July 8, 2020

Re: RFP #2065 – **Long-Term Care Insurance Legal Restructuring**

The National Association of Insurance Commissioners (NAIC) is soliciting proposals from law firms to research and report on existing state laws and regulations that could support a new regulatory framework authorizing insurers to separate policies from one another.

The chosen legal consultant will identify options for insurer restructuring or transfer of blocks of business to accomplish separation of policies from insurers’ general accounts to avoid material cross-state rate subsidization and consider the potential risks to states’ guaranty funds, existing legal impediments, and other potential issues.

To receive consideration, proposals should be sent electronically to Proposals@naic.org by 5 PM Central on Friday, August 7, 2020. In addition to ensure the proposal addresses all items within the scope of work, the proposal should clearly state the price plus any service charges or fees that could be incurred in the delivery of this service.

**Request for Proposal Schedule**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wednesday, 07/08/2020</td>
<td>Release of RFP</td>
</tr>
<tr>
<td>Friday, 07/17/2020</td>
<td>Notification of intent to bid to <a href="mailto:Proposals@naic.org">Proposals@naic.org</a></td>
</tr>
<tr>
<td>Monday, 07/20/2020</td>
<td>Submission of questions to <a href="mailto:Proposals@naic.org">Proposals@naic.org</a></td>
</tr>
<tr>
<td>Monday, 07/27/2020</td>
<td>Responses to questions provided via email and the NAIC website</td>
</tr>
<tr>
<td>Friday, 08/07/2020</td>
<td>Proposal due to NAIC to <a href="mailto:Proposals@naic.org">Proposals@naic.org</a></td>
</tr>
<tr>
<td>October 2020</td>
<td>Vendor Selection and Award of RFP</td>
</tr>
</tbody>
</table>

Please submit questions regarding any aspect of this project to Jim Woody via Proposals@naic.org by close of business on Monday, July 20, 2020. All questions will be consolidated, and answers provided to all potential vendors and posted to the NAIC website by close of business on Monday, July 27, 2020.

**Selection Criteria**

A committee of NAIC staff with direction from regulators representing the Long-Term Care Insurance (EX) Task Force will review the proposals and make a recommendation to the Executive (EX) Committee.
The selection will be based on the following criteria:

- Knowledge of specific requirements
- Knowledge of state-based regulation
- Qualifications of staff dedicated to the project
- Professional reputation of the firm
- Ability to provide the deliverables in a reasonable timeframe
- Price

NAIC reserves the right to reject any or all proposals, request new proposals, or request additional information. NAIC also reserves the right to further negotiate with any or all bidders or cancel this RFP at the direction of its membership. Thank you for your consideration.

Sincerely,

[Signature]

James W. Woody
NAIC Chief Financial Officer

CC: Andy Beal, NAIC Chief Operating Officer/CLO
    Donna Powers, NAIC Strategic Business Initiatives Assistant Director
I. Scope of Work – Long-Term Care Insurance Legal Restructuring

The Long-Term Care Insurance (EX) Task Force (Task Force) is charged with developing a consistent national approach for reviewing long-term care insurance (LTCI) rates that results in actuarially appropriate increases granted by the states in a timely manner and eliminates cross-state rate subsidization. In connection with that charge, the Task Force is to consider whether state laws and regulations could support a new regulatory framework authorizing insurers to separate policies from insurers’ general accounts to avoid material cross-state rate subsidization.

In view of the above, the CONSULTANT shall provide to the NAIC the following services governed by the Consultant Agreement entered into by the parties. Note, the contract will utilize an agreed-upon price, and only Phase I of the agreement is guaranteed. Phase II will only occur if the NAIC deems it appropriate based on the results of Phase I and requests it.

Phase I – Research and Report on Existing State Law Pertaining to Insurer Restructuring or LTCI Transfer and Develop Company-Specific Recommendations

a. Based upon CONSULTANT’s analysis of existing state laws, including those that allow a formal restructuring, identify options for insurer restructuring or transfer of blocks of business to accomplish separation of policies from insurers’ general accounts to avoid material cross-state rate subsidization.

