

SOLICITATION ADDENDUM

Date: **3/1/2021**
Subject: **Complex Litigation & Litigation Consultants RFP**
Solicitation Number: **OGC-2021-03**
Due Date/Time: **March 12, 2021 @ 4:00 pm EST**
Addendum Number: **2**

To All Suppliers:

The Commonwealth of Pennsylvania defines a solicitation “Addendum” as an addition to or amendment of the original terms, conditions, specifications, or instructions of a procurement solicitation (e.g., Invitation for Bids or Request for Proposals).

The Issuing Office received the following questions regarding the above-referenced RFP and provides the following responses.

Q.1. With regard to the area of “takeovers”, what type of matters would fall into this category? Is this concerning takeover of Commonwealth construction projects when a contractor fails, or when Commonwealth vendors are taken over via transaction, or some other area(s)?

A.1. We are unsure of what is being referred to here, but we certainly have concerns when a vendor is taken over, or is otherwise subject to a change in control.

Q.2. The conflict section at Appendix D, number 1 is worded very broadly. Based on our experience with other state governments, the specific agency or department is considered the client for conflicts purposes rather than all agencies and departments. Will the Commonwealth agree to that approach or will it require the firm to obtain a waiver each time we are asked to represent a client adverse to any agency or department?

A.2. Please refer to the January 2016 letter from former General Counsel Denise Smyler, a copy of which is attached to this Addendum.

Q.3. The indemnification and hold harmless provisions are worded broadly, stating that firm “shall indemnify and defend the Commonwealth” at Article 23, Contract for Legal Services Article 23, and has similar wording with regard to the ADA policy at Appendix I. We are unsure how to interpret this obligation as it relates to the entire Commonwealth and have limitations that would need to be included in an engagement.

- a.** Can you provide an example of when the Commonwealth would expect such indemnification and defense obligations and when they would arise under Article 23? Also, what would be the expected extent of such obligations?



- b.** Similarly, does this mean that the firm would owe such obligations only to the state agency which the firm represents in the specific matter?
- c.** Our insurance provides coverage only for claims asserted against the firm. Could these provisions be tailored to allow for limitation of indemnity and related obligations to only those covered by our insurance coverages?

A.3. a. No; I think that the paragraph is self-explanatory.

b. I don't perceive the indemnification obligation to be so limited, but in practicality, that will be the case.

c. No.

Q.4. The RFP requires that the Commonwealth be named as an additional insured on the firm's insurance. Our insurance will not allow the naming of additional insureds on our coverages. Can this requirement be waived?

A.4. We are unaware of a situation where we would waive (or have waived) this requirement in connection with a legal services contract.

Q.5. With regard to litigation against the firm, we do not disclose such a list. We can and will represent that there are no claims against our firm arising from work in Pennsylvania and there are no claims against any of the team members proposed for this RFP. Would this representation be sufficient and/or can this requirement be waived?

A.5. That representation can be sufficient, but we cannot guarantee that an evaluator might not desire additional information.

Q.6. Related to the foregoing, the RFP states that a proposal will be rejected if it is conditioned upon the negotiation of terms. If the above waivers were to be allowed, would that decrease our scoring?

A.6. No.

Q.7. Is the General Counsel soliciting proposals from law firms that provide portfolio monitoring and securities litigation services? If so, is this separate from the Securities Litigation Counsel pool?

A.7. This RFP does not specifically include a potential contract for Securities Litigation and/or Portfolio Monitoring. A separate procurement may be issued at some point for these types of services. With that being said, please note on page 24 of the RFP document, it lists the types of engagements envisioned as a result of this RFP and states, "but are in no way limited to." This is because we simply cannot foresee the exact types of engagements that will result from these awards.



pennsylvania

DEPARTMENT OF GENERAL SERVICES
BUREAU OF PROCUREMENT

Q.8. We have found very little information on veteran-owned entities. Can the Commonwealth assist us with locating VBE firms? How much flexibility is there if a prime is unable to locate a viable entity?

A.8. An offeror may contact BDISBO for assistance in searching the Supplier Search database for VBE firms. If an offeror is unable to meet the VBE Participation Goal in full, they must submit a Good Faith Effort waiver request demonstrating that they took all necessary and reasonable steps to achieve the VBE Participation Goal. See, VBE-4, Guidance for Documenting Good Faith Efforts to meet the VBE Participation Goal.

*** If you asked a question, and do not see your question listed, please let me know right away so we can get you a response as soon as possible.**

Except as clarified and amended by this Addendum, the terms, conditions, specifications, and instructions of the solicitation and any previous solicitation addenda, remain as originally written.

Respectfully,

Name: Mrs. Jordan M. Kiessling
Title: Issuing Officer
Phone: 717-346-8110
Email: jkiessling@pa.gov



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 29, 2016

To the Law Firms Retained by the Office of General Counsel

Dear Counsel:

We are sending you this notice to clarify the scope of the attorney-client relationship (and its attendant conflicts issues) when a firm enters into a Contract for Legal Services with a Commonwealth agency represented by the Office of General Counsel ("OGC"). When entering into a Contract for Legal Services with a specific Commonwealth agency, your firm is forming an attorney-client relationship only with that agency, and not with other executive agencies as that term is defined in the Commonwealth Attorneys Act, 71 P.S. § 732-101, *et seq.* (such other executive agencies are hereinafter collectively referred to as "Other Agencies"). In the event that your firm wishes to represent a client adverse to an executive agency that your firm also represents under a Contract for Legal Services, your firm is required to obtain a waiver in accordance with the OGC's conflict waiver procedures – updated most recently in January 2015, and enclosed herein for your convenient reference - as they may be amended from time to time and otherwise comply with Rule 1.7 and Rule 1.9 of the Pennsylvania Rules of Professional Conduct (the "Rules").

Unless your firm provides legal services to Other Agencies pursuant to a Contract for Legal Services, your firm shall not be restricted in providing representation to clients that are adverse to Other Agencies in unrelated matters, provided that (a) the Governor is not a defendant; (b) such other representation does not involve an important Administration issue as may be determined by the General Counsel, or might otherwise adversely affect the professional relationship between your firm and the Administration; and (c) your firm otherwise complies with Rule 1.7 and Rule 1.9 of the Rules. In order to effectuate this policy, we expect that you will notify us in writing of such matters so that we may confirm that the matter satisfies these conditions.

If you have any questions about this clarification to OGC's conflict waiver procedures, please direct them to Deputy General Counsel H. Geoffrey Moulton, Jr. or Deputy General Counsel Rodney R. Akers (both of whom are located at 333 Market Street, Harrisburg, PA 17101; 717-783-6563).

Sincerely,

A handwritten signature in black ink that reads "Denise J. Smyler".

DENISE J. SMYLER
General Counsel

Enclosure: (OGC Conflict Waiver Procedure)