

Project: Legal Services

Date: **February 8, 2019**

RE: **Addendum # 1**

of Pages: **(9)**

The following information is hereby provided in response to written questions submitted to Battery Park City Authority (“BPCA”) in connection with the Request for Proposals (“RFP”) for the “Legal Services” project (the “Project”).

RFP Questions:

- 1) If responding to more than one area, does the 10-page limit still pertain? If yes, would it be acceptable to list relevant experience as an appendix that is exclusive of the page limit?

Response:

The page limit is hereby extended to 15 single-sided pages. Such limit applies regardless of whether the Proposer wishes to be considered in multiple areas. Professional biographies, lists of relevant experience and the like may be attached as an appendix and will not be counted toward the 15 page limit.

- 2) Our firm has already identified matters in which we have been, or may potentially be, adverse to Battery Park City Authority (BPCA). Due to our client base and large real estate practice, we anticipate that there will be additional matters in the future in which we may be adverse to BPCA. If BPCA seeks to assign a matter to us, is it permissible for the firm to decline work that places us adverse to clients or potential clients of the firm and to represent such clients in matters directly adverse to BPCA? Is BPCA willing to execute advance waivers, waiving current and potential conflicts and permitting the firm to represent clients directly adverse to BPCA?

Response:

A conflict check should be conducted at the time a specific engagement is proposed. Nothing precludes a firm (or BPCA) from declining work where a conflict exists. Conflict waivers will be considered on a case-by-case basis at the time of the proposed assignment.

- 3) We are an MBE firm to several large prime legal providers that seek to name us in the RFP as an MBE Firm they work with. Are we relegated to being named only in one RFP by a prime legal provider or can we be named in several proposals?

Response:

BPCA does not object to a firm being identified as a possible subconsultant by more than one prime legal provider.

- 4) In RFP Section VI.A., it is requested that the Proposals be no longer than ten (10) pages. Does this number include the attorney biographies or are the biographies considered to be part of the “Required Attachments”?

Response:

See Response to question 1 above.

- 5) In the first sentence of RFP Section VI.B., should it be “Cost Proposal, described in **Section IX**” instead of “Section VIII”?

Response:

Yes. The Cost Proposal is described in Section IX on page 9.

- 6) In RFP Section VI.B.2), can you please give more detail as to what is meant by “Executive Summary”.

Response:

The Executive Summary should summarize the contents of the proposal, including the proposer’s qualifications and expertise and any other high-level information the Proposer believes is most relevant to the selection process.

- 7) In RFP Section VII.A, can you please explain how number 3) differs from number 7)?

Response:

Question 7 seeks a description of the relevant qualifications and experience of each attorney listed in Question 3. Your responses to Questions 3 and 7 may be combined for ease of presentation and review. Additionally, your responses may refer to biographies or curriculum vitae that may be annexed as appendices (and are not part of the page limit).

- 8) In RFP Section VII.C.2), should it be “New York State businesses set forth in **Section XIII**” instead of “Section XII”?

Response:

Yes.

- 9) Can you please confirm that MWBE and SDVOB Utilization Forms only need be submitted upon assignment of a contract and are not required to submit with the Proposal?

Response:

Correct. Please see response to Question 11.

- 10) In Section 5B on page 3, it states that there are no MWBE or SDVOB goals established at this time. Under "Business Participation Opportunities for SDVOBs," on page B-2, it states that there is an overall goal of 6% for SDVOB participation. Could you please clarify?

Response:

Since this solicitation has been issued to develop a list of pre-qualified vendors and will result in the award of one or more contracts with a scope to be determined, the Authority will assess M/WBE and SDVOB goals at the time of the award of the contract based on the specific scope of work. Please disregard the SDVOB goal stated in the RFP.

- 11) Additionally, in Exhibit B on page B-1, it states that "proposers need not to submit MWBE utilization plans at this time." But on page B-2, it requests proposers to submit an MWBE Utilization Plan. Can you please advise if an MWBE utilization plan is required?

Response:

For purposes of responding to this RFP, proposers *may* provide information related to the potential use of M/WBE and SDVOB firms, but since goals will be set at a later date, Proposers may opt not to provide such information at this time.

- 12) The RFP asks that our response be limited to 10 pages, exclusive of the Cover Letter, Cost Proposal, and Required Attachments. However, the printed RFP questions alone take up 2 pages, so we are concerned that we will not be able to provide full responses to your questions within the 10-page limit. We of course recognize your desire for conciseness. In light of this, could you possibly extend the page limit to 20 pages?

