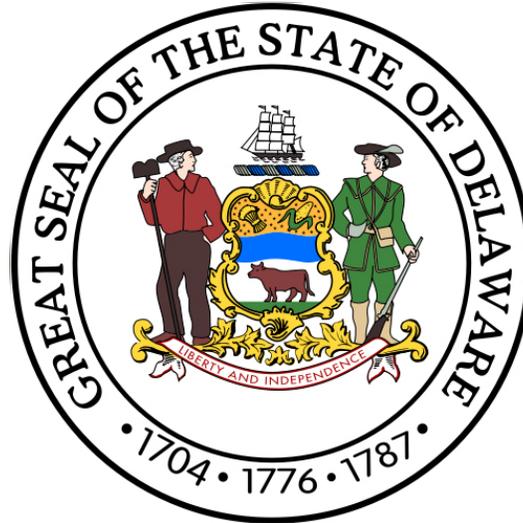


State of Delaware



Department of Justice

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Delaware Department of Justice Request for Proposals for Special Legal Counsel

RFP Number: 062317DOJ

RFP Closing: Friday, August 18, 2017; 5:00 PM EST

**REQUEST FOR PROPOSALS (“RFP”) TO PROVIDE
SPECIAL LEGAL COUNSEL SERVICES
ISSUED BY THE DEPARTMENT OF JUSTICE
FOR THE STATE OF DELAWARE**

Executive Summary

The Delaware Department of Justice (“DOJ”) is issuing this Request for Proposals (“RFP”). DOJ seeks to engage a law firm to act as Special Legal Counsel (“Special Legal Counsel”) representing the State of Delaware (“State”) and the Attorney General of the State of Delaware (“Attorney General”) in connection with an investigation and possible litigation involving the manufacture, marketing, sale, and distribution of prescription opioid products in the State.

DOJ anticipates that, after conducting interviews, it will select one firm to act as Special Legal Counsel consistent with the scope of this RFP, but DOJ reserves the right to award multiple contracts if it determines that such an award is in the best interests of the State.

The Department of Justice is authorized by the Constitution of the State of Delaware and 29 *Del. C.* § 2505 to independently retain outside counsel to serve in the role of Special Assistant Attorney General. A Special Assistant Attorney General retained and engaged through this selection process shall be designated to have only such powers, duties, and responsibilities as designated by the Attorney General or his designee. This selection process is for professional legal services and as such is outside the scope of 29 *Del. C.* § 6901, *et seq.* To foster and maximize transparency in this selection process, the Department of Justice has adopted a selection process similar to the process routinely and generally used by the State of Delaware to procure non-legal professional services.

This RFP will define the scope of the work to be performed, the requirements an Applicant Law Firm (“Applicant”) must address, the method for response and the administrative requirements that must be followed. The DOJ will advise potential Applicants of changes to any dates as may be necessary. The 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	June 23, 2017	Request for Proposals issued and Posted on DOJ Web Site, http://attorneygeneral.delaware.gov/ , the State Bid Window, http://bids.delaware.gov , and supplied to the Delaware Courts website
2	July 7, 2017	All Applicant questions regarding RFP are due
3	July 28, 2017	DOJ issues answers to RFP via http://attorneygeneral.delaware.gov/ and http://bids.delaware.gov
4	August 18, 2017 5:00 pm EDT	RFP Response due date
5	August 25, 2017	Invitations to Selected Applicants for Oral Presentations and Interviews
6	September 5-15, 2017	Applicant Oral Presentations and Interviews
7	September 22, 2017	Contract Awarded

The DOJ will advise potential Applicants of changes to any dates as may be necessary. In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any addendum to this RFP will become part of this RFP and part of any designation of a firm as Special Legal Counsel as a result of this RFP. The DOJ reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

All interested Applicants should submit electronic copies of their proposals (“Proposals”) to the DOJ email at RFP.Legal@state.de.us no later than 5:00 p.m. EDT on August 18, 2017 (“Closing Date”). Interested firms should also submit five (5) hard copies of their proposals to Christian Douglas Wright, Director of Consumer Protection, at the address provided below. All timely proposals become the property of the DOJ. Requests for extensions of the Closing Date will not be granted. Any Proposal or request for modification received after 5:00 p.m. on the Closing Date is late and may not be considered.

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, which the applicant may have taken in presenting the Proposal. The DOJ reserves the right to deny any and all exceptions taken to the RFP

requirements. The cost of preparing Proposals will be borne solely by Applicants. Proposals shall address all the questions posed by the DOJ in the order in which they appear in this RFP.

RFP Designated Contact:

Please submit all questions and requests for information to:

Christian Douglas Wright
Director of Consumer Protection
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 5th Floor
Wilmington, Delaware 19801
Direct Dial: (302) 577-8944
Email: christian.wright@state.de.us

Questions should be addressed to the contact person. 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 DOJ website at <http://attorneygeneral.delaware.gov/>.

