



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

ADDENDUM NO. 2

RFP Title: REQUEST FOR PROPOSALS FOR OUTSIDE COUNSEL LEGAL SERVICES IN CONNECTION WITH NEW YORK CITY RETIREMENT SYSTEMS' ASSET MANAGEMENT PRIVATE MARKET INVESTMENTS

PIN: 01524OGC68565

Date: February 2, 2024

Contact: Brittania Stewart

Email: BAMCounselSubmission@comptroller.nyc.gov

THIS ADDENDUM IS ISSUED FOR THE PURPOSE OF AMENDING THE REQUIREMENTS OF THE REQUEST FOR PROPOSALS (RFP) AND IS HEREBY MADE A PART OF SAID REQUEST FOR PROPOSALS TO THE SAME EXTENT AS THOUGH IT WERE ORIGINALLY THEREIN.

UNLESS OTHERWISE INDICATED BELOW, ALL TERMS AND CONDITIONS OF THIS RFP REMAIN THE SAME. PROPOSERS MUST ACKNOWLEDGE RECEIPT OF ALL ADDENDA ISSUED AS INDICATED IN THIS RFP.

This addendum includes the following information:

1. REVISIONS TO THE RFP DOCUMENT

Changes to the RFP document are in bold and underlined.

- Page 1, Section 1 Timetable, D. Questions, the first paragraph second sentence has been corrected to the following:

Please include “PIN **01524OGC68565** – NEW YORK CITY RETIREMENT SYSTEMS PRIVATE MARKET INVESTMENTS OUTSIDE COUNSEL RFP” in the subject line of any e-mail sent to the address above.

- Page 18, Section IV – Format and content of the proposal, B. Proposal Package Submission, Contents (“Checklist”) and Labeling, 1. Proposal Package Submission, second sentence has been corrected to the following:

“Proposal for PIN **01524OGC68565** – NEW YORK CITY RETIREMENT SYSTEMS PRIVATE MARKET INVESTMENTS OUTSIDE COUNSEL RFP.”

- Page 18, Section IV – Format and content of the proposal, B. Proposal Package Submission, Contents (“Checklist”) and Labeling, 3. Proposal Labeling, the sample file labeling bullets has been corrected to the following:
 - ACME Inc_PIN 01524OGC68565 Technical Proposal
 - ACME Inc_PIN 01524OGC68565 Price Proposal
 - ACME Inc_PIN 01524OGC68565 DBDF
- Page 3, Section II Summary of the Request for Proposal, F. Conflict of Interest and other Restrictions, has been changed to the following:
 1. Proposers must disclose in their written proposals, all pending claims, proceedings and actions, including cross-claims and counterclaims, by the proposers, its subcontractors, employees, associates, partners or attorneys serving as of counsel, or in which the proposers, its subcontractors, agents, representatives, employees, associates, partners or attorneys serving as of counsel represent a client against the City or any of its agencies or entities, including but not limited to, NYCERS, TRS, Police, Fire, and BERS, and/or any employee or indemnitee of these entities in their capacity (or relating to their capacity) as employee or indemnitee, of any nature.
 2. Proposers must disclose in their written proposals (i) any material arrangements, relationships or other employment that the firm or any firm employee has with any financial advisory firms, accounting firms, claims administrators, investment banks, investment advisers, investment managers, fund or other law firms or other persons or entities that may create a conflict of interest or the appearance of a conflict of interest in acting as Investment Counsel to NYCERS, (ii) any family relationship that any principal, partner, member, associate, or employee of the firm has with any City public servant that may create a conflict of interest or appearance of a conflict of interest in acting as Investment Counsel to NYCERS, and (iii) any other matter that the firm believes may create a conflict of interest or the appearance of a conflict of interest in acting as Investment Counsel to NYCERS.
 3. ~~Proposers must provide a resume, job description, and identify the name and title of their conflict officer(s) in their proposals and agree to promptly advise the Comptroller’s Office if a new conflicts officer is appointed and of any conflicts that would be responsive to F)(1) (2) of this section of the RFP from the date of the proposal deadline and throughout the Term of any contract awarded pursuant to this RFP.~~ Proposer must certify in their proposals that they have conducted a conflict check prior to the submission of their proposals, and, if awarded, must conduct another conflict check prior to the execution of any contract or task order.
 4. Proposers must certify in writing to the Comptroller’s Office that they have removed themselves from any claims, actions, proceedings or relationships, where the Comptroller, in its sole discretion, determines such removal is necessary for a contract award to proceed.
 5. The Comptroller’s Office reserves the right to require any contractor during the Term of any contract awarded pursuant to the RFP to: a. Conduct periodic conflict checks ~~as described in paragraph (F)(2) above~~; b. Certify in writing that the contractor has conducted the ~~required requested~~ conflict check; c. Advise the Comptroller’s Office in writing of all potential conflicts ~~described in paragraph (F)(1) (F)(2) above~~; and d. Remove itself from any such matter in the event the Comptroller’s Office determines such matter presents a conflict of interest and advise the Comptroller’s Office in writing of such removal.