• The options may include restructuring long-term care (LTC) insurers in whole or part and/or transfer of blocks of LTCI through the use of quota-share agreements and/or assumption reinsurance.

• The CONSULTANT must consider the potential risks to states’ guaranty funds and policyholders’ access to guaranty fund protections, focusing on options that avoid receivership.

• CONSULTANT’s analysis should identify existing legal impediments in each state that could impair a restructure or transfer to prevent cross-state rate subsidization.

• CONSULTANT’s analysis should identify the impact of states failing to allow LTCI rate increases when legally permissible and actuarially appropriate. The analysis should identify the legal risks for such states and the legal recourse options available to affected stakeholders against such states.

b. Develop a report discussing the results from the CONSULTANT’s research and include specific recommendations on how to mitigate against each legal impediment and litigation risk.
The discussion must identify options for overcoming the legal and regulatory impediments. The options may include a discussion of the use of permitted accounting practices to allow sufficient time to carry out restructuring or transfer options.

The discussion should include an analysis of advantages and disadvantages for each recommendation.

The NAIC (through its Long-Term Insurance (EX) Task Force) intends to expose the report for public comment to industry stakeholders including LTC, life and health insurers, guaranty fund representatives, and leading LTC consumer representatives.

c. CONSULTANT will modify the report to consider valid comments made by such stakeholders and produce a document providing a legal basis for rejecting other comments.

Phase II – Draft Industry-Wide Solutions or Statutory Changes If Deemed Appropriate and Requested by the NAIC

a. If deemed appropriate and requested by the NAIC, develop a report with recommended industry-wide solution(s) (e.g. creation of a run-off facility) on how to mitigate against each legal impediment and risk, which includes an analysis of advantages and disadvantages for each recommendation.

b. If deemed appropriate and requested by the NAIC, evaluate statutory changes necessary to achieve the stated objective.

II. CONTENT OF PROPOSAL

The following items should be included in your proposal. Please reference RFP-2065 on all parts of your response.

Section I – Company Overview
• Concise description of your company, including a brief history and general expertise related to projects of this type.
• Point of contact who will facilitate this project, their role, experience, and contact information.
• Biographies of the proposed team members, including their role and specific experience and expertise.

Section II – Services Provided
• Outline of the services your company offers as it relates to this type of project.
• General description of how the provided services would meet the Scope of the Work described above and the following which are qualification requirements:
  o Demonstrated and documented experience in restructuring of complex companies, including financial services companies and/or companies operating in a highly regulated market.
  o Demonstrated and documented experience with litigation associated with restructuring. This includes successful defense of restructuring plans in court, particularly those involving multiple states and parties, including governmental entities.
  o Demonstrated and documented experience developing novel restructuring concepts.
  o Demonstrated and documented knowledge of law relevant to novel restructuring techniques developed by the consultant.
  o Demonstrated and documented experience in administrative law, particularly matters of administrative litigation involving insurance regulatory issues.
  o A list of cases in which, during the previous four (4) years, the consultant has served as counsel or testified as an expert at trial or by deposition in litigation related to restructuring. This list should indicate the party for whom the consultant served as counsel, or testified and whether the testimony was struck or limited by the court.
  o A list and copy of publications or reports that have been cited in or relied upon in court. Please also identify the case in which the report was cited or relied upon.
  o Disclosure of all potential conflicts throughout the firm or an affirmative statement that a conflicts check has been performed and no conflict was identified.
• Any supplemental information deemed to be helpful to the Committee’s decision.

III. SELECTION PROCESS

The NAIC, with appropriate input from regulators and subject matter experts, will be responsible for the selection of the vendor. After selection of the vendor, funding will require approval of the NAIC Executive Committee.

