

**GATEWAY PROGRAM DEVELOPMENT CORPORATION**  
**REQUEST FOR PROPOSALS**  
**RFP No. 2019-01**  
**PROFESSIONAL LEGAL SERVICES (PROJECT COUNSEL)**

**Addenda No. 1 and No. 2**

April 26, 2019

**Addendum No. 1**

The Request for Proposals No. 2019 for Professional Legal Services (Project Counsel) issued on April 5, 2019 (the "RFP") is hereby amended by this Addendum No. 1 as follows:

1. Section 4 of the RFP is amended to add the following paragraph at the end thereof:

"If GDC selects one Proposer, GDC anticipates entering into a retainer agreement with only one firm, regardless of the number of firms comprising the Proposer. If a Proposer is comprised of multiple firms, the Proposer should clearly identify in the "Management Approach" section of its Proposal: (a) the firm that proposes to serve as the prime firm and enter into the retainer agreement with GDC, if successful; (b) the contracting arrangements contemplated between the prime firm and each co-counsel firm on the Proposer team, including provisions to ensure that GDC benefits from attorney-client privilege and any other standard privileges afforded to clients of attorneys; and (c) how the Proposer team will ensure continuity of service and ease of administration for GDC, while at the same time allowing GDC to fully leverage the capabilities and strength of the entire team assigned to GDC."

2. Section 9 of the RFP is amended as follows:

- (a) the following sentence at the end of the first paragraph of the Section is deleted in its entirety: "A firm's submission of a Proposal in response to this RFP will constitute agreement on the part of the selected firm to the form of the retainer agreement.";

- (b) the following sentences are added to the end of the first paragraph, as amended pursuant to Section 2(a) of this Addendum No. 1:

"If a Proposer has comments or proposed edits to the form of the retainer agreement attached to this RFP as Attachment E, the Proposer may include the comments and proposed edits for GDC's consideration in its Proposal. GDC makes no assurances to Proposers that edits to the retainer agreement will be accepted, as proposed. The Fee Schedules to the retainer agreement, forms of which are attached to this RFP as Attachments F-1, F-2, and F-3, will be updated for the successful Proposer, as needed, to reflect the ultimate fee structure that has been accepted by GDC. Additionally, GDC may add provisions to the retainer agreement, as needed, to reflect other aspects of the Proposer's proposal."; and

(c) the second paragraph of Section 9 is deleted in its entirety.

3. Attachment D of the RFP is amended as follows:

(a) the requirements for "Pending Legal Matters" are amended as follows:

i. subsection (a) is deleted in its entirety.

ii. subsection (b) is amended and restated in its entirety as follows:

"(b) Disclose any civil or criminal actions, suits, proceedings, arbitrations, investigations of, against or involving the Firm or its principals or employees (in their capacity as principals or employees) occurring over the past five years and brought by any bar association, governmental or quasi-governmental authority or agency or other public sector entity, or to the Firm's knowledge, threatened or contemplated by such entities."

(b) the requirements for "Conflicts of Interest" are amended and restated in their entirety as follows:

"If a Proposer, including any firm on a Proposer team, or any employee or agent thereof has an actual or potential conflict of interest relating to (i) GDC or (ii) Amtrak, NJ TRANSIT, or PANYNJ in connection with the Gateway Program, the Proposer shall include in its Proposal a statement indicating the nature of the actual or potential conflict and how the firm would propose to deal with such disclosed circumstance(s). GDC reserves the right to disqualify the Proposer if any interest disclosed from any source indicates a conflict of interest exists at the time of the submission of its Proposal, or the interest disclosed could create, or give the appearance of, a conflict of interest that cannot be resolved to GDC's satisfaction. The determination by GDC regarding any question(s) of conflict of interest shall be final."

(c) the requirements for "Fees and Charges" are hereby amended to add a new section (k) as follows:

"(k) A statement of how your proposed fee structure would maximize value to GDC."

## **Addendum No. 2**

Set forth below are questions and requests for clarification that GDC received relating to the RFP. As instructed in the RFP, all questions were received via email at [procurement@gatewayprogram.org](mailto:procurement@gatewayprogram.org).

All responses provided by GDC in this Addendum No. 2 to the questions and requests for clarification are deemed to be supplemental information to the RFP, and Proposers may rely on such responses in preparing their Proposals.

