

# STATE OF DELAWARE



## **Department of Finance**

Carvel State Office Building, 8<sup>th</sup> Floor  
820 N. French Street  
Wilmington, DE 19801

## Request for Proposals for Special Litigation Counsel

**Bid Number:** FIN-16- 001- Spec\_Lit

**Bid Closing:** 08/12/2015, 2015; 3:00 p.m. EST

**REQUEST FOR PROPOSALS FOR  
SPECIAL LITIGATION COUNSEL  
ISSUED BY THE STATE OF DELAWARE**

**Executive Summary**

The Department of Finance of the State of Delaware (“DoF”) is issuing this Request for Proposals (“RFP”). DoF seeks to engage a law firm to act as Special Litigation Counsel (“Special Litigation Counsel”) representing DoF and certain current and former officers in their professional capacities (collectively, the “State Defendants”) in *JLI Invest S.A., and LIN Invest S.A. v. Cook, et al.*, Court of Chancery of the State of Delaware Case No. 11274 (“Action”). In the Action, plaintiffs seek compensation for the alleged improper acceptance and subsequent liquidation of foreign-addressed abandoned property under Delaware’s escheat laws, 12 *Del.C.* §§ 1101 *et seq.* Plaintiffs challenge DoF’s actions under a variety of statutory and U.S. Constitutional theories. Plaintiffs have sought monetary damages, as well as both permanent injunctive relief and a declaratory judgment.

DoF anticipates that, after conducting interviews, it will select one firm to act on behalf of DoF as Special Litigation Counsel. DoF reserves the right to award multiple contracts if it determines that such an award 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 the vendor (“Vendor”) must address in its response, the method for response, and the administrative requirements that must be followed. DoF will advise potential Vendors of changes to any dates as may be necessary. DoF 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	7/29	Request for Proposal issued, posted on Department of Finance and Attorney General’s websites
2	8/5	All Vendor questions regarding RFP due
2	8/7	State issues answers to questions regarding RFP via Department of Finance website at <a href="http://www.state.de.us/finance">http://www.state.de.us/finance</a> and Attorney General’s website at <a href="http://attorneygeneral.delaware.gov">http://attorneygeneral.delaware.gov</a>
5	<b>8/12 3:00 p.m. EST</b>	<b>RFP Response due date</b>
4	8/13	Begin vendor interviews (subject to change)
5	8/17	Begin negotiations (subject to change)
6	8/19	Contract awarded (subject to change)

All interested firms should submit an original and eight bound copies of their proposals (“Proposal”) to the contact person. Proposals may be mailed or hand-delivered for receipt no later than 3:00 p.m. EST on Tuesday, **[SELECT DATE: 8/7; 8/11; 8/18]** (“Closing Date”). All timely Proposals become the property of the State. Requests for extensions of the Closing Date will not be granted. Any Proposal, request for modification, or request for withdrawal received after 3:00 p.m. on the Closing Date is late and may not be considered. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), U.S. Mail, or by hand. Proposals shall be submitted to:

Caroline Lee Cross  
Deputy Attorney General  
Carvel State Building; 820 N. French Street, 6<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Direct Dial: (302) 577-8814  
Fax: (302) 577-5866  
Email: caroline.cross@state.de.us

Each proposal must be accompanied by a transmittal letter, which briefly summarizes the proposing firm’s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP that the applicant may have taken in presenting the Proposal. DoF reserves the right to deny any and all exceptions taken to the RFP requirements.

The cost of preparing Proposals will be borne solely by the offerors. Proposals shall address all the questions posed by the Issuers in the order in which they appear in this request.

RFP Designated Contact:

Please submit all questions and requests for information to:

Caroline Lee Cross  
Deputy Attorney General  
Carvel State Building; 820 N. French Street, 6<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Direct Dial: (302) 577-8814  
Fax: (302) 577-5866  
Email: caroline.cross@state.de.us

All questions submitted, along with answers will be consolidated into a single Q&A document. The source of the questions will not be disclosed in the document. The Q&A document will be posted on the Department of Finance’s website at <http://www.state.de.us/finance> and the Attorney General’s website at <http://attorneygeneral.delaware.gov>.