Response:

See Response to Question 1.

- 13) The RFP states that BPCA's public officials' liability policy (including employment practices liability) is with AIG, and your general liability policy is with Chubb. If we are interested in submitting in these areas, and we have panel rates with AIG and Chubb in these areas already, are we expected or required to offer those panel rates for this engagement?

Response:

Any firm that serves as panel counsel for BPCA's relevant carriers is expected to accept the rates in place for defense costs that are subject to coverage by such policies. Proposers are encouraged to also provide non-panel rates in their Cost Proposal for any work that is not covered by BPCA's policies, including counseling or any other matters not related to covered litigation.

- 14) The RFP asks us to provide a copy of our firm's most recent Audited or Certified Financial Statements. Per firm policy, we do not provide this information to current or potential clients. We are happy to provide you with contact information for our bank, who can attest to our firm's financial health. Would that be acceptable to BPCA? Would not providing the Financial Statements be considered disqualifying?

Response:

BPCA is required to assess all vendors' financial ability to perform under an anticipated contract. In lieu of Audited or Certified Financial Statements, a summary document demonstrating such financial ability is acceptable.

- 15) Is the Executive Summary included or excluded from the 10-page limit?

Response:

The Executive Summary is included in the now 15-page limit (See response to Question 1.)

- 16) Regarding Section VIII: Insurance, do we need to attach to our proposal proof of our insurance in the various areas described in the section, or do we only need to provide this information should we be selected, prior to commencing the representation? Please clarify.

Response:

Firms do not need to provide Certificates of Insurance or any other proof of insurance as part of their Proposal. Compliance with insurance requirements will be evaluated at the time of engagement.

- 17) Question VII.A.3 asks us to "list all attorneys [we] intend to assign to this engagement... include the following: a) area(s) of specialization; b) title and/or position within your firm or practice; and c) anticipated role of the attorney." Question VII.A.7 asks us to "identify principal partners and other attorneys who would likely be responsible for BPCA's matters, and provide a description of the relevant qualifications and experience of each attorney." These questions seem to be asking for largely the same information. Can we simply reference our response to

VII.A.3 as our answer to VII.A.7? If there's specific separate information you would like for these two answers, please clarify.

Response:

Please see response to Question 7.

- 18) Much of the information asked for in questions VII.A.3 and VII.A.7 can be found in our attorneys' resumes, which we are required to attach to the proposal. Can we simply reference the full resumes in our responses to these questions? This would help us stay within your 10-page limit, as well as avoid providing you with duplicative information.

Response:

Please see response to Question 7.

- 19) How much did BPCA spend on legal fees for labor and employment issues (litigation and otherwise) in 2018?

Response:

The amount that BPCA spends on legal fees for labor and employment issues is highly variable. BPCA's total budget for outside counsel (across all subject areas) for this fiscal year is \$1,000,000.00.

- 20) How much did BPCA spend on legal fees for municipal/government entity representation (litigation and otherwise) in 2018?

Response:

The amount that BPCA spends on legal fees for municipal/government entity representation issues is highly variable. BPCA's total budget for outside counsel (across all subject areas) for this fiscal year is \$1,000,000.00.

- 21) How many BPCA labor and employment litigation matters have there been on average in the last 3 years?

Response:

BPCA declines to provide this information.

- 22) How many BPCA municipal/government entity litigation matters have there been on average in the last 3 years?

Response:

BPCA declines to provide this information.

- 23) In the VIII. Insurance, paragraph C, the RFP refers to Insurance for Subconsultants, but does not define what a Subconsultant is. Please clarify, what does the Authority consider a sub consultant- for example a small law firm pairing up with a large firm?

Response:

A subconsultant is any consultant used by the prime consultant for work that is being subcontracted out, including, for example, a prime consultant's utilization of M/WBE or SDVOB firms.

- 24) The same section of the RFP contains this bullet point:
“Sub consultants will also be required to obtain all other insurances listed in Section (2) unless otherwise approved in writing by BPCA prior to commencement of any Subcontractor's work.” Where does one locate the Section (2) referenced?

Response:

The reference to “Section (2)” should be replaced with “Section (B)”. In sum, all subconsultants must have the same insurance coverage as the prime consultants listed in Section (B) unless otherwise approved in writing by BPCA prior to the commencement of any Subcontractor's work. Such approval is most frequently granted in cases where the type of insurance is inapplicable (e.g., where the subconsultant does not have any employees, Workers' Compensation, etc., is not required).

