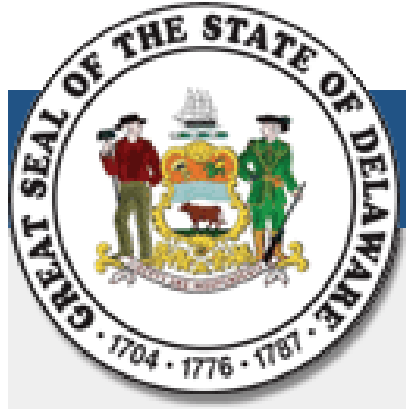


State of Delaware



Department of Justice

Carvel State Building
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Wilmington, Delaware 19801
Telephone (302) 577-8400

Delaware Department of Justice

Request for Qualifications for

Special Civil Litigation Conflict Counsel

RFQ Number: 050517DOJ

RFQ Closing: June 7, 2017; 5:00 PM EST

**REQUEST FOR QUALIFICATIONS (“RFQ”) TO PROVIDE
SPECIAL CIVIL LITIGATION CONFLICT COUNSEL
ISSUED BY THE DEPARTMENT OF JUSTICE
FOR THE STATE OF DELAWARE**

Executive Summary

The Department of Justice for the State of Delaware (“DOJ”) serves as the legal representative and counsel for the departments, boards, offices, commissions and other instrumentalities of State government, its officers and employees. The DOJ intends to create a list of outside counsel interested in serving as conflict counsel, as authorized and governed by Delaware law pursuant to 29 *Del. C.* §2507, in the following practice area designations:

- (a) general litigation;
- (b) employment and related litigation;
- (c) expedited Court of Chancery litigation.

The term of the special counsel designations made pursuant to this RFQ will be two years.

The procurement of legal services, including those contemplated herein, is not governed by 29 *Del. C.* § 6901, *et seq.* This RFQ will define the scope of the work to be performed, the requirements the Applicant Law Firms (“Applicants”) 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 RFQ process.

RFQ Schedule

ID	Date/Time	Activity
1	May 5, 2017	Request for Qualifications 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 and the DSBA Listserv
2	May 15, 2017	All Applicant questions regarding RFQ are due
3	May 22, 2017	DOJ issues answers to RFQ via http://attorneygeneral.delaware.gov/ website
4	June 7, 2017 5:00 pm EST	RFQ Response due date
5	June 21-28, 2017	Invitations to Selected Applicants for Oral Presentations
6	June-July, 2017	Applicant Oral Presentations
7	July, 2017	Placement on List

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 RFQ, such clarification or revision will be by addendum. Any addendum to this RFQ will become part of this RFQ and part of any designation of a firm as special counsel as a result of this RFQ. The DOJ reserves the right to modify and/or cancel this solicitation at any time during the RFQ process.

All interested firms 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. EST on June 7, 2017 (“Closing Date”). Interested firms should also submit three (3) hard copies of their proposals to Deputy State Solicitor Ilona Kirshon 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 RFQ, which the applicant may have taken in presenting the Proposal. The DOJ reserves the right to deny any and all exceptions taken to the RFQ requirements. The cost of preparing Proposals will be borne solely by the Applicants. Proposals shall address all the questions posed by the DOJ in the order in which they appear in this request.

RFQ Designated Contact:

Please submit all questions and requests for information to

Deputy State Solicitor Ilona Kirshon

Carvel State Building

820 N. French Street, 6th Floor

Wilmington, Delaware 19801

Direct Dial: (302) 577-8372

Fax: (302) 577-6630

Email: ilona.kirshon@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 DOJ wishes to have access to counsel with substantial experience in the practice areas that are the subject of this RFQ. Counsel must also have resources sufficient to advance all costs, including the costs of any experts needed to assess damage and the costs of the preparatory work described below. Counsel must also be free of any conflict of interest, and must comply with the conflicts policy referred to in section 3.01.

The DOJ seeks counsel with experience in the following areas. While the Applicant may select one or more of these areas, the Applicant must indicate which area(s) of specialized legal expertise it wishes to be considered for and be prepared to demonstrate its competency in each indicated area:

- A. General Litigation: Representation of State agencies and employees in commercial, tort, or other civil litigation, when required due to conflicts of interest or as otherwise deemed necessary by the Attorney General and Governor.
- B. Employment Litigation: Defense of State agencies and employees in matters brought by State employees alleging discrimination, violations of Title VII, Title IX, 42 U.S.C. § 1983, 19 *Del. C.* chapter 7 and other employment-related causes of action, when required due to conflicts or as otherwise deemed necessary by the Attorney General and Governor.
- C. Expedited Court of Chancery Litigation: Defense of State agencies and employees before the Court of Chancery in matters seeking temporary restraining orders or other expedited equitable relief. Such matters might include, but are not limited to, procurement and contracting matters, construction matters, election matters, and certain civil rights matters.

Retention for a particular matter may 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; conducting settlement negotiations and handling appeals.

