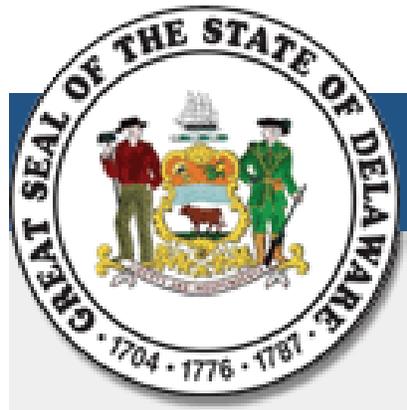


STATE OF DELAWARE



Department of Finance

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

Request for Proposals for Special Litigation Counsel

Bid Number: FIN-16- - Spec_Lit

Bid Closing: Wednesday, March 9, 2016; 3:00 p.m. EST

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

Executive Summary

The Department of Finance of the State of Delaware (“DoF”) is issuing this Request for Proposals (“RFP”). DoF seeks to engage a law firm to act as Special Litigation Counsel (“Special Litigation Counsel”) representing DoF and certain current and former officers in their professional capacities (collectively, the “State Defendants”) in *Marathon Petroleum Corporation; Speedway LLC; Marathon Prepaid Card, LLC; and Speedway Prepaid Card, LLC.*, District Court for the District of Delaware Civil Action No. 16-80 (the “Action”). In the Action, the plaintiffs seek equitable, declaratory, injunctive and other relief pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983. The plaintiffs further allege that the Delaware Escheats Law, 12 *Del.C.* §§ 1101 *et seq.*, violates and is preempted by federal common law and the Fourth Amendment protection against unlawful search and seizure. A copy of the complaint is attached as **EXHIBIT A** to this RFP.

DoF anticipates that, after conducting interviews, it will select one firm to act on behalf of DoF as Special Litigation Counsel. DoF reserves the right to award multiple contracts if it determines that such an award is in the best interest of the State of Delaware (the “State”). DoF also reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

This RFP will define the scope of the work to be performed, the requirements the bidding law firm (“Firm”) must address in its response, the method for response, and the administrative requirements that must be followed.

RFP Schedule

ID	Date/Time	Activity
1	February 24, 2016	Request for Proposal issued, posted on the State’s website at http://bids.delaware.gov
2	March 9, 2016 3:00 p.m. EST	RFP Responses due by electronic submission*
3	March 10, 2016	Begin Firm interviews (subject to change)
4	March 14, 2016	Contract awarded (subject to change)

Due to the expedited nature of this retention, DoF 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 Wednesday, March 9, 2016** (“Closing Date”). All timely Proposals become the property of the DoF. 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 FIN-16- - Spec Lit.”

caroline.cross@state.de.us
michelle.smith@state.de.us

The cost of preparing Proposals will be borne solely by the offerors. Proposals shall address all the questions posed by the Issuers in the order in which they appear in this request.

RFP Designated Contact: Please submit all questions and requests for information in writing to one or both of the following RFP Designated Contacts:

caroline.cross@state.de.us
michelle.smith@state.de.us

1.0 GENERAL INFORMATION

1.01 Project Scope and Objectives

This RFP seeks to retain the services of Special Litigation Counsel to provide legal services to DoF representing the State Defendants in the above-referenced Action. In addition to DoF, the State Defendants include the Secretary of Finance, the State Escheator, and the Audit Manager, each of whom are named in their official capacities.

Special Litigation Counsel should be prepared to offer the following services:

- A. General. Special Litigation Counsel will be expected to represent the State and DoF throughout the duration of the litigation and provide other counsel related to and abandoned and unclaimed property as shall be determined by DoF.
- B. Timing. Defendants’ Answer has not yet been filed; an Order granting an extension of time has been signed by the assigned Judge.

