State of Delaware

Department of Justice

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Delaware Department of Justice
Request for Qualifications for Special Counsel Services
Under 16 *Del. C.* § 2225 for Insurance Coverage for
Substance Abuse Treatment

RFQ Number: 083117DOJ

RFQ Closing: September 25, 2017; 5:00 PM EST

REQUEST FOR QUALIFICATIONS ("RFQ") TO PROVIDE SPECIAL COUNSEL SERVICES UNDER 16 *Del. C.* § 2225 FOR INSURANCE COVERAGE FOR SUBSTANCE ABUSE TREATMENT ISSUED BY THE DEPARTMENT OF JUSTICE FOR THE STATE OF DELAWARE

Executive Summary

Pursuant to Section 2225 of Title 16 of the Delaware Code, effective September 27, 2017, the Department of Justice ("DOJ") is authorized to retain counsel to provide legal advice, assistance, and representation to eligible individuals in matters involving the existence or scope of private or public insurance coverage for substance abuse treatment, including appeals of adverse determinations and litigation. The DOJ intends to create a list of outside counsel interested in providing such legal advice and representation. The term of the special counsel designations made pursuant to this RFQ will be two years, with the possibility of a two-year extension.

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 and legal services organizations ("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	August 31, 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 State Courts for distribution via listserv
2	September 7, 2017	All Applicant questions regarding RFQ are due
3	September 11, 2017	DOJ issues answers to RFQ via http://attorneygeneral.delaware.gov/ and http://bids.delaware.gov
4	**September 25, 2017, 5:00 pm EDT**	**RFQ Response due date**
5	September 27, 2017	Invitations to Selected Applicants for Oral Presentations and Interviews
6	October 2-6, 2017	Applicant Oral Presentations and Interviews
7	October 13, 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 an Applicant 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 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 September 25, 2017 ("Closing Date"). Applicants should also submit three (3) 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 Applicant'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:

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 DOJ wishes to have access to counsel with experience in health insurance and benefits law, other insurance coverage law, or in providing civil legal services to low-income individuals ("Subject Matter Areas"), to provide legal advice, assistance, and representation to eligible individuals ("Eligible Individuals") in matters involving the existence or scope of private or public insurance coverage for substance abuse treatment, including appeals of adverse determinations and litigation. The purpose of 16 *Del. C.* § 2225 is to enable individuals with private or public health insurance coverage who are denied adequate coverage for substance abuse treatment, and who may lack the financial means to obtain legal assistance to challenge that denial of coverage, to obtain private legal representation from counsel who will be paid by the DOJ using funds from the DOJ's Consumer Protection Fund.

Such counsel ("Special Counsel") should also have resources sufficient to advance costs as needed during the course of any litigation, subject to the provisions of the DOJ Outside Counsel Billing Policy (attached as Exhibit A). Special Counsel must also be free of any conflict of interest, and must comply with the conflicts policy referred to in Section 3.02 below.

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

Provided that there are sufficient funds available in the DOJ's Consumer Protection Fund, the Deputy Attorney General assigned to act as the Coordinating Attorney shall, upon determining that a person may be an Eligible Individual eligible to receive legal assistance under 16 *Del. C.* § 2225, refer that Eligible Individual to selected Special Counsel who, if it takes the engagement, will be expected to enter into an attorney-client relationship with the Eligible Individual subject to a written engagement letter as set forth herein. Costs of the representation, including attorney's fees, will be paid for by the DOJ out of available funds in the Consumer Protection Fund, subject to the provisions of the DOJ Outside Counsel Billing Policy (attached as Exhibit A). Special Counsel will not enter into an attorney-client relationship with the State or the DOJ.

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 five (5) or more years' experience in the area of specialization.

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 $1 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 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.

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 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 Applicant's capabilities to satisfy the minimum qualifications of Section 2.01 and 2.02 above and the information requested under Section 3 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 law firm or legal services organization 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 law firm or legal services organization dealing with the Subject Matter Areas, including subscription services and periodicals.