1. **Q:** To meet the minimum qualifications, do all lawyers proposed have to be licensed to practice law in New York or New Jersey?

**A:** No. There is no minimum requirement in Section 3 or Attachment C of the RFP relating to New York or New Jersey bar admissions. Proposers will have to independently determine how they will comply with applicable law or professional standards regarding the practice of law of attorneys that are not admitted in NY and/or NJ.
2. **Q:** Attachment C - The Proposal Format Requirements in the RFP indicate that the content for Attachment C (Proposer Minimum Requirements) is not subject to the 20 page limit for the proposals. Is there a limit to the number of pages or deals we may include for reference as part of our response to Attachment C?

**A:** No. There is no page limit for Attachment C. However, Proposers should not use Attachment C to include information beyond what is required to demonstrate satisfaction of the minimum requirements listed in Section 3 of the RFP.
3. **Q:** Is there a minimum number of projects/matters that must be submitted through Attachment C?

**A:** No. There is no minimum number of projects/matters required for Attachment C.
4. **Q:** RFP Section 4 notes that a Proposer may include in its proposal co-counsel to perform certain Legal Services. Will GDC allow a law firm with specialized expertise to team as co-counsel with more than one Proposer? Will GDC consider entering into separate retainer agreements with the selected Proposer and any co-counsel?

**A:** A co-counsel firm within a Proposer team may participate on multiple Proposals, provided that each team must take any and all measures necessary to ensure that all firms can accurately certify as to the matters contained in Attachment H of the RFP. See Addendum No. 1, Section 1 regarding contracting arrangements relating to co-counsel.
5. **Q:** Are each of the selection criteria weighted equally or will GDC have different weighting for each of the selection criteria?

**A:** The selection criteria described in clauses (a) – (d) of Section 8 of the RFP are listed in the order of priority to GDC.
6. **Q:** Will GDC consider changes to the Draft Form of Retainer Agreement and if so, how would you like us to provide GDC with our proposed changes?

- A:** See Addendum No. 1, Section 2.
7. **Q:** If federal funding is provided, what federally mandated terms and conditions will be required as part of the retainer agreement? Will the law firm be considered a federal subcontractor?
- A:** See Addendum No. 1, Section 2(c).
8. **Q:** To the extent that federal funding is used to pay for the Legal Services, would the federally mandated terms and conditions that will be required as part of the retainer agreement obligate the selected Firm(s) to have affirmative action plans or any other federally mandated EEO requirements/FAR flow-down provisions?
- A:** See Addendum No. 1, Section 2(c). However, GDC may request that a potential successful Proposer provide information regarding its affirmative action, EEO and/or other similar programs prior to contract award.
9. **Q:** In Attachment D: Proposal Content Requirements section “Firm Qualifications and Experience” under item 4: (c) Regulatory Rail law – is this reference intended to capture safety regulations? (e) Construction Law – is this reference intended to capture negotiation of construction arrangement as compared to construction disputes? (g) Insurance Law – is this reference intended to capture Experience drafting and negotiating insurance requirements for rail projects? (i) Environmental Law – is this reference intended to capture experience with the NEPA process and environmental requirements as compared to environmental litigation?
- A:** GDC’s request for information about the Proposer’s experience with the various types of legal matters referenced in item 4 of “Firm Qualifications and Experience” in Attachment D is not intended to be narrowly focused on any type of experience within the broad categories. Proposers must use their discretion and understanding of the Legal Services to determine the content of their Proposals.
10. **Q:** In Attachment D: Proposal Content Requirements section “Pending Legal Matters”: This section appears to demand three different ways that we identify any legal proceedings to which we are or expect to be a party. Would it be sufficient in this regard to certify that the Firm is not a party to any legal proceeding which would be material to our proposed representation of GDC?
- A:** Proposers must provide all the information required by the “Pending Legal Matters” section of Attachment D. See also Addendum No. 1, Section 3(a).
11. **Q:** Attachment E refers to utilizing Co-Counsel. Will GDC enter into the engagement letter directly with the Co-Counsel or is the expectation the Co-Counsel will be a subcontractor to the prime counsel? Does the Co-Counsel have to complete Attachments A, G and H? Can the Co-Counsel be used to satisfy any of the minimum requirements?
- A:** See Addendum No. 1, Section 1. All firms comprising a Proposer must complete and submit Attachments A, B, G and H. Proposed co-counsel shall be deemed to be a part of a Proposer

team, and the experience of co-counsel may be used to satisfy a minimum requirement listed in Section 3 of the RFP.

