

State of Delaware



Department of Justice

Carvel State Office Building
820 N. French Street
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Delaware Department of Justice Request for Proposals for Special Legal Counsel

Proposal Number: DOJ - 5052015

Proposal Deadline: May 5, 2015; 3:00 PM EST

**REQUEST FOR PROPOSALS FOR
SPECIAL LEGAL COUNSEL
ISSUED BY THE DEPARTMENT OF JUSTICE
OF THE STATE OF DELAWARE**

Executive Summary

The Delaware Department of Justice (“DOJ”), on behalf of the Delaware Department of Transportation (“DelDOT”) pursuant to 29 *Del. C.* §§ 2504 and 2507, is issuing this Request for Proposals (“RFP”). DOJ seeks to engage one law firm to act as Special Legal Counsel (“Special Legal Counsel”) to advise DelDOT and represent the State in connection with various aspects of a dispute between “DelDOT” and George & Lynch, Inc. (“G&L”) arising out of a contract for bridge removal at Indian River Inlet, Delaware.

DOJ anticipates that, after conducting interviews, it will select one firm to act on behalf of DelDOT as Special Legal Counsel, consistent with the scope of this RFP. DOJ reserves the right to award multiple contracts if it determines that doing so is in the best interest of the State of Delaware (“State”).

This RFP will define the scope of the work to be performed, the requirements a bidding law firm must address, the method for response, and the administrative procedures that must be followed. DOJ will advise candidate firms of changes to any dates as may be necessary. DOJ also reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

RFP Schedule

ID	Date/Time	Activity
1	April 30, 2015	RFP issued, posted on the State’s website at http://bids.delaware.gov and the Attorney General’s website at http://attorneygeneral.delaware.gov
2	May 5, 2015; 3:00 p.m. EST	RFP Response due date
3	May 8, 2015	Selected firms’ oral presentations and interviews (subject to change)

Any interested firm should submit: (1) one original and five bound copies of its proposal (“Proposal”) to the address immediately below, and (2) one electronic version of its Proposal to the RFP Designated Contact below. Proposals must be received by DOJ **no later than 3:00 p.m. EST on May 5, 2015** (“Closing Date”). Timely delivery of the Proposal is the bidder’s responsibility. Any Proposal received after 3:00 p.m. on the Closing Date will be late and may not be considered. All timely Proposals shall become the property of the State.

Requests for extensions of the Closing Date will not be granted. Any request for modification of the terms of this RFP must be received and approved by DOJ prior to the Closing Date.

Proposals may be submitted by Express Delivery (e.g., FedEx, UPS, etc.), U.S. Mail, or hand delivery. Proposals shall be submitted to:

Delaware Department of Justice
Attn: Mary Catherine McTaggart
Carvel State Office Building
820 N. French Street, 6th Floor
Wilmington, DE 19801
RFP: Special Legal Counsel – Proposal Number: DOJ - 5052015
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8922

RFP Designated Contact:

Please submit all questions and requests for information, via email, to:

Mary Page Bailey (with a copy to: Mary Catherine McTaggart)
Delaware Department of Justice
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, DE 19801

Direct Dial: (302) 577-8361
Fax: (302) 577-6630
Email: marypage.bailey@state.de.us (with a copy to:
Mary.McTaggart@state.de.us)

1.0 GENERAL INFORMATION

1.01 Project Scope

This RFP seeks to retain the services of one law firm to act as Special Legal Counsel to provide advice and legal representation with respect to arbitration and/or litigation, as the case may be, of a contract dispute between DelDOT and G&L as more specifically detailed below.

The law firm should be prepared to offer the following services:

- A. **General.** The law firm will be expected to represent DelDOT in an arbitration hearing conducted by an American Arbitration Association panel. It is anticipated that the members of the panel will be Peter Marvin, Rocco Cavallo and Travis L. Kreiser. The law firm is required to perform a conflicts check to insure that it has no conflict with the panel members or G&L.
- B. Timing. The Panel is ready to schedule the arbitration hearing shortly. The selected firm should be able to prepare quickly.**

1.02 Procedures

Selected Special Legal Counsel will work closely with the DAG assigned to act as special litigation counsel to DelDOT. All legal services are to be provided only at the request of the DAG. From time to time, the DAG may refer the Special Legal Counsel to work directly with DelDOT Staff, as necessary to successfully represent DelDOT interests. All advice is to be provided directly to the DAG or individuals identified and/or designated by the DAG.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The law firm must have been in business at least five (5) years; and
- B. The law firm should have at least five (5) years experience in complex contract litigation; and
- C. The law firm should have at least five (5) years experience in arbitrations conducted pursuant to American Arbitration Association procedures; and
- D. The law firm must designate as a member of the team proposed for this representation a lead attorney, licensed to practice law, with seven (7) or more years experience in contract litigation.

2.02 Professional Liability Insurance

The law firm shall agree to maintain in full force and effect during the term of the representation professional liability insurance in an aggregate amount of not less than \$10 million. In order to satisfy this requirement, the law firm must

- A. Include a statement in its Proposal affirmatively responding to this requirement; and
- B. Include in its Proposal either:
 - 1. A certificate of insurance or letter from its insurer demonstrating that the law firm meets this requirement, or
 - 2. A commitment letter or other evidence, satisfactory to the DOJ, that the law firm will have such coverage as of the date the representation commences.

2.03 Capacity

Each law firm must demonstrate the capacity to perform the type of services needed by DOJ, as described in Section 1.01 above. The law firm must be available at all times to render services required.