## **1.0 GENERAL INFORMATION**

### **1.01 Project Scope and Objectives**

This RFP seeks to retain the services of Special Litigation Counsel to provide legal services to DoF representing the State Defendants in the above-referenced Action. In addition to DoF, the State Defendants include the Secretary of Finance and the State Escheator, each of whom are named in their individual and official capacities, as well as two former Secretaries of Finance, and the former State Escheator, each of whom are named in their individual capacities.

In the Action, plaintiffs seek to permanently enjoin DoF from accepting foreign-owned property, from selling escheated property shortly after receipt of such property, and challenge DoF's policies and practices under a variety of theories. Among other theories, plaintiffs assert that DoF's acceptance and subsequent liquidation of foreign-owned property:

- constitutes a violation of the Delaware Escheat law;
- constitutes a violation of federal common law;
- constitutes a violation of its due process rights under the U.S. and Delaware Constitutions;
- constitutes an unlawful taking under the U.S. and Delaware Constitutions;
- violates the Commerce Clause of the U.S. Constitution;
- violates the Friendship, Establishment and Navigation Treaty between the U.S. and Belgium;
- was negligent; and
- constitutes conversion.

Plaintiffs have sought monetary damages, a declaratory judgment, and permanent injunctive relief. Defendants' Answer has not yet been filed. It is anticipated the DoF will request an extension of time to file a responsive pleading in order to engage Special Litigation Counsel.

Selected Special Litigation Counsel will work closely with the Deputy Attorney General ("DAG") assigned to DoF for the Action. From time to time, the DAG may refer the Special Litigation Counsel to work directly with DoF Staff, as necessary to successfully defend the pending Action. All advice is to be provided directly to the DAG or to one of these members of DoF, as referred by the DAG.

## **2.0 MINIMUM REQUIRED QUALIFICATIONS**

### **2.01 Experience and Reputation**

- A. The Vendor must have been in business at least three years.
- B. The Vendor shall have at least five (5) or more years' prior experience in representing clients in the U.S. District Court for the

District of Delaware, the Delaware Supreme Court, and/or the Delaware Court of Chancery.

- C. The Vendor shall have experience with respect to escheat, abandoned property, or unclaimed property matters arising under Delaware law.
- D. The Vendor shall have experience litigating claims under the U.S. and Delaware Constitutions, particularly claims relating to due process, takings, and claims relating to the Commerce Clause and Full Faith and Credit Clause of the U.S. Constitution.
- C. The Vendor must designate a lead attorney licensed to practice law with five (5) or more years' litigation experience in the Delaware Court of Chancery.

## **2.02 Professional Liability Insurance**

The Vendor shall agree to maintain in full force and effect during the term of the Contract professional liability insurance in an aggregate amount of not less than \$2 million. In order to satisfy this requirement, the Vendor 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 Vendor meets this requirement, or
  - 2) A commitment letter or other evidence, satisfactory to the contact person, that Vendor will have such coverage as of the date the Contract commences.

If the Vendor is a joint venture, and one party of the joint venture does not presently have such liability insurance, this requirement may be satisfied if the members of the joint venture include in their proposal evidence, satisfactory to the contact person, that all members of the joint venture will have such coverage as of the date the Contract commences, either through actual insurance policies or an indemnity agreement by the properly insured firm, in form and substance acceptable to DoF.

## **2.03 Vendor's Capacity**

Each Vendor must demonstrate the capacity to perform the type of services needed by DoF described in Section 1.01 above. The Vendor must be available at all times to render services required under the Contract.

### **3.0 TECHNICAL PROPOSAL FORMAT**

The following information shall be provided in each proposal in the order listed below. A Vendor 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 the DoF.

#### **3.01 General**

All technical proposals shall be prepared with a concise description of the Vendor's capabilities to satisfy the minimum qualifications of Section 2 above and the information requested under Section 3 below. Vendors should organize their proposals so that their 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. Vendor's Prior Experience

1. General Information:

- (i) Within the past three 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 an attorney in your firm's employ even been disciplined or censured by any regulatory body? If so, describe the principal facts.
- (iii) Within the last five 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 the DoF leave the firm. Identify the key attorney who will be the primary contact and lead counsel in

providing services to DoF, whose continuing status as such is an essential element of this contract.

