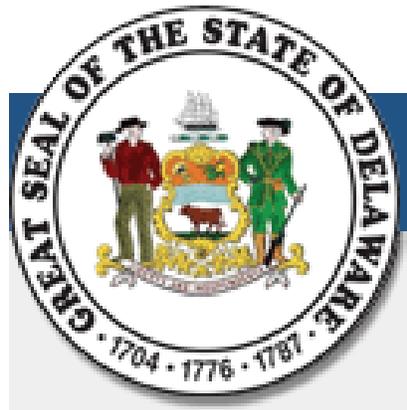


STATE OF DELAWARE



Department of Transportation

Carvel State Office Building, 8th Floor
820 N. French Street
Wilmington, DE 19801

Request For Proposals For Special Real Estate Counsel

Bid Number: 160318DOT

Bid Closing: April 4, 2018; 3:00 p.m. EST

**REQUEST FOR PROPOSALS FOR
SPECIAL REAL ESTATE COUNSEL
ISSUED BY THE STATE OF DELAWARE**

Executive Summary

The Delaware Department of Transportation (“DelDOT”) is issuing this Request for Proposals (“RFP”). DelDOT seeks to engage a law firm[s] to act as Special Real Estate Counsel (“Special Real Estate Counsel”) to represent, DelDOT’s real estate section in matters relating to inverse condemnation, the processing of eminent domain actions for both DelDOT projects and those in accordance with 17 *Del. C.* Section 507 (“Section 507”), together with the settlements for those Section 507 acquisitions. Secondary responsibilities will be for those project related property settlements which DelDOT’s in-house legal section delegates to Special Real Estate Counsel.

DelDOT anticipates that, after conducting interviews, it will select at least one vendor (“Vendor”) to act on behalf of DelDOT as Special Real Estate Counsel. DelDOT reserves the right to award multiple contracts if it determines that such an award is in the best interest of the State of Delaware (“State”).

This RFP will define the scope of the work to be performed, the requirements the Vendor must address in its response, the method for response, and the administrative requirements that must be followed. DelDOT will advise potential Vendors of changes to any dates as may be necessary. DelDOT 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	March 16, 2018	Request for Proposal issued, posted on the State’s website at http://bids.delaware.gov and the Attorney General’s website at http://attorneygeneral.delaware.gov .
2	March 23, 2018	All Vendor questions regarding RFP are due
2	March 28, 2018	State issues answers to questions regarding the RFP via State of Delaware website at http://bids.delaware.gov and Attorney General’s website at http://attorneygeneral.delaware.gov
5	April 4, 2018; 3:00 p.m. EST	RFP Response due date
4	April 18, 2018	Begin Vendor Interviews (subject to change)
5	April 25, 2018	Begin Negotiations (subject to change)
6	May 4, 2018	Contract awarded (subject to change)

All interested Vendors should submit (1) One original and three bound copies of their proposals (“Proposal”) and (2) one electronic version to the Designated Contact. Proposals may be mailed or hand-delivered for receipt no later than **3:00 p.m. EST on April 4, 2018** (“Closing Date”). All timely Proposals become the property of the State.

Requests for extensions of the Closing Date will not be granted. Any Proposal, or request for modification 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:

Brad Eaby
Deputy Attorney General
DelDOT Administration Building
800 South Bay Road
Dover, Delaware 19901
Direct Dial: (302) 760-2492
Fax: (302) 739-2251
Email: Brad.Eaby@state.de.us

Each Proposal must be accompanied by a transmittal letter, which briefly summarizes the proposing Vendor'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 Vendor may have taken in presenting the Proposal. DelDOT 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 Vendor. Proposals shall address all the questions posed by DelDOT in the order in which they appear in this request.

Any Vendor questions and requests for information should be submitted to the RFP Designated Contact:

Brad Eaby
Deputy Attorney General
DelDOT Administration Building
800 South Bay Road
Dover, Delaware 19901
Direct Dial: (302) 760-2492
Fax: (302) 739-2251
Email: Brad.Eaby@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 State's website at <http://bids.delaware.gov> and the Attorney General's website at <http://attorneygeneral.delaware.gov>.