1.0 GENERAL INFORMATION

1.01 Project Scope and Objectives

The Delaware Department of Justice (“DOJ”) seeks to retain the services of a law firm to act as Special Legal Counsel to provide advice and legal representation to the State in connection with an investigation and possible litigation involving the manufacture, marketing, sale, and distribution of prescription opioid products in the State.

Special Legal Counsel will be retained pursuant to a contingent fee arrangement, and must therefore have resources sufficient to advance all costs, including the costs of any experts needed to perform or assist in the performance of the work contemplated by this RFP. Special Legal Counsel must also be free of any conflicts of interest, and must comply with the conflicts policy referred to in Section 3.02 below. Current representation of an entity that manufactures or distributes prescription opioid products will present an insurmountable conflict.

Retention will include significant evaluative and investigative preparatory work. Litigation may include drafting pleadings, motions, briefs, and all other papers to be filed in court; conducting and responding to discovery; attending all pre-trial, trial and post-trial court appearances; and handling appeals.

1.02 Procedures

Selected Special Legal Counsel will work closely with the Deputy Attorney General assigned to act as the Coordinating Attorney. All legal services are to be provided only at the request of the Coordinating Attorney and shall be subject to the Coordinating Attorney’s active oversight and supervision. All advice is to be provided directly to the Coordinating Attorney or to individuals identified and/or designated by the Coordinating Attorney. The Coordinating Attorney shall retain veto power over any decisions made by the selected Special Legal Counsel, subject to Special Legal Counsel’s right to seek court protection for any alleged conflict with the Special Legal Counsel’s ethical duties.

The decision to settle any matter shall be reserved exclusively to the Attorney General, subject to Special Legal Counsel’s right to seek court protection for any alleged conflict with the Special Legal Counsel’s ethical duties.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The Applicant must have been in business at least five (5) years.
- B. The Applicant should present a team of attorneys that significant experience in the area of complex commercial litigation, preferably complex consumer fraud and unfair or deceptive trade practices litigation, and/or complex fraud and regulatory-related investigations (“Subject Matter Areas”).
- C. The Applicant must designate, as a member of the team proposed for the representation, a lead attorney licensed to practice law with ten (10) or more years’ experience in the Subject Matter Areas.
- D. The Applicant should have experience representing government agencies.

2.02 Professional Liability Insurance

The Applicant 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 \$10 million. In order to satisfy this requirement, the Applicant 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 Applicant meets this requirement, or
 - 2) A commitment letter or other evidence, satisfactory to the DOJ, that the Applicant will have such coverage as of the date the Contract commences.

2.03 Applicant's Capacity

Each Applicant must demonstrate the capacity to perform the type of services needed by the DOJ described in Section 1.01 and 2.01 above. The Applicant 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. 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 the DOJ.

3.01 General

All technical proposals shall be prepared with a concise description of the Applicant's capabilities to satisfy the minimum qualifications of Section 2.01 and 2.02 above and the information requested under Section 3.02 below. Applicants should organize their proposals so that their responses correspond to the specific subsections to the extent possible without unnecessary repetition. Proposals are generally within the definition of "public records" as set forth in our Freedom of Information Act (FOIA), *see 29 Del. C. § 10001, et seq.*, upon the conclusion of the selection process. In the event that a proposal contains content that meets the definition of any exception to the definition of "public records" as set forth in FOIA, applicants should separate such materials, place them in an envelope marked "confidential", and submit them with the remaining portion of the proposal. Any such envelope shall include a written statement explaining the basis for designating such content not subject to disclosure pursuant to FOIA.

3.02 Required Information

The Proposal shall contain the information described below.

A. Applicant's Experience

1. General Experience and Information:

- (a) 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 within the next five (5) years? Please describe.
- (b) Describe the on-line services, publications and other resources maintained by your firm dealing with the Subject Matter Areas, including subscription services and periodicals.

- (c) Has your firm or an attorney in your firm's employ who will have any involvement with the provision of legal assistance, advice, or representation pursuant to this RFP ever been disciplined or censured by any regulatory body? If so, describe the principal facts.
- (d) 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.
- (e) Does your firm represent the Attorney General of another state? If so, list the full name, address and telephone number of each Attorney General and provide a contact and telephone number.
- (f) Does your firm represent any other states or governmental entities? If so, list the entity, and provide a contact and telephone number.
- (f) Please describe your firm's backup procedures in the event one or more attorneys assigned to a matter contemplated by this RFP leave the firm.
- (g) Describe your disaster recovery plan and facilities.