The existence of any conflicts or potential conflicts will be evaluated and a determination will be made, at the sole discretion and consideration of the Comptroller's Office, as to whether such conflict(s) will disqualify a proposer.

2. QUESTIONS

This addendum lists of the questions received by January 31, 2024.

1. **We note that Addendum No. 1 provides that Attachment C has been revised to only allow proposed pricing for subcategories in Category A.1-A.6 and B.1-B.2 and proposed pricing should not be included within boxes that are shaded gray and filled in as “N/A.” We note that Category C: Sole Investor is not shaded gray or filled in as N/A. Notwithstanding the foregoing, please confirm we should NOT fill in Category C.**

Answer: Firms should complete Category C in Attachment C.

2. **For purposes of providing a proposed flat fee for any category in Attachment C, should we assume the fund will be formed in Delaware or can we assume that such fund will be organized in a foreign jurisdiction which may entail additional review (e.g., opinions from non-US counsel)?**

Answer: When responding to the RFP, Firms should propose a flat fee to complete the work in the categories listed in Attachment C while keeping in mind all potential variables that may impact the amount of work that the firm will need to do to complete the work. Firms must determine how those variables impact their flat fee proposal when completing Attachment C.

With respect to a specific deal, when responding to a Request for Services (RFS), firms can propose at such time a flat fee that reflects the scope of the RFS, provided that such flat fee cannot exceed the not-to-exceed rate established in the Master Agreement.

3. **When determining proposed pricing for Category B in Attachment C, should we assume that pool counsel in the prior fund was NOT the same pool counsel for the subsequent fund (even though NYC invested in both funds)?**

Answer: See answer to question #2 above.

4. **For this RFP because the PIN number listed on the cover page of the RFP, on the NYCRS website and the footer of each page of the RFP is 01524OGC68565, but the instructions in Section I.D. (on Page 1 of the RFP) and Section IV.B. (on Page 18 of the RFP) regarding email subject line and document naming requirements list PIN 01524OGC65865.**

Answer: The PIN referenced in the instructions in Section I.D. and IV.B of the RFP are incorrect. The correct PIN is 01524OGC68565.

5. **Going forward, can we assume the Systems will generally identify changes to fund counsel (and underlying deal documentation) in subsequent funds before we, as your counsel, respond to a bid request?**

Answer: As standard, the RFS will provide information on the fund counsel. The Comptroller's Office will make all efforts to confirm if the fund counsel has changed from the prior fund and will provide such information, upon request, if available. However, we do not expect to be able to identify any changes to the underlying deal documentation at the time the RFS is issued.

6. As a follow up to the above (question 5), changes in fund counsel usually result in substantial changes to documents or entirely new underlying fund documents, materially impacting the deal review process in connection with subsequent funds. Accordingly, should our proposed master caps for subsequent funds be set so that they include a potential change in counsel? A subsequent fund review with new fund counsel and new underlying documents can be extensive, as it requires both a clean review of the new fund documentation while attempting to retain beneficial concepts and terms received by the Systems in the prior fund(s).

Answer: See answer to questions #2 and #5 above.

7. You note that firms will have the opportunity to review and ask questions about the terms of the master agreement. If necessary, will firms have the opportunity to negotiate mutually agreeable changes to those terms? In addition, Section VI.C states that contracts will be subject to the City's general contract provisions in Appendix A. Will there be an opportunity for firms to raise exceptions to those general provisions, and if so, should that be done in the firm's response to the RFP?

Answer: Firms may have an opportunity to negotiate some terms, however, the Comptroller's Office intends to issue identical terms and conditions to all firms for each pool; not-to-exceed rates are subject to negotiation and may differ from one firm to another in value but will still be based on the same structure. You may raise exceptions to Appendix A in your response to the RFP and this will not impact the evaluation process. The Comptroller's Office may consider those exceptions at its sole discretion.

8. Section F(3) of the RFP, Conflict of Interest and Other Restrictions, indicates that firms have an ongoing obligation to advise the Comptroller's Office of any conflicts responsive to F(1)-(2). Sections F(1) and F(2) in turn are very expansive and include matters and relationships that would not typically be considered ethical conflicts under the applicable rules, as well as some that as a large law firm we do not track on a firmwide basis. Is the duty to disclose and seek approval from the Comptroller for conflicts on an ongoing basis limited to those as defined by the applicable rules of professional conduct, or is the Comptroller intending to expand that duty to something broader?

Answer: This section of the RFP has been revised. See Part 1 above.