- 25) Our firm is a MBE/WBE and would most likely be considered a “small” Proposer. Are we going to be held to the same \$3,000,000 E & O requirement? Our limit is \$2,000,000 – would this be ameliorated by pairing up with a majority firm?

Response:

All firms must have the required coverage at the time of engagement (not at the time of being selected for the pre-qualified panel), regardless of size.

- 26) Can cost proposals be marked confidential? If so, will confidentiality of our cost proposal affect our eligibility for this work?

Response:

As set forth in Section III of the RFP, all information submitted to BPCA is subject to disclosure pursuant to the Freedom of Information Law (“FOIL”). If a Proposer believes that

a portion of its submission is exempt from disclosure, it should so indicate in response to Question 12, Section VII of the RFP. If BPCA receives a FOIL request seeking disclosure of such information, it will follow the process set forth in Section 89 of New York State Public Officers Law.

- 27) Is there any expectation of additional development and/or construction outside the boundaries of the currently developed Battery Park City properties on the lower west side of Manhattan?

Response:

BPCA's project area is defined by state statute and includes only Battery Park City.

- 28) What is the scope and volume of real estate, financing and development work for Battery Park City Authority since Battery Park City is now generally fully developed? Are any of the subleases with building owners expected to expire, requiring our assistance in renegotiations?

Response:

Although Battery Park City is now generally fully developed, numerous legal issues arise relating to the existing ground leases (all of which expire in 2069), including but not limited to potential renegotiation of various ground lease terms.

- 29) **Construction** Is previous experience representing public agencies/authorities a necessary requirement to qualify under this section of the RFP?

Response:

While not an explicit minimum requirement, 25% of a Proposer's score is based upon "demonstrated relevant experience representing municipalities or other similar government entities." Firms without such experience, or with minimal experience representing public agencies/authorities are still encouraged to apply if they believe they have applicable expertise in the areas in which BPCA is seeking counsel.

- 30) Is specific experience required in handling bid and/or procurement disputes?

Response:

The intent of this RFP is to establish a panel of pre-qualified counsel with various skills and expertise. While BPCA may, at some point, require representation related to a bid and/or procurement dispute, experience in this area is not a minimum requirement, and firms without such experience are still encouraged to apply if they believe they have applicable expertise in the areas in which BPCA is seeking counsel.

- 31) **Public Finance** Is the work limited to bond counsel? Is BPCA seeking to retain disclosure counsel? Is BPCA also developing a panel of qualified underwriter’s counsel?

Response:

BPCA is seeking Proposers that are able to provide Bond Counsel and/or Disclosure Counsel legal services, as well as other general counseling services related to Public Finance.

- 32) **Environmental** Are there ongoing environmental remediation/monitoring activities being conducted within Battery Park City (the “Site”)?

Response:

No.

- 33) Are there existing environmental land use restrictions on the Site?

Response:

BPCA is subject to all federal and state environmental land use regulations and certain New York City environmental land use regulations.

- 34) Are there pending environmental claims/litigation and if so what are the nature of those claims (plaintiff/defendant) – are they enforcement/violation claims; are they environmental damage/cost recovery claims or personal injury or both?

Response:

There are no pending environmental claims.

- 35) Are there any issues with vapor intrusion pathways/indoor air quality in buildings at the Site/is this an area of potential investigation?

Response:

This is not applicable to BPCA. The conditions of individual buildings are managed by their respective developers or owners.

- 36) Are there proposals to retrofit existing buildings for better resiliency/minimizing flood risk?

Response:

A description of BPCA’s resiliency projects can be found at <https://bpca.ny.gov/nature-and-sustainability/resiliency/>.

37) Are there pending or proposed changes to watersheet [sic] use/access?

Response:

This is not applicable to BPCA.

38) [Proposer] would like clarification regarding the 10-page limit that is indicated in the RFP. Is this a 10-page limit *per practice area*, or a 10-page limit for our answers to all of the questions listed under Sections VIIA and VIIB? Does the Executive Summary count toward the page count?

Response:

Please see responses to Questions 1 and 15.

By signing the line below, I am acknowledging that all pages of this Addendum have been received, reviewed and understood, and will be incorporated into the Proposal submitted. This document must be attached to the Proposal for consideration.

Print Name

Signature

Date

Number of pages received: _____ <fill in>

Distributed to: All prospective Proposers