The following factors will be considered in making the vendor selection:
  • Knowledge of specific requirements
  • Knowledge of state-based regulation
  • Qualifications of staff dedicated to project
  • Professional reputation of the firm
  • Ability to provide the deliverables in a reasonable timeframe
  • Price
IV. CONFLICTS OF INTEREST

The NAIC recognizes that, given the broad scope of this project, any vendor with the experience reasonably necessary to produce the work may have certain conflicts of interest based upon past associations with regulators or industry participants. These conflicts of interest will not automatically disqualify the vendor, but the vendor must have verifiable policies and procedures in place designed in compliance with established industry standards to address conflicts of interest issues that may arise.

V. CONDITIONS

The NAIC reserves the right to not award a contract for this project. Reasons for not awarding a contract could include, but are not limited to, a lack of acceptable proposals or a finding that insufficient funds are available to proceed. The NAIC also reserves the right to redirect the project as is deemed advisable. The NAIC also reserves the right to cancel this RFP at the direction of its membership.

VI. QUESTIONS

Any questions regarding the Scope of Work should be directed to: Proposals@naic.org. Questions related to any other matter should be directed to Jim Woody, e-mail: JWoody@naic.org.
NAIC CONFLICT OF INTEREST FORM
FOR RETENTION OF CONSULTANTS SUBJECT TO BID

NAIC RFP 2065

Any Entity that desires to contract with the NAIC must complete this form, including vendors, consultants and purchasers of goods or services. All potential conflicts must be disclosed and approved before the contract execution.

CERTIFICATION

________________________________________
Authorized Entity Signature
Date

Print Name & Company Name

CLOSURE OF POTENTIAL CONFLICT

NAIC Executive Approval
Date
STANDARD TERMS AND CONDITIONS
for
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
PURCHASE ORDERS FOR SERVICES

As used herein, “Seller” means the person, firm, or corporation to whom this Purchase Order is issued; “Buyer” means the National Association of Insurance Commissioners, a nonprofit Delaware corporation.

1. **Acceptance of Terms and Conditions.** Seller agrees to perform the services (“Services”) described in any purchase order (“Purchase Order”) in accordance with these Terms and Conditions. Upon acceptance of a Purchase Order or upon commencement of Services, Seller shall be bound by these Terms and Conditions and all provisions set forth on the face of any applicable Purchase Order, whether Seller signs or otherwise acknowledges these Terms & Conditions or the Purchase Order, unless Seller objects to such Terms and Conditions in writing prior to commencing Services.

2. **Revocable.** This writing does not constitute a firm offer and may be revoked at any time prior to acceptance.

3. **No modification.** No agreement or other understanding in any way altering the terms, prices or conditions of the applicable Purchase Order or these Terms and Conditions shall be binding upon Buyer unless made in writing and signed by Buyer’s duly authorized representative.

4. **Termination.** Buyer may immediately terminate the Purchase Order upon written notice to Seller if Seller fails to perform or otherwise breaches these Terms and Conditions, files a petition in bankruptcy, becomes insolvent, or dissolves. Buyer may terminate the Purchase Order for any other reason upon thirty (30) days’ written notice to Seller. Upon receipt of notice of termination, Seller shall cease to provide Goods and/or perform Services pursuant to the Purchase Order. In the event of termination, Buyer shall be liable to Seller only for those Services satisfactorily performed before the date of termination, less appropriate offsets. Buyer shall not be subject to any charges or other fees as a result of such cancellation. Seller may terminate this Agreement upon written notice to Buyer if Buyer fails to pay Seller within sixty (60) days after Seller notified Buyer in writing that payment is past due and that it intends to terminate the Purchase Order.

5. **Warranty of Services.** Seller represents and warrants that all Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good, and sound professional procedures. Further, Seller warrants that the Services shall be completed in accordance with applicable specifications. Seller represents and warrants that the performance of Services hereunder will not conflict with, or be prohibited in any way by any other agreement or statutory restriction to which Seller is bound.