2. Litigation Experience:

- (i) Describe the Vendor's experience in litigating abandoned property, escheat or tax-related matters in the last five (5) years. Additionally, please describe the Vendor's experience in matters relating to property valuation or similar financial issues in the last five (5) years that are relevant to the Action.
- (ii) Describe the Vendor's experience in litigating matters relating to issues arising out of the U.S. or Delaware Constitutions in the last five (5) years, particularly claims relating to due process, takings, and claims relating to the Commerce Clause and Full Faith and Credit Clause of the U.S. Constitution.
- (iii) Describe the Vendor's experience representing or advising public sector clients in the last five (5) years.
- (iv) Describe the Vendor's experience in litigating matters before the Delaware Court of Chancery in the last five (5) years.
- (v) Describe the Vendor's experience in the Delaware Supreme Court, Delaware Court of Chancery, and/or the U.S. District Courts during the last five (5) years with respect to issues relating to escheat, abandoned property or unclaimed property; administrative law (including appeals of administrative law issues); or other tax or financial issues that are germane to the Action.
- (vi) Provide a brief description of areas of the law related to the purpose of this RFP in which the Vendor has an expertise.

B. Conflicts of Interest.

1. In general. If a conflict of interest arises, the Vendor must be willing to continue to represent DoF and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The State may entertain a request for a waiver of a Vendor's representation of a party in litigation involving a unit of

State government other than DoF, but does not expect to waive any other conflicts. DoF 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 Vendor shall complete a conflicts check for the State, DoF and the identified petitioners. Each Vendor shall identify any conflicts of interest which may arise if the Vendor serves as Special Litigation Counsel and shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys names on the contract but also from representation of parties involved in the transactions or other matters involving DoF by any member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

2. The State recognizes that Vendors may have conflicts due to previous representations. The State encourages Vendors with conflicts to submit proposals, identify the conflicts and describe recommended resolutions.

#### **4.0 PRICE PROPOSAL FORMAT**

##### **4.01 Billing Rates**

**Vendors shall provide the following items:**

- A. Current billing Rates for all attorneys assigned to represent DoF pursuant to this RFP and any applicable discounts;
- B. Current billing Rates for all para-professionals assigned to represent DoF pursuant to this RFP and any applicable discounts;
- C. No compensation will be permitted for the services of law clerks and law school graduates not admitted to practice.

##### **4.02 Alternative Pricing Proposals**

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

## **5.0 EVALUATION OF PROPOSALS**

The selection committee shall evaluate the proposals. During the evaluation process the selection committee may, at its discretion, request any or all firms to make oral presentations or participate in a formal interview. Such presentation or interviews will provide firms with an opportunity to answer questions about a firm's Proposal. Not all firms may be asked to make an oral presentation or to attend an interview.

### **5.01 Selection Criteria**

The selection of the firm to provide legal services will be based on an evaluation of the Proposals to determine which Proposal reflects the best value to DoF, with technical factors generally being considered more important than cost of services. The selection of the firm to provide legal services will be based upon the following technical factors in descending order of importance.

- A. Experience of the firm and the individual attorneys in litigating abandoned property or escheat matters or complex issues involving valuation or finance;
- B. Experience of the firm and the individual attorneys representing clients in challenges based on constitutional issues, in particular matters relating to due process, takings, and claims relating to the Commerce Clause and Full Faith and Credit Clause of the U.S. Constitution;
- C. Experience of the firm and the individual attorneys representing governmental agencies generally;
- E. Experience of the firm and the individual attorneys representing clients in U.S. District Court;
- F. Administrative structure of representation (i.e., proposed staffing assignments), soundness of approach to representation and understanding of the needs of DoF;
- G. Demonstrated ability to perform the services referred to under Project Scope and Objectives, and
- H. References and recommendations of other clients.

### **5.02 Contract Negotiation**

DoF intends on opening negotiations with Vendors that DoF determines have a reasonable likelihood of being awarded a contract based on the proposals that are

submitted. Negotiations will focus on any technical weaknesses or deficiencies in proposals as well as cost and pricing issues.

A written contract with each of the selected law firms will be required. Each contract must be approved by the Attorney General of the State of Delaware and the Governor of the State of Delaware pursuant to *29 Del. C. § 2507*.

### **5.03 Contract Award**

DoF reserves the right to award all, part, or none of this contract. DoF intends to award a contract to one law firm if deemed appropriate and desirable.