1.02 Procedures

In certain matters, selected Special Litigation Counsel will work closely with the Deputy Attorney General (“DAG”) assigned to act as the Coordinating Attorney. Such legal services are to be provided only at the request of the Attorney General (“AG”) and/or the DAG. In certain other matters, the nature of the conflict of interest may require that selected Special Litigation Counsel be appointed pursuant to 10 *Del. C.* § 3925, in which case such counsel will act independently and submit invoices to the Court.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The Applicant must have been in business at least five years.
- B. The Applicant must designate, as a member of the team proposed for the representation, a lead attorney licensed to practice law with seven (7) or more years' experience in the area of specialization.

2.02 Professional Liability Insurance

The law firm 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 \$1 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 Contract commences.

2.03 Law Firm'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 law firm must be available to render services required under the Contract with minimum notice.

3.0 TECHNICAL PROPOSAL FORMAT

The following information shall be provided in each proposal in the order listed below. A law firm is expected to provide a response for each requirement listed in this RFQ. 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 law firm's capabilities to satisfy the minimum qualifications of Section 2.01 and 2.02 above and the information requested under Section 3 below. Law firms 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. Law Firm'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 in the next two years? Please describe.

(b) Describe the on-line services, publications and other resources maintained by your firm dealing with the area(s) of specialization for which you are submitting your qualifications to act as Special Litigation Counsel, including subscription services and periodicals.

(c) Has your firm or an attorney in your firm's employ who will have any involvement to the matters identified in your proposal or access to the information related to such matters ever been disciplined or censured by any regulatory body? If so, describe the principal facts.

(d) 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.

(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.

(g) Please describe your firm's backup procedures in the event one or more attorneys assigned to a matter contemplated by this RFQ leave the firm.

(h) Describe your disaster recovery plan and facilities.

2. Specialized Litigation Counsel.

(a) Provide a detailed description of the Applicant's experience in each area of specialized litigation in which an appointment is sought during the last five (5) years.

(b) Representation of Attorney General Offices ("AGO") as listed in Section 1 above. List the approximate number of engagements for AGOs during the last five (5) years. Of those transactions, the Applicant should select no more than five (5) illustrative matters for each area of specialization 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 RFQ 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 RFQ 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 and provided advice on issues relevant to the purpose of this RFQ.
 2. Resumes 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 resume.
- C. Conflicts of Interest.
1. In general. If a conflict of interest arises, the law firm should be willing to continue to represent the DOJ 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 law firm'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 Conflicts Litigation 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 of Delaware 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 Applicant shall describe in detail its existing system for identifying conflicts of interest in undertaking new representations. 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 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, the Applicant shall provide assurances that potential conflicts have been discussed with other existing clients of the 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 Billing Rates

- A. Current billing rates for all attorneys who would be assigned to represent the DOJ pursuant to this RFQ;
- B. Current billing rates for all para-professionals who would be assigned to represent the DOJ pursuant to this RFQ;
- 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 Applicant is required to submit a price proposal containing the information set forth in Part 4.0, the DOJ will also accept proposals for alternative billing arrangements that enhance the value and efficiency of the services to be provided and that are consistent with the DOJ's Special Counsel Retention Policy. The Applicant 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. 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 or firms to provide legal services will be based on an evaluation of the Proposals to determine which Proposal reflects the best value to the DOJ in which technical factors will be considered significantly more important than cost of services. The DOJ policy relating to the Procurement of Special Counsel can be accessed at: <http://attorneygeneral.delaware.gov/documents/SpecialCounselRetentionPolicy.pdf>

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 representing states in litigation in the specialized areas designated in Section 1;
- B. Experience of the firm and the individual attorneys in the representation of a State, state agency, state employee, or an Attorney General in litigation for each designated areas of specialization;
- C. Proposed work plan, soundness of approach and understanding of the needs of the DOJ;
- D. Demonstrated ability to perform the services referred to herein at Section 1.01;
- E. Billing rates and fee arrangements; and
- F. References and recommendations of other clients.

5.02 Conflict Counsel Designations

A firm selected pursuant to this RFQ for designation as special counsel, with the approval of the Attorney General and the Governor, will be placed on a list of law firms with a special conflict counsel designation, pursuant to 29 *Del. C.* §2507. In selecting a firm to be retained for a particular matter, the Attorney General will choose a firm from the list based on the following factors, combined or separate, and not necessarily listed in order of significance:

- A. Geographic location;
- B. Magnitude or complexity of the matter;
- C. The firm and/or attorney's past success in handling similar matters;
- D. Whether the experience and knowledge of the firm and attorney coincide with the type of legal work to be performed;
- E. The firm's capacity to staff and perform the required work; and
- F. Any current adversarial position or conflict of interest between the firm/attorney and the State.

If a particular matter requires expertise in practice areas outside those encompassed by the existing list, a separate RFP will be advertised for that retention, if time permits. If the matter requires confidentiality or if time does not permit the issuance of an RFP, the Attorney General and Governor may select a firm from among those that have submitted proposals in response to this RFQ or may choose another method of retention. Successful Applicants will be required to comply with the DOJ Outside Counsel Billing Policy. ("Attachment A").