(c) Has your your law firm or legal services organization, or an attorney in your law firm or legal services organization's employ who will have any involvement with the provision of legal assistance, advice, or representation pursuant to this RFQ ever been disciplined or censured by any regulatory body? If so, describe the principal facts.

(d) Within the last five years, has your law firm or legal services organization, or an attorney in your law firm or legal services organization, 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) Please describe your your law firm or legal services organization's backup procedures in the event one or more attorneys assigned to a matter contemplated by this RFQ leave the your law firm or legal services organization.

(g) Describe your disaster recovery plan and facilities.

2. Subject Matter Experience

Provide a detailed description of the Applicant's expertise or 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:

(a) Nature of the matter and the Applicant's role;

(b) The year and the approximate dollar amount of the claim;

(c) Status of case and range of responsibilities; and

(d) Disposition of case, and if relevant, a description of damages negotiated/awarded or other relief obtained.

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. 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

Special Counsel engaged to provide legal assistance, advice, or representation to an Eligible Individual will have an attorney-client relationship with the Eligible Individual, not the State or the DOJ. If a conflict of interest arises, the Applicant should be willing to continue to represent the Eligible Individual and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The DOJ reserves the right, in its sole discretion, to select another approved Applicant to work on a particular matter if a conflict is not resolved to its satisfaction.

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

Each Applicant shall identify any known conflicts of interest that may arise if the Applicant serves as Special Counsel and shall describe in its Proposal how it proposes to deal with such conflicts.

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 Applicants to make oral presentations. Such presentations will provide Applicants with an opportunity to answer questions about an Applicant's Proposal. Not all Applicants may be asked to make such oral presentations.

5.01 Selection Criteria

The selection of Applicants 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 more important than cost of services. 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

The selection of an Applicant to provide legal services will be based upon the following technical factors in descending order of importance:

A. Experience of the Applicant and the individual attorneys in the Subject Matter Areas;

B. Proposed work plan, soundness of approach and understanding of the needs of Eligible Individuals;

C. Demonstrated ability to perform the services referred to in Section 1.01 above;

D. Billing rates and fee arrangements; and

E. References and recommendations of other clients.

5.02 Special Counsel Designations

An Applicant selected pursuant to this RFQ for designation as Special Counsel, with the approval of the Attorney General or Chief Deputy Attorney General, will be placed on a list of Applicants with a Special Counsel designation. In selecting an Applicant to be retained for a particular matter, the Attorney General or Chief Deputy Attorney General will choose an Applicant 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 Applicant's past success in handling similar matters;

D. Whether the experience and knowledge of the Applicant and attorney coincide with the type of legal work to be performed;

E. The Applicant's capacity to staff and perform the required work; and

F. Any current adversarial position or conflict of interest between the Applicant/attorney and the State.

If a particular matter requires expertise in practice areas outside the Subject Matter Areas, 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 may select an Applicant 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 (attached as Exhibit 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 Applicant on the list of Special Counsel.

C. *Effect of Inclusion on List*. Inclusion of an Applicant on the list of designated counsel will not bind or otherwise obligate the Attorney General to select the listed Applicant to provide legal services to any Eligible Individual. Inclusion on the list of Special Counsel will not guarantee any other form of employment or engagement.

D. *Attorney-Client Relationship*. Special Counsel engaged to provide legal assistance, advice, or representation to an Eligible Individual will have an attorney-client relationship with the Eligible Individual, not the State or the DOJ. Such Special Counsel shall be required to enter into an engagement letter with the Eligible Individual in a form approved by the Attorney General or Coordinating Attorney.

E. *Attorney General Authority Not Constrained*. Nothing in this RFQ is intended to limit or constrain the discretion of the Attorney General in exercising any authority, duty, prerogative or power established or recognized by the Constitution, statutes, Executive Orders, regulations, or case law.

EXHIBIT 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

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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.