1.02 Procedures

Selected Special Litigation Counsel will work closely with the Deputy Attorney General (“DAG”) assigned to DoF for the Action. From time to time, the DAG may refer the Special Litigation Counsel to work directly with DoF Staff, as necessary to successfully defend the pending Action. All advice is to be provided directly to the DAG or to one of these members of DoF, as referred by the DAG.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The Firm must have been in business at least three years.
- B. The Firm shall have at least five (5) or more years' prior experience in representing clients in the U.S. District Court for the District of Delaware, the Delaware Supreme Court, and/or the Delaware Court of Chancery.
- C. The Firm shall have experience with respect to escheat, abandoned property, or unclaimed property matters arising under Delaware law.
- D. The Firm shall have experience litigating claims under the U.S. and Delaware Constitutions, particularly claims relating to due process, takings, and claims relating to the Commerce Clause and Full Faith and Credit Clause of the U.S. Constitution.

2.02 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 \$2 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 contact person, that 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 contact person, 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 DoF.

2.03 Firm's Capacity

Each Firm must demonstrate the capacity to perform the type of services needed by DoF 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 DoF.

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. 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 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 even 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 one or more attorneys assigned to the DoF leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to DoF, whose continuing status as such is an essential element of this contract.

2. Litigation Experience:

- (i) Describe the Firm's experience in litigating abandoned property, escheat or tax-related matters in the last five (5) years. Additionally, please describe the Firm's experience in matters relating to property valuation or similar financial issues in the last five (5) years that are relevant to the Action.
- (ii) Describe the Firm's experience in litigating matters relating to issues arising out of the U.S. or Delaware Constitutions in the last five (5) years, particularly claims relating to due process, takings, and claims relating to the Commerce Clause and Full Faith and Credit Clause of the U.S. Constitution.
- (iii) Describe the Firm's experience representing or advising public sector clients in the last five (5) years.
- (iv) Describe the Firm's experience in litigating matters before the District Court for the District of Delaware in the last five (5) years.
- (v) Describe the Firm's experience in the Delaware Supreme Court, Delaware Court of Chancery, and/or the U.S. District Courts during the last five (5) years with respect to issues relating to escheat, abandoned property or unclaimed property; administrative law (including appeals of administrative law issues); or other tax or financial issues that are germane to the Action.
- (vi) Provide a brief description of areas of the law related to the purpose of this RFP in which the Firm has an expertise.

B. Conflicts of Interest.

1. In general. If a conflict of interest arises, the Firm must be willing to continue to represent DoF and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. DoF may entertain a request for a waiver of a Firm's representation of a party in litigation involving a unit of State government other than DoF, but does not expect to waive any other conflicts. DoF 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 Firm shall complete a conflicts check for the State of Delaware, DoF and the identified petitioners. Each Firm shall identify any conflicts of interest which may arise if the Firm serves as Special Litigation 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 DoF by any member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

2. DoF recognizes that the Firm may have conflicts due to previous representations. DoF 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

Firms shall provide the following items:

- A. Current billing Rates for all attorneys assigned to represent DoF pursuant to this RFP and any applicable discounts;
- B. Current billing Rates for all para-professionals assigned to represent DoF 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. Billing will conform to the State of Delaware, Department of Justice's 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, DoF 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 DoF, its legal counsel, 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 the firm to provide legal services will be based upon the following factors:

- A. Experience of the firm and the individual attorneys in litigating abandoned property or escheat matters;
- B. Experience of the firm and the individual attorneys representing clients in challenges based on constitutional issues, in particular matters relating to due process, takings, and claims relating to the Commerce Clause and Full Faith and Credit Clause of the U.S. Constitution;
- C. Experience of the firm and the individual attorneys representing governmental agencies generally;
- D. Projected cost of the representation.
- E. Administrative structure of representation (i.e., proposed staffing assignments), soundness of approach to representation and understanding of the needs of DoF and the State;
- 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

DoF intends on opening negotiations with Firms that DoF determines have a reasonable likelihood of being awarded a contract based on the proposals that are submitted. 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 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

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