1.0 GENERAL INFORMATION

1.01 Project Scope and Objectives

The State seeks qualified Vendors to provide legal counsel to and representation for DelDOT in matters relating to defending inverse condemnation claims, processing eminent domain actions for DelDOT's Capital Transportation Projects ("CTP") and Section 507 as it relates to development related improvements requiring new right-of-way. The engagement will also include property settlements in connection with Section 507 property acquisitions, including title searches. Minor responsibilities may also include, from time to time, CTP property settlements and land dispositions. These matters include, but are not limited to, areas involving:

- 1) preparing and filing eminent domain actions, reviewing title searches, identifying and naming party defendants, obtaining possession, recording Orders of Possession, identifying and retaining expert's needed, discovery, drafting and filing dispositive and non-dispositive motions, alternative dispute resolution, developing trial strategy in conjunction with the Deputy Attorney General assigned to DelDOT, obtaining a determination of just compensation, prosecuting the case through trial verdict, filing and recording Certified Abstract of Record of Condemnation Proceedings and defending inverse condemnation claims;
- 2) performing real estate title searches (sixty year searches);
- 3) preparing and processing of legal documents, i.e., deeds, easements, releases, mortgage releases, affidavits, settlement forms, etc., in connection with real estate settlements;
- 4) determining property tax liability including prorations, payments and/or reimbursements;
- 5) holding real estate settlements within ninety (90) days of receipt of DelDOT's request, pursuant to DelDOT's instructions;
- 6) recording legal instruments in connection with settlements;
- 7) advising DelDOT on the need to acquire title insurance;
- 8) completing and filing appropriate IRS forms;
- 9) providing completed settlement files, with original instruments, to DelDOT;
- 10) providing advice and services to DelDOT relative to the State's Landlord-Tenant Code and reviewing lease agreements on behalf of DelDOT; and

- 11) If requested by DelDOT, provide monthly status reports.

1.02 Coordination with Deputy Attorney General

Vendor will work with the Deputy Attorney General (“DAG”) assigned to DelDOT as the Coordinating Attorney for this engagement and with DelDOT staff. All advice is to be provided to the DAG and DelDOT.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience

- A. The Vendor must have been in business at least three (3) years.
- B. The Vendor should have at least five (5) or more year’s prior experience in representing clients before the Delaware courts.
- C. The Vendor should have at least five (5) or more year’s prior experience in representing clients in real estate matters, including eminent domain actions, in Delaware.
- D. The Vendor must have a thorough understanding of real estate appraisal and acquisition concepts and theories and five (5) years of demonstrated experience;
- (c) The Vendor must have at least five (5) years of experience in real estate negotiations and settlements; and
- D. The Vendor must designate a lead attorney licensed to practice law with five (5) or more year’s real estate experience in the above areas.

2.02 Professional Liability Insurance

The Vendor shall agree to maintain in full force and effect during the term of the engagement professional liability insurance in an aggregate amount of not less than \$15 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 contact person, that Vendor will have such coverage as of the date the engagement commences.

If the Vendor 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 contact person, that all members of the joint venture will have such coverage as of the date the engagement commences, either through actual insurance policies or an indemnity agreement by the properly insured firm, in form and substance acceptable to DelDOT.

2.03 Vendor's Capacity

Each Vendor must demonstrate the capacity to perform the type of services needed by DelDOT described in Section 1.01 above. The Vendor must be available at all times to render services required under the engagement.

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 DelDOT.

3.01 General

All 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. Joint ventures should provide the information separately for each firm.

- A. Vendor's Prior Experience
 1. General Information:
 - (i) Please provide a list of the jurisdictions the members of your firm are licensed in and the status of their licenses (only list those who are expected to be assigned to this engagement).

- (ii) Please provide a statement attesting to the fact that the Vendor is in compliance with all federal, state and local laws and regulations and all tax obligations.
- (iii) 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.
- (iv) Has your firm or an attorney in your firm's employ even been disciplined or censured by any regulatory body? If so, describe the principal facts.
- (v) 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 the provision of legal services? If so, provide an explanation and indicate the current status or disposition.
- (vi) Please describe your firm's backup procedures in the event one or more attorneys assigned to DelDOT leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to DelDOT, whose continuing status as such is an essential element of this contract.

2. Real Estate Experience:

- (i) Describe the Vendor's experience in representing clients in eminent domain and inverse condemnation proceedings during the last five (5) years;
- (ii) Describe the Vendor's experience in real estate matters relating to Section 507 property acquisitions during the last five (5) years;
- (iii) Describe the Vendor's experience in assisting clients with real estate appraisal, acquisition and settlement issues during the last five (5) years;

- (iv) Describe the Vendor's experience in Delaware state courts during the last five (5) years related to real estate issues described above;
- (v) Provide a brief description of areas of the law related to the purpose of this RFP in which the Vendor has an expertise not already addressed.

