

# **State of Delaware**

## **Department of Correction**

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### **EXPEDITED Request for Proposals for Special Legal Counsel**

**RFP Number: 2016-DOCLEGAL-001**

**Proposal Deadline: Friday, February 19, 2016; 3:00 PM EST**

**EXPEDITED REQUEST FOR PROPOSALS FOR  
SPECIAL LEGAL COUNSEL TO THE STATE OF DELAWARE AND  
DEPARTMENT OF CORRECTION**

**Executive Summary**

The Delaware Department of Correction (“DOC”), with the assistance of legal counsel in the Office of the Governor, is issuing this Request for Proposals (“RFP”). The DOC seeks to engage a law firm to act as Special Legal Counsel (“Special Legal Counsel”) to represent the named state employee defendants, including current and former DOC officials, in connection with a lawsuit recently filed in the Delaware Superior Court, C.A. No. N16C-02-028 (VLM). A copy of the complaint is attached as **EXHIBIT A** to this RFP.

The DOC anticipates that, after conducting interviews, it will select one firm to act as Special Legal Counsel, consistent with the scope of this RFP, to represent the named State employee defendants throughout the course of the lawsuit. The State reserves the right to retain additional legal counsel for one or more of the named defendants if it proves necessary in the course of the litigation. The State also reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

**RFP Schedule**

<b>ID</b>	<b>Date/Time</b>	<b>Activity</b>
<b>1</b>	February 12, 2016	RFP issued, posted on the State’s website at <a href="http://bids.delaware.gov">http://bids.delaware.gov</a>
<b>2</b>	<b>February 19, 2016</b>	<b>RFP Responses due by electronic submission*</b>
<b>3</b>	Week of February 22, 2016	Interviews of firms, selection of counsel
<b>4</b>	March 18, 2016	Deadline for State’s response to amended complaint

Due to the expedited nature of this retention, the State is not requiring the submission of hard copy responses to this RFP. Submissions should be made by email only to the address listed below **no later than 3:00 p.m. EST on Friday, February 19, 2016** (“Closing Date”). All timely Proposals become the property of the State. Requests for extensions of the Closing Date will not be granted. Any request for modification must be received and approved prior to the Closing Date. Timely delivery of any Proposal is the Bidder’s responsibility. Any Proposal received after 3:00 p.m. on the Closing Date will be late and will not be considered. **Proposals shall be submitted to both email addresses listed below, with the subject line: “RFP for Special Legal Counsel No. 2016-DOCLEGAL-001”:**

[Michelle.Smith@state.de.us](mailto:Michelle.Smith@state.de.us)

[Tammy.Menard@state.de.us](mailto:Tammy.Menard@state.de.us)

RFP Designated Contact:

Please submit all questions and requests for information in writing to:

[Michelle.Smith@state.de.us](mailto:Michelle.Smith@state.de.us) or  
[Tammy.Menard@state.de.us](mailto:Tammy.Menard@state.de.us)

## **1.0 GENERAL INFORMATION**

### **1.01 Project Scope**

This RFP seeks to retain the services of Special Legal Counsel to provide legal services to the State in representing the State for the duration of the litigation.

The Firm should be prepared to offer the following services:

- A. General. The Firm will be expected to represent the State throughout the duration of the litigation.
- B. Timing. As there are rapidly-approaching deadlines within the scope of this RFP, the selected firm should be able to prepare quickly, and to assist the State in identifying any conflicts of interest that may require the retention of additional legal counsel to represent one or more of the named state employee defendants.**

### **1.02 Procedures**

Selected Special Legal Counsel will work closely with representatives of the DOC, with the oversight of the legal counsel to the Governor, throughout the duration of the litigation.

## **2.0 MINIMUM REQUIRED QUALIFICATIONS**

### **2.01 Professional Liability Insurance**

The 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 \$10 million. In order to satisfy this requirement, the 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 Firm meets this requirement, or
2. A commitment letter or other evidence, satisfactory to the Office of the Governor, that the Firm will have such coverage as of the date the contract commences.

If the Firm 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 State, 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 the State's Insurance Coverage Office.

### **2.02 Firm's Capacity**

Each Firm must demonstrate the capacity to perform the type of services needed by the State described in Section 1.01 above. The Firm 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 Firm 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 State.

### **3.01 General**

All technical proposals shall be prepared with a concise description of the Firm's capabilities to satisfy the minimum qualifications of Section 2 above and the information requested under Section 3 below. The Firms 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. Firm's Prior 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 the State, 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 legal counsel retention, including the subject matter of the Complaint and the representation of government entities, in which the Firm has an expertise,

B. Conflicts of Interest.

1. In general, if a conflict of interest arises, the Firm should be willing to continue to represent the State, 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 Firm's representation of a party in litigation involving a unit of State government which is not being represented pursuant to the resulting RFP, but does not expect to waive any other conflicts. The State reserves the right 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.

2. Conflict Check System.

The Firm 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 Firm shall provide a copy of its written conflicts policy or explain in detail why there is no written policy.

3. Potential Conflicts.

The State recognizes that the Firm may have conflicts due to previous representations. The State encourages Firms with conflicts to submit proposals, identify the conflicts, and describe recommended resolutions, which may include providing 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 matter, and that those existing clients are amenable to such an inconvenience.

## 4.0 PRICE PROPOSAL FORMAT

### 4.01 Billing Rates

**Each Firm that submits a Proposal shall provide the following information:**

- A. Current billing rates for all attorneys assigned to represent the State defendants pursuant to this RFP;
- B. Current billing rates for all para-professionals assigned to this case;
- C. All billing shall be in accordance with the State of Delaware Outside Counsel Billing Policy.

### 4.02 Alternative Pricing Proposals

Although each Firm is required to submit a price proposal containing the information set forth in Part 4.01, the State will also accept proposals for alternative billing arrangements, which 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

Representatives of the DOC and the legal counsel to the Governor shall evaluate the Proposals. In the interest of expediency, the evaluation process will consist of meetings with bidding firms to discuss the written submissions. The State does not anticipate asking for formal oral presentations from applicants.

### **5.01 Selection Criteria**

The selection of a Firm to provide legal services will be based upon the following factors:

- A. Experience of the Firm in handling similar types of litigation;
- B. Projected cost of the representation;
- C. Experience of the Firm and the individual attorneys representing governmental agencies generally, and past performance on State of Delaware engagements;
- D. Administrative structure of representation (i.e. proposed staffing assignments), soundness of approach to representation and understanding of the needs of the DOC and the State;
- E. Demonstrated ability to perform the services referred to in the Project Scope; and
- F. References and recommendations of other clients.

### **5.02 Contract Negotiation**

Following interviews of prospective firms, the State intends to select one or more firms with which to negotiate a legal service retention agreement. All legal service retention agreements must be approved by the Office of the Governor and the Attorney General, subject to modification in certain circumstances as conflicts require. *See 29 Del. C. § 2507.*

### **5.03 Contract Award**

The State 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.