored, transmissible and deliverable transcripts as defined and required by the Issuer in its RFP and must agree to operate in compatible technology and document formats for the Commonwealth clients. Provide written acknowledgment of ability to comply with this requirement.

SECTION III
ONGOING COMPLIANCE WITH MINIMUM QUALIFICATIONS;
REMOVALS

To remain in good standing in the approved BCP, 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 BCP for reasons that include, but are not limited to, the following:

- A. Disqualification because of legal proceeding.
- B. Unacceptable performance in any bankruptcy counsel case as determined by an evaluation by the General Counsel;
- C. Being the subject of disciplinary action by Commonwealth, state or federal regulatory authorities;
- D. Filing for protection under federal or state bankruptcy laws;
- E. Failure to continue to meet the Minimum Qualifications listed in Section II. (This includes changes in personnel to perform BCP services identified in the RFQ process.)
- F. Undisclosed conflict of interest.

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**SECTION IV
ADDITIONAL SUBMISSION INSTRUCTIONS**

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 BCP and will be required prior to participation in any RFP for BC services and appointment as BC for a specific 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 or as an electronic copy as outlined in **Section IV – Additional Submission Instructions**.