2. Subject Matter Experience

- (a) Provide a detailed description of the Applicant's experience in the Subject Matter Areas, including identification of the approximate number of engagements involving the Subject Matter Areas during the last five (5) years. Of those engagements, the Applicant should select no more than five (5) illustrative matters and provide the following information:
 - (1) Nature of the matter and the Applicant's role;
 - (2) The year and the approximate dollar amount of the claim;

- (3) Status of case and range of responsibilities;
and
 - (4) Disposition of case, and if relevant, a description of damages negotiated/awarded or other relief obtained.
- (b) Representation of Attorney General Offices (“AGO”) as listed in Section 3.02.A.1.(e) above. List the approximate number of engagements for AGOs during the last five (5) years. Of those engagements, the Applicant should select no more than five (5) illustrative matters and provide the following information:
- (1) Nature of the litigation and the Applicant’s role;
 - (2) The year and the dollar amount (stated within a range of \$5 million increments) of the claim;
 - (3) Status of case and range of responsibilities;
and
 - (4) Disposition of case, and if relevant, a description of damages negotiated/awarded, governance and/or process changes achieved.

3. Related Legal Experience

Provide a brief description of areas of the law related to the purpose of this RFP in which the Applicant has an expertise.

B. Applicant’s Team (Specific Individuals Responsible for Performance of Services)

Provide a detailed description of the team that would provide services identified in this RFP and include the following information:

1. The identity of the individuals, the areas of law in which each specializes and the type of related transactions and/or litigation which the attorney has handled, the number of

years of experience in such areas, and the extent to which each has analyzed laws, provided advice, and conducted investigations and litigation on issues relevant to the purpose of this RFP.

2. Résumés of each member of the team, attached to the Proposal as Appendix A.
3. The courts in which each is admitted to practice, the year of admission, and the location of the principal place or places of business, if not included on a résumé.

C. Conflicts of Interest

1. In General

In general, if a conflict of interest arises, the Applicant should be willing to continue to represent the State and the Attorney General, 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 Applicant's representation of a transactional nature, or if the matter relates to litigation involving a unit of State government other than the DOJ, and may waive any other conflicts when such waiver does not have the possibility of damaging the State's position in the litigation or other matters. The 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 Applicant shall identify any conflicts of interest that may arise if the Applicant 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 involving the State 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

Applicant shall describe in detail its existing system for identifying conflicts of interest in undertaking new representations. Applicant must include information about who maintains the records, how often the information is updated and at what stage of representation the check is made. Applicant 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, Applicant shall provide assurances that potential conflicts have been discussed with other existing clients of Applicant 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 Contingent Fee Arrangement

DOJ will contract with Special Legal Counsel on a contingent fee basis. An Applicant must identify in the Proposal the contingent fee rate sought for the services contemplated by this RFP. Proposals suggesting tiered contingency arrangements, with differential recoveries depending upon the point at which a final resolution is achieved, are encouraged. The contingent fee rate will be an “all in” rate, inclusive of all fees, expenses, and costs, including but not limited to expert witness fees and court costs.

5.0 EVALUATION OF PROPOSALS

5.01 Selection Process

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. 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.

Pursuant to the DOJ policy relating to the Procurement of Special Counsel, the selection committee will make a recommendation to the Chief Deputy Attorney General regarding the selection of the firm or firms to provide legal services pursuant to this RFP, and the terms upon which the firm or firms should be retained. The Attorney General will not receive information on the RFP process—including the identity of any Applicant—until after a contract is awarded. The DOJ policy relating to the Procurement of Special Counsel can be accessed at:

<http://attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2017/03/SpecialCounselRetentionPolicy.pdf>

5.02 Selection Criteria

The selection of the firm or firms to provide legal services will be based on an evaluation of the Proposals to determine which Proposals reflect the best value to the DOJ in which technical factors will be considered significantly more important than cost of services.

The selection of a 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 connection with investigations and litigation in the Subject Matter Areas;
- B. Experience of the firm and the individual attorneys in the representation of a state, a state agency, or an attorney general in litigation in the Subject Matter Areas;
- C. Administrative structure of the representation (*i.e.*, proposed staffing assignments), proposed work plan, soundness of approach and understanding of the needs of the DOJ;

- D. Demonstrated ability to perform the services referred to in Section 1.01 above;
- E. Contingent fee arrangements; and
- F. References and recommendations of other clients.

5.03 Contract Negotiation

DOJ intends on opening negotiations with the Applicant that the DOJ determines has a reasonable likelihood of being awarded a contract based on the Proposal, interview and, if any, supplemental submissions. Negotiations will focus on any weaknesses or deficiencies in the Proposal as well as cost and pricing issues.

A written contract with the law firm(s) selected will be required, and will include the terms set forth in Section 1.02 above. The contract will be approved by the Chief Deputy Attorney General, pursuant to 29 *Del. C.* § 2505(a).

5.04 Contract Award

DOJ reserves the right to award all, part, or none of this contract and intends to award contracts to more than one law firm if deemed appropriate and desirable.