6. **Seller’s Indemnification.** Seller shall indemnify, hold harmless, and at Buyer’s request, defend Buyer, its officers, directors, agents and employees, against all claims,
liabilities, damages, losses and expenses, including attorneys’ fees and costs of suit arising out of or in any way connected with any claim by a third party against Buyer alleging that the Services infringe a patent, copyright, trademark, trade secret or other proprietary right of third party. Seller shall not settle any such suit or claim without Buyer’s prior written consent. Seller shall also indemnify and hold harmless Buyer from any injury to person or property arising out of or caused by Seller’s performance of the Purchase Order. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing this indemnity provision, including attorneys’ fees.

7. **Compliance with Laws.** Seller shall comply with all laws and regulations of federal, state and local governments, including without limitation, laws and regulations dealing with fair labor standards, civil rights, and public contracts. Seller further warrants that all Services performed pursuant to the Purchase Order have been produced or performed in compliance with such laws and regulations and Seller agrees to indemnify Buyer for any liability resulting from such noncompliance by the Seller.

8. **Price.** The price to be paid by the Buyer shall be the price contained in Seller’s bid and/or the price stated on the face of the Purchase Order whichever is less. Seller represents the price contained in Seller’s bid is no higher than Seller’s current prices on orders by others for similar products or services under similar or like conditions and methods of purchase.

9. **Invoices.** Seller shall submit invoices on each Purchase Order after each delivery. Buyer shall not be charged sales tax and shall furnish a tax exemption certificate upon request. Discounts will be taken from the date of acceptance of services or date the invoice is received by Buyer whichever is later. Buyer shall retain the right of offset.

10. **Force Majeure.** Buyer shall not be liable for any failure to perform including failure to: (1) accept performance of Services, or, (2) take delivery of the Goods as provided if caused by circumstances beyond Buyer’s control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, government action, accident, labor difficulties or shortage, or the inability to obtain materials, equipment or transportation.

11. **Insurance.** Seller shall be solely responsible for maintaining adequate auto, workers’ compensation, unemployment compensation, disability, liability and other applicable insurance, as is required by law or as is the common practice in Seller’s trade or business, whichever affords greater coverage. Seller shall carry Comprehensive General Liability coverage and Umbrella or Excess Liability coverage with minimum limits of $1,000,000 per occurrence and $2,000,000 in the aggregate for property damage and bodily injury. Upon request, Seller shall provide Buyer with certificates of
insurance evidencing adequate coverage naming the Buyer as additional insured.

12. **Limitation of Liability.** IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR SELLER’S AGENTS, OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER OR NOT BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

13. **Confidentiality.** In the event Seller gains written or oral confidential information of or from the Buyer, Seller agrees not to reveal to anyone or make use of such knowledge and information at any time for any purposes except as necessary in the course and scope of provision of Goods or performance of Services specified hereunder. Upon termination of the Purchase Order, Seller agrees to deliver to Buyer all such confidential information or work product belonging to Buyer.

14. **Assignability.** Seller shall not assign or subcontract this Purchase Order or any of its rights or obligations hereunder without the prior written consent of Buyer. Any assignment or transfer without such written consent shall be null and void.

15. **Publicity.** Seller shall not use Buyer’s name in any form or attribution in connection with any solicitation, publicity, advertising, endorsement or other promotion.

16. **Survivability.** Any obligations and duties, which by their nature extend beyond the expiration or termination of this Purchase Order shall survive the expiration or termination hereof.

17. **Choice of Law.** This Purchase Order shall be construed in accordance with, and disputes shall be governed by, the laws of the State of Missouri.

18. **Severability.** If any provision of this Purchase Order shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

NAIC 8/2012
Do you agree to the NAIC Terms & Conditions?

YES  ________________________________   ______________
     Signature                                                            Date

NO   ________________________________   ______________
     Signature                                                            Date

Please Sign one.

If NO,

Please provide your Terms and Conditions of Sale if you do not agree to the NAIC Terms & Conditions attached.