

SOLICITATION ADDENDUM

Date: **5/18/2023**
Subject: **Insurance Receivership Counsel RFP**
Solicitation Number: **OGC-2023-04**
Due Date/Time: **May 23, 2023 @ 4:00 PM EST**
Addendum Number: **4**

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. The Contract for Legal Services refers to the Commonwealth of Pennsylvania, Insurance Commissioner, as Statutory Liquidator, as the client in the matter, however the documents request information on matters a firm is handling adverse to the Commonwealth or any of its agencies. As a matter of law, when the Commissioner acts as receiver of an insurer, the Commissioner is not acting in a regulatory or state executive officer capacity; they are instead a separate juridical person. For conflicts purposes, is the Commonwealth considering itself and any agency to be a client of the retained firm which represents the Commissioner as receiver?

A.1. The Commissioner is the Statutory Liquidator for purposes of the estate, which is run-off through the Office of Liquidations, Rehabilitations and Special Funds at the Pennsylvania Insurance Department (PID). As such, for conflict purposes, at a minimum, OGC considers PID, through its representation of the Commissioner as Statutory Liquidator in the matter, a client, and well as the estate (and therefore, any potential conflicts with representation adverse to the former company. Additionally, OGC would need to consider any representation in an adverse action against the Executive Offices and Agencies under the Governor’s jurisdiction in determining whether a conflict exists for this engagement.

Q.2. Would the Commonwealth be willing to provide waivers and consent for unrelated litigation matters, including for the firm’s representation of clients in any pre-existing or subsequent unrelated work?

A.2. Upon award, the firm should disclose any potential conflicts, regardless of subject matter, in which the firm is representing an interest adverse to the Commonwealth, its agencies, employees and the like. A case by case determination will be made regarding each and whether there are conflicts with specific contracting opportunities with the Commonwealth.

Q.3. If the Commonwealth believes it and all state agencies would be considered clients of the firm for conflicts of interest purposes in an insurer receivership matter, would it agree to an advance waiver of future matters adverse to the Commonwealth and such agencies, so long as such future matters are unrelated to any work the firm is performing for the Commissioner as receiver, and the firm meets all other ethical obligations?

A.3. OGC cannot grant a blanket advance waiver of future matters adverse to the Commonwealth and such agencies. Any such waiver would have to be considered and granted based upon the facts and circumstances of a particular engagement by the firm that might be seen as adverse to the Commonwealth's interests.

Q.4. Paragraph 9 of the form Contract for Legal Services permits amendments with written agreement from all parties, although the RFP terms under II-2. Standard Legal Services Contract Terms and Conditions state the firm must accept all clauses as written. Can you confirm Paragraph 9 will allow an opportunity to negotiate contract terms?

A.4. Pursuant to "II-2. Standard Legal Services Contract Terms and Conditions", by submitting the proposal, you are accepting the terms and conditions of the legal services contract as written. One of the terms in the legal services contract is the possibility to amend or modify the contract *after* the contract has been fully executed. During the term of the contract, there is a process for extensions of the contract and funding adjustments which require a letter of mutual consent signed by the Department and the Law Firm. All other changes during the term of the contract must be done through a formal amendment.

Q.5. To clarify, it is required we partner with a SDB or VBE for this RFP? Or since we are a women's owned business/diverse business, would we already fill that criteria?

A.5. Vendor # 540146 - Griesing Mazzeo Leadership LLC. Is not a DGS- Verified SDB/VBE vendor. They are currently registered as a Small Business (SB) only. The previous SDB certificate held by vendor # 540146 - Griesing Mazzeo Leadership LLC. Expired 11/22/21. SDB and VBE participation goals are separate and distinct. Offerors must meet both participation goals in full or seek a good faith efforts **waiver** from any unmet portion of the goals.

Only SDBs/VBEs verified by DGS as defined in the solicitation may be counted for purposes of achieving the SDB/VBE participation goals. Please review SDB-1 "Instructions for completing the Small Diverse Business (SDB) Participation Submittal, II. SDB Eligibility: #3" AND VBE-1 "Instructions for completing the Veteran Business Enterprise Participation Submittal II. VBE Eligibility: #3." Information on the DGS verification process can be found at: <https://www.dgs.pa.gov/Small%20Diverse%20Business%20Program/Pages/default.aspx>

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.



pennsylvania

DEPARTMENT OF GENERAL SERVICES
BUREAU OF PROCUREMENT

Respectfully,

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