12. **Q:** Please clarify the intent of the following reference in the Draft Form of Retainer Agreement (Attachment F): “This retention is made upon the understanding that, during the period of the retention (i) the Firm will not accept employment or be otherwise retained by any other party whose interests may be in conflict with those of GDC...”

Does this language mean that the selected Firm(s) may not represent any such parties in matters unrelated to the Gateway Project? Under what circumstances do you consider another party’s interests to be in conflict with GDC? Can we assume that said party needs to be involved in a matter (transactions, negotiations, proceedings or other representations involving specific parties) adverse to GDC?

Does GDC anticipate at this point that NYSDOT, Amtrak and NJ Transit are likely to be parties “whose interests may be in conflict with those of GDC”? If so, does that mean that the selected Firm(s) may not represent NYSDOT, Amtrak and/or NJ Transit in any matters (including matters unrelated to the Gateway Project)?

- A:** See Addendum No. 1, Section 3(b). See also GDC Response to questions 16 and 17 below.

13. **Q:** In Attachment D: Proposal Content Requirements section “Conflicts of Interest”: The document appears to demand extensive disclosures related to our current clients” Could you confirm that this request is confined to any potential conflicts identified with respect to Amtrak, PANYNJ, NYSDOT, NJTRANSIT or USDOT? And not all of our current clients?

- A:** See Addendum No. 1, Section 3(b).

14. **Q:** The RFP requires us to disclose any actual or potential conflict of interest that the assignment might present, including actual or potential conflict with Amtrak, PANYNJ, NYSDOT, NJ TRANSIT or USDOT. Is it GDC's position that representing clients adverse to these entities or departments constitutes a conflict of interest?

- A:** See Addendum No. 1, Section 3(b). Proposers should use applicable rules of professional conduct and any information Proposers have regarding the Gateway Program, as of the date of their Proposal submission, in determining whether there is an actual or potential conflict of interest that must be disclosed.

15. **Q:** The RFP provides that the law firm may be asked to advise on, negotiate and draft, governance and/or project development agreements among GDC, NJ TRANSIT, Amtrak and PANYNJ. Does GDC anticipate that this would be a joint representation or would the firm represent GDC only and that NJ TRANSIT, Amtrak and PANYNJ would be adverse parties for purposes of conflicts analysis?

- A:** All firms procured pursuant to the RFP shall be retained to advise and provide Legal Services only to GDC. The nature of the relationship between GDC and any other entity will be determined on a context-specific basis. See also GDC Response to question 14 above.

16. **Q:** The Draft Form of Retainer Agreement provides that "during the period of retention the firm will not accept employment or be otherwise retained by any other party whose interests may be in conflict with those of GDC..." Is GDC defining a conflict more broadly than would be defined by the applicable rules of professional conduct?
- A:** No, GDC intends to use applicable rules of professional conduct in determining whether there is a conflict of interest.
17. **Q:** Will GDC consider waiving conflicts? For example, the firm may be asked to represent GDC adverse to an entity while other attorneys in the firm represent that entity in unrelated matters.
- A:** See Addendum No. 1, Section 3(b). Proposers should disclose all matters they have determined to be actual or potential conflicts of interest and how the firm(s) propose to deal with such disclosed circumstance(s). GDC's decision with respect to any proposed resolution to the disclosed matters shall be made on a case-by-case basis and in GDC's sole discretion.
18. **Q:** For the Fees and Charges section, should Proposers include blended rates by position with at least a 20 percent discount or is GDC looking for similarly discounted hourly rates for each proposed attorney? Or, should we include both options?
- A:** Proposers must provide all the information required by the "Fees and Charges" section of Attachment D. If Proposers wish to propose more than one fee structure, they may do so.
19. **Q:** Is there a preferred pricing process to follow when Proposers are including co-counsel? Can we provide separate discounted rates by position for each firm? The draft retainer agreement (Attachment F) only appears to allow for a single rate for each position.
- A:** Proposers must provide all the information required by the "Fees and Charges" section of Attachment D, including rates for all people expected to perform services. See also Addendum No. 1, Section 2(b).