

STATE OF DELAWARE  
DEPARTMENT OF INSURANCE

Delaware Department of Insurance

Request for Proposals for

Ratepayer Advocate

Bid Number: DOI13101-RATEPAYADV  
(12030013001)

**Bid Closing: July 29, 2013; 3:00 p.m. EDT**

**REQUEST FOR PROPOSALS FOR RATEPAYER ADVOCATE  
ISSUED BY THE INSURANCE DEPARTMENT FOR THE STATE  
OF DELAWARE**

**Executive Summary**

The Delaware Department of Insurance (“DOI”) is issuing this Request for Proposals (“RFP”) for the State of Delaware. The DOI seeks to engage, with the consent of the Attorney General, a member of the Delaware Bar to serve as Ratepayer Advocate who shall represent the interests of Delaware workers compensation rate-payers in connection with the filing of an application by the Delaware Compensation Rating Bureau (“DCRB”) relating to rates or prospective loss cost throughout the course of the application (including any amendments thereto) and any appeals.

The DOI consists of five divisions: (1) the Bureau of Company Examination, Rehabilitation & Guaranty; (2) the Consumer Services & Investigations Division; (3) Market Regulation; (4) the Fraud Prevention Bureau; and (5) the Bureau of Captive and Financial Insurance Products. The DOI is tasked with ensuring reliable insurance coverage at reasonable rates for Delaware consumers.

The DOI anticipates that, after conducting interviews, it will select a lawyer (“Vendor”) to serve as Ratepayer Advocate pursuant to 18 **Del.C.** §§2610(e), (f), and (g) (enacted June 27, 2013) and applicable regulations (whether under consideration or finally adopted). This RFP will define the scope of the work to be performed, the requirements the Vendor must address, the method for response, and the administrative requirements that must be followed. The DOI will advise potential Vendors of changes to any dates as may be necessary. The DOI 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	July 16, 2013	Request for Proposal issued and Posted on bids.delaware.gov and a link to this website will be on DOI and DOJ websites.
		DOI and DOJ issue answers to questions regarding the RFP via DOI website at <a href="http://www.delawareinsurance.gov/">http://www.delawareinsurance.gov/</a> and the DOJ website at <a href="http://attorneygeneral.delaware.gov/">http://attorneygeneral.delaware.gov/</a> .
2	<b>July 29, 2013; 3:00 p.m. EDT</b>	<b>RFP Response due date</b>

All interested attorneys or firms should submit an original and five (5) 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. EDT on July 29, 2013 (“Closing Date”). A copy of the Proposal shall be delivered by electronic mail to the contact person at the email address provided below at the same time the paper copies are provided. All timely Proposals become the property of the DOI. 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:

State of Delaware  
Department of Insurance  
841 Silver Lake Blvd.  
Dover, Delaware 19904  
Attn: Jenifer Vaughn, Controller  
Re: Ratepayer Advocate

Each Proposal must be accompanied by a transmittal letter, which briefly summarizes the proposing lawyer’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. DOI 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 DOI in the order in which they appear in this request.

RFP Designated Contact:

Please submit all questions and requests for information to:

Jenifer Vaughn, Controller  
Department of Insurance  
841 Silver Lake Blvd.  
Dover, Delaware 19904

Direct Dial: (302) 674-7381  
Fax: (302) 739-7651  
Email: [Jenifer.Vaughn@state.de.us](mailto:Jenifer.Vaughn@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 DOI website at <http://www.delawareinsurance.gov/>.

## **1.0 GENERAL INFORMATION**

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

This RFP seeks to retain the services of a Ratepayer Advocate to represent the interests of Delaware workers compensation rate-payers in connection with the filing of an application by the DCRB with respect to rates or prospective loss cost, in accordance with 18 **Del.C.** Ch. 26 (as recently amended by HB 175) and applicable regulations promulgated by the DOI pursuant to 18 **Del.C.** §2610(f) (either adopted or under consideration). The position of Ratepayer Advocate was created by legislation adopted as of June 27, 2013.

### **1.02**

The cost of the Ratepayer Advocate shall be borne by the DCRB. The Ratepayer Advocate shall be entitled to charge a reasonable hourly rate acceptable to the Commissioner and the Attorney General, and to be reimbursed for reasonable expenses. Regardless of the approved hourly rate, the total amount charged by the Ratepayer Advocate for fees and expenses, during the course of the application (including any amendments thereto) and any appeals, shall be limited to \$40,000. The Ratepayer Advocate shall submit a statement or statements for fees and expenses to the Commissioner, who shall forward each statement to the DCRB for payment.

### **1.03**

It is expected that the DCRB will submit a filing on or about August 15, 2013, and any hearing on the filing will be held October 2013. The Ratepayer Advocate shall select an actuary to work with him or her in review of the filing and to testify in any rate-setting proceeding. The selected actuary shall be an Associate or Fellow of the Casualty Actuarial Society, and shall have met the qualification standards of the American Academy of Actuaries for issuing a statement of opinion concerning workers compensation insurance. The actuary shall prepare a written report and statement of opinion evaluating the filing, which shall include a calculation of the appropriate increase or decrease in residual market rates and voluntary market loss costs and supporting analysis (“Report”). The Ratepayer Advocate must be prepared promptly to retain a qualified actuary, and both the Ratepayer Advocate and the selected actuary must meet tight deadlines in connection with the ratemaking process.