B. Conflicts of Interest.

1. DelDOT is interested in avoiding even the appearance of impropriety or conflict and, therefore, any doubts in this regard must be resolved in favor of full disclosure. The successful Vendor(s) shall be required to conform in all respects to the provisions of the Delaware Lawyers' Rules of Professional Conduct, including those relating to conflicts of interest. The successful Vendor, and its personnel who will perform work for DelDOT, must have no financial or business interest directly or indirectly involving DelDOT. Even though the Vendor's employees are not State employees, the firm should read and be familiar with the terms of 29 *Del.C. c. 58* "Laws Regulating the Conduct of Officers and Employees of the State" so as to assist DelDOT's employees in avoiding any improper conduct.
2. Prior to submitting its Proposal each Vendor shall complete a conflicts check for the State, and its agencies. Each Vendor shall identify any conflicts of interest which may arise if the Vendor serves as Special Real Estate Counsel and shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys names on the contract but also from representation of parties involved in the transactions or other matters involving the State, by any member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.
3. In general if a conflict of interest arises, the Vendor should be willing to continue to represent DelDOT 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 Vendor's representation of a party in litigation involving a unit of State government other than DelDOT, but does not expect to waive any other conflicts. The State,

reserves the right, in their sole discretion, to select another approved law firm to work on a particular matter if a conflict is not resolved to its satisfaction.

4. The State recognizes that Vendors may have conflicts due to previous representations. The State encourages Vendors with conflicts to submit Proposals, identify the conflicts and describe recommended resolutions

4.0 PRICE PROPOSAL FORMAT

4.01 Billing Rates

- A. Current billing Rates for all attorneys assigned to represent DelDOT, pursuant to this RFP and any applicable discounts;
- B. Current billing Rates for all para-professionals assigned to represent DelDOT, pursuant to this RFP and any applicable discounts;
- C. No compensation will be permitted for the services of law clerks and law school graduates not admitted to practice.
- D. In addition to the information requested above, please submit a Proposal to charge a flat fee on a parcel by parcel basis to include reimbursements for actual costs of instrument recordation, release processing, (price for at least two contracts with company), title insurance, etc. List agency fee for title insurance which the firm receives and indicate whether the firm is willing to waive its agency fee.
- E. In addition to the information requested above, please submit a Proposal to bill a flat fee for the following:
 1. Drafting and filing Condemnation Complaint and related attachments (not including title review and analysis);
 2. Drafting and filing Stipulated Orders of Possession (not including negotiation of terms);
 3. Drafting and filing Stipulated Orders of Judgment (not including negotiation of terms); and
 4. Drafting and filing Recorded Certified Abstract of Record of Condemnation Proceedings.
- E. **PLEASE NOTE:** When handling a Section 507 case, it is the responsibility of the Developer to pay the Vendor directly for any legal representation they may receive under this contract.

4.02 Alternative Pricing Proposals

Although each Vendor is required to submit a price Proposal containing the information set forth in Part 4.1, DeIDOT will also accept Proposals for alternative billing arrangements, which enhance the value and efficiency of the services to be provided. 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 interview will provide Vendors with an opportunity to answer questions about their 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 to DeIDOT and the State, with technical factors generally being considered more important than cost of services. 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 firm and the individual attorneys in representing clients in eminent domain and inverse condemnation actions;
- B. Experience of the firm and the individual attorneys representing clients in real estate matters, including right-of-way actions, property settlements, and acquisitions;
- C. Experience of the firm and the individual attorneys representing governmental agencies in real estate, inverse condemnation and eminent domain actions;
- D. Experience of the firm and the individual attorneys representing governmental agencies generally;
- E. Administrative structure of representation (i.e., proposed staffing assignments), soundness of approach to representation and understanding of the needs of DeIDOT;
- F. Demonstrated ability to perform the services referred to under Project Scope and Objectives, and

- G. References and recommendations of other clients.

5.02 Contract Negotiation

DelDOT intends on opening negotiations with Vendors that DelDOT 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 each of the selected Vendors will be required. Each Vendor will be required to comply with the Delaware Department of Justice Outside Counsel Billing Policy, attached hereto as Exhibit A. Each contract must be approved by the Governor of the State of Delaware and the Attorney General of the State of Delaware pursuant to 29 *Del. C.* § 2507.

5.03 Contract Award

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

EXHIBIT A

***State of Delaware Department of Justice
Outside Counsel Billing Policy***

- 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
 - 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.