6.0 ADDITIONAL TERMS

- A. No endorsement: Designation as special counsel does not constitute an endorsement by the State of Delaware or the Attorney General.
- B. Effect of RFQ response: A response to this RFQ will not bind or otherwise obligate the State of Delaware to include the responding firm on the list of special counsel.
- C. Nothing herein shall operate to modify, alter, or amend any currently existing legal services agreement between the State and any firm. Firms with active engagements with the State of Delaware need not apply for consideration through this RFQ in order to maintain such engagements.
- D. Effect of Inclusion on List: Inclusion of a firm on the list of designated counsel will not bind or otherwise obligate the State of Delaware to retain the listed firm for legal services. Inclusion on the list of designated counsel will not guarantee any other form of employment or engagement.
- E. Attorney General authority not constrained: Nothing in this RFQ is intended to limit or constrain the discretion of the Attorney General or Governor in exercising any authority, duty, prerogative or power established or recognized by the Constitution, statutes, Executive Orders, regulations, or case law.

ATTACHMENT A

Delaware Department of Justice Outside Counsel Billing Policy

As of April 30, 2015

- I. Budgeting, billing and staffing.
 - a. Billing rates will be in effect for entire matter as provided for in the outside counsel contract. Any change must be approved by the Coordinating Attorney in writing 60 days in advance of the effective date of the change in a billing rate.
 - b. General Billing practices.
 - i. Bills to be rendered monthly within 30 days after end of month for entire month. No carry-over billing (example cannot bill from May 1 — June 15).
 - ii. Details of fees by lawyer, paralegal, number of hours by task, description.
 - iii. Expenses/disbursements detail and charges by category.
 - iv. Block Billing of Services is unacceptable. All bills shall be billed in increments of no less than 0.1 billing hour (6 minutes).
 - v. Time billed for each activity should be identified separately. Do not combine different types of activities in one entry on the invoice. "Block billing" of fees is not acceptable, even if the same individual performed the activities.
 - vi. The description of services or activity should be brief and informative. For example, merely listing "Research" is not an acceptable billing entry. An acceptable entry would be "Legal research on statute of limitations issues related to [Insert issue]. Another example would be merely listing "Telephone calls" would not be acceptable, instead "Telephone calls to J. James of [Firm] and M. Smith [of firm] re: motion to dismiss." Be sure to identify the "who, what and where."
 - vii. No more than 2 outside counsel attorneys at meetings, depositions, mediations, negotiations, and/or hearings unless pre-approved by the Coordinating Attorney.
 - viii. No firm paralegals at meetings, depositions, mediations, negotiations, and/or hearings unless pre-approved by the

Coordinating Attorney.

- ix. Billable hours for summer interns/clerks will not be allowed unless pre-approved by the Coordinating Attorney.
- x. More than 12 hours per day by one member of outside counsel staff will be closely reviewed.
- xi. Internal conferences accounting for more than 10% total monthly billings closely reviewed. Excessive intra-office conferences between attorneys or paralegals for the purpose of providing instruction or status will be closely reviewed.
- xii. Excessive number of attorneys performing services in a matter will be closely reviewed, unless prior approval is received from the Coordinating Attorney in writing.
- xiii. Billing for research on general legal issues which should be within the knowledge of the firm and/or associate will be closely reviewed.
- xiv. Billing of hours for work done by multiple attorneys in the firm for similar work on the same issue will be closely reviewed.
- xv. Billing attorney and/or paralegal time for invoice preparation, review, or for corrections to the invoice is not acceptable.
- xvi. Excessive time spent in "file review" will be closely reviewed.
- xvii. Excessive time spent in "review and revision" of documents that that you prepare will be closely reviewed.
- xviii. Charging attorney time for tasks that should be performed efficiently and effectively at less expense by a paralegal or secretary, or charging paralegal time for tasks that should be performed by clerical workers will be closely reviewed. For example, we do not allow charging attorney time for arranging logistics for a deposition.
- xix. Hours charged at a more senior attorney rate when a matter should be handled by a less senior attorney will be closely reviewed.
- xx. Charging for secretarial time, and or overtime or other staff members is not acceptable

c. Expenses/Disbursements.

- i. Reasonable expenses and fees will be reimbursed. Should you have any questions or concerns whether or not a fee or expense falls within the reasonable expense range or will be reimbursed please contact your Coordinating Attorney for an approval.

- ii. Examples of non-reimbursable overhead
 - a. Computer, e-mail, word processing charges
 - b. Conference room charges, rent Online research charges
 - c. Supplies
 - d. Library use, staff
 - e. Clerks
 - f. Proofreader charges
 - g. Support salaries
 - h. Telephone charges
 - i. Fax charges
 - j. Online research (Westlaw, Lexis)
- d. Use of Outside Consultants, Experts and Contract Attorneys. There may be instances where the use of consultants, experts and contract attorneys may be required to staff a case. This should be done as part of the case planning in conjunction with your Coordinating Attorney. These fees should be reasonable and necessary, and are subject to approval by the Delaware Department of Justice.