### **1.04**

Pursuant to HB 175, Section 8 (enacted June 27, 2013) (the “Act”), the DCRB “shall, within 90 days after June 27, 2013 [*i.e.* no later than September 25, 2013], file for approval by the Commissioner prospective loss costs that shall explicitly and individually account for the impact of any statutory changes in this Act or Senate Bill 238 of the 146<sup>th</sup> General Assembly, as well as any regulatory changes proposed by the Health Care Advisory Panel within 60 days of the enactment of this Act. Any order issued by the

Department of Insurance relating to said filing shall explicitly account for all statutory changes and regulatory proposals that are enumerated by the advisory organization in the filing required by this Section.” In furtherance of this directive, and to assist the Commissioner in formulating the findings required by the Act, any report prepared by an actuary retained by the Ratepayer Advocate “shall explicitly account for all statutory changes and regulatory proposals that are enumerated by the advisory organization in the filing required by this Section [8 of HB 175].” The Ratepayer Advocate shall provide a complete copy of the Report to the Commissioner, the DCRB, and any other party upon receipt of the Report from the actuary.

## **2.0 MINIMUM REQUIRED QUALIFICATIONS**

### **2.01 Experience and Reputation**

- A. The Vendor shall, at a minimum, (1) be a member of the Delaware Bar in good standing; (2) have significant experience in matters related to insurance company regulation; (3) preferably have experience in insurance rate proceedings; and (4) comply with the Delaware Lawyers Rules of Professional Conduct guidelines on conflicts of interest with regard to the proposed representation.
- B. If the Vendor is a law firm, it must designate a member of the firm, having the qualifications set forth in section 2.01B., who will serve as the Ratepayer Advocate.

### **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 Procurement Officer, that Vendor will have such coverage as of the date the Contract commences.

### **2.03 Vendor's Capacity**

The Vendor must demonstrate the capacity to perform the type of services needed by the DOI described in Section 1 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 DOI.

#### **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.

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 ever 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 the Ratepayer Advocate leaves the firm.

2. Insurance Experience:

- (i) Provide a detailed description of the Vendor's experience in matters related to administrative law, insurance law, insurance company regulation, and insurance rate proceedings during the last five (5) years, including any involvement with issues relating to administrative law issues.
- (ii) Describe the Vendor's experience in the last five (5) years representing or advising public sector clients in administrative law issues.
- (iii) Provide a brief description of areas of the law related to the purpose of this RFP in which the Vendor has an expertise, including, but not limited to insurance law and administrative law.
- (iv) Please describe how the Vendor will be prepared promptly to retain an actuary, and with the actuary, meet tight deadlines in connection with the ratemaking process.

B. Conflicts of Interest.

- 1. In general. If a conflict of interest arises, the Vendor should be willing to continue to serve as Ratepayer Advocate and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The DOI and Attorney General 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 the DOI, but does not expect to waive any other conflicts. The DOI 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 identify any conflicts of interest which may arise if the Vendor serves as Ratepayer Advocate and shall describe in its Proposal how it proposes to deal with such conflicts. Such conflicts may arise not only from the Ratepayer Advocate but also from other matters involving

any member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

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

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

- A. Current billing rates for the Ratepayer Advocate, and all attorneys who may assist the Ratepayer Advocate pursuant to this RFP and any applicable discounts;
- B. Current billing rates for all para-professionals who may assist the Ratepayer Advocate pursuant to this RFP and any applicable discounts;
- C. Confirmation that regardless of the approved hourly rate, the total amount charged by the Ratepayer Advocate for fees and expenses, throughout the entire course of the application (including any amendments thereto) and any appeals, shall be limited to \$40,000.
- D. 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, the DOI will also accept proposals for alternative billing arrangements, which enhance the value and efficiency of the services to be provided, while complying with the overall \$40,000 ceiling for representation throughout the entire course of the application (including any amendments thereto) and any appeals. 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 Vendors to make oral presentations or participate in a formal interview. Such presentation or interviews will provide Vendors with an opportunity to answer questions about a Vendor's Proposal. Not all Vendors may be asked to make an oral presentation or to attend an interview.

##### **5.01 Selection Criteria**

The selection of the Vendor to provide legal services will be based on an evaluation of the Proposals to determine which Proposal reflects the best value, with technical factors generally being considered more important than cost of services, subject

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to the \$40,000 ceiling for representation throughout the entire course of the application (including any amendments thereto) and any appeals. The selection of the Vendor to provide legal services will be based upon the following technical factors in descending order of importance.

- A. Experience of the Vendor in matters related to administrative law, insurance law, insurance company regulation, and insurance rate proceedings during the last five (5) years, including any involvement with issues relating to administrative law issues;
- B. Administrative structure of representation (i.e., proposed staffing assignments), soundness of approach to representation and understanding of the needs of the DOI;
- C. Demonstrated ability to perform the services referred to under Project Scope and Objectives, including without limitation how the Vendor will be prepared promptly to retain an actuary, and with the actuary, meet tight deadlines in connection with the ratemaking process; and
- D. References and recommendations of other clients.

### **5.02 Contract Negotiation**

The DOI intends on opening negotiations with Vendors that the DOI 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 the selected Vendor will be required. Each contract must be approved by the Attorney General pursuant to 18 **Del.C.** §2610.

### **5.03 Contract Award**

The DOI reserves the right to award all, part, or none of this contract. The DOI intends to award a contract to one Vendor if deemed appropriate and desirable.