3.0 TECHNICAL PROPOSAL FORMAT

The following information shall be provided in each proposal in the order listed below. An applicant is expected to provide a response for each requirement listed in this RFP. Failure to respond to any request for information within this proposal may result in rejection of the Proposal at the sole discretion of DOJ.

3.01 General

All technical proposals shall be prepared with a concise description of the law firm's capabilities to satisfy the minimum qualifications of Section 2, above, and the information requested under Section 3.02, below. The applicant should organize its Proposal so that responses correspond to the specific subsections to the extent possible without unnecessary repetition.

3.02 Required Information

The Proposal shall contain the information described below. Joint ventures should provide the information separately for each firm.

A. Law Firm's Experience

1. General Experience and Information:

- i. Within the past three (3) years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the future? Please describe.
- ii. Has your firm or a partner or an attorney in your firm's employ ever been disciplined or censured by any regulatory body? If so, describe the principal facts.
- iii. Within the last five (5) years, has your firm, or a partner or attorney in your firm, been involved in litigation or other legal proceedings relating to provision of legal services? If so, provide an explanation and indicate the current status or disposition.
- iv. Please describe your firm's backup procedures in the event one or more attorneys assigned to this matter should leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to DOJ and DelDOT, whose continuing status as such is an essential element of this contract.

2. Related Legal Experience:

Provide a brief description of areas of the law related to the purpose of this RFP in which the firm has an expertise, including, but not limited to, construction and contracts law, other transactional and litigation practice areas, and arbitration.

3. Special Experience:

Provide a brief description of the firm's experience in the last five years representing or advising public sector clients in contract law issues

B. Conflicts of Interest.

1. In general, if a conflict of interest arises, the firm should be willing to continue to represent DelDOT, and be in a position to inform other

existing or potential clients that they must find representation elsewhere in particular situations. The Attorney General may entertain a request for a waiver of a firm's representation of a party in litigation involving a unit of State government other than DelDOT, but does not expect to waive any other conflicts. DOJ reserves the right, in its sole discretion, to select another approved law firm to work on a particular matter if a conflict is not resolved to its satisfaction.

Each firm shall identify any conflicts of interest which may arise if the firm serves as Special Legal Counsel and shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys named on the contract but also from representation of parties involved in the transactions or other matters or members of any panel of arbitrators, as set forth above, by any other member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

2. Conflict Check System.

The firm shall describe in detail its existing system for identifying conflicts of interest in undertaking new representations, and shall report on any conflicts with the arbitration panel members identified above. The description should include information about who maintains the records, how often the information is updated and at what stage of representation the check is made. The firm shall provide a copy of its written conflicts policy or explain in detail why there is no written policy.

3. Potential Conflicts.

Prior to entering into any contract, the firm shall provide assurances that potential conflicts have been discussed with other existing clients of the firm who might be requested to engage other counsel for a specific transaction, and that those existing clients are amenable to such an inconvenience.

4.0 PRICE PROPOSAL FORMAT

4.01 Billing Rates

- A. Current billing rates for all attorneys assigned to represent DelDOT pursuant to this RFP;
- B. Current billing rates for all para-professionals assigned to represent DelDOT pursuant to this RFP;
- C. All billing shall be in accordance with the DDOJ Outside Counsel Billing Policy ("Attachment A").

4.02 Alternative Pricing Proposals

Although each firm is required to submit a price proposal containing the information set forth in Part 4.01, DOJ will also accept proposals for alternative billing arrangements that enhance the value and efficiency of the services to be provided. The firm may submit a statement, not more than one page in length, with respect to any alternative pricing proposal.

5.0 EVALUATION OF PROPOSALS

DOJ shall evaluate the proposals. During the evaluation process DOJ may, at its discretion, request any or all firms to make oral presentations. Such presentations will provide firms with an opportunity to answer questions about a firm's Proposal. Not all firms may be asked to make such oral presentations.

5.01 Selection Criteria

The selection of the firm to serve as Special Legal Counsel will be based upon the following factors, in descending order of importance:

- i. The experience and reputation of the firm and relevant attorneys with respect to the subject matter of the anticipated litigation, dispute or engagement;
- ii. If applicable, the performance of the firm and relevant attorneys on past outside counsel engagements by the State of Delaware;
- iii. The firm's proposed approach to the dispute or litigation in question;
- iv. The cost to the state of the firm's services and strategy, relative to that of other bidders and relative to the experience and qualifications of the bidder;
- v. References and recommendations from former clients or members of the bar in the jurisdiction(s) in which the firm will provide legal services;
- vi. The experience and reputation of the firm and relevant attorneys in the jurisdictions(s) in which the firm will provide legal services;
- vii. Any potential or actual conflicts of interest and the potential for securing a waiver from relevant parties;
- viii. The extent and success of the firm's efforts to encourage the hiring, promotion and inclusion of women and minority attorneys, including its ability and commitment to include women and minority attorneys in the project under bid; and

- ix. Such other factors as may be relevant to the subject matter of the anticipated litigation or dispute.

5.02 Contract Negotiation

DOJ intends on opening negotiations with the firm that DeIDOT determines has a reasonable likelihood of being awarded a contract based on the proposal, interview and supplemental submissions (if any) that are submitted. Negotiations will focus on any weaknesses or deficiencies in proposals as well as cost and pricing issues.

A written contract with the law firm selected will be required, which must be approved by the Attorney General of the State of Delaware, DOJ and the Governor of the State of Delaware pursuant to *29 Del. C. § 2507*. The successful firm will be required to comply with the DDOJ Outside Counsel Billing Policy. (“Attachment A”).