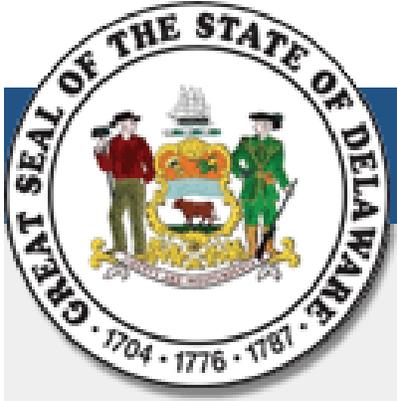


State of Delaware



Department of Justice

Carvel State Office Building
820 N. French Street
Wilmington, DE 19801
Telephone (302) 577-8400

Delaware Department of Justice Request for Proposals for Rate Counsel

Proposal Number: DOJ - 06012015

Proposal Deadline: June 19, 2015; 3:00 PM EST

**REQUEST FOR PROPOSALS FOR
RATE COUNSEL
ISSUED BY THE DEPARTMENT OF JUSTICE
OF THE STATE OF DELAWARE**

Executive Summary

The Delaware Department of Justice (“DOJ”), on behalf of the Delaware Public Service Commission (“PSC”) pursuant to 29 *Del. C.* §§ 2504 and 2507, is issuing this Request for Proposals (“RFP”). DOJ seeks to engage one law firm to act as legal counsel (“Rate Counsel”) to advise PSC and represent the State of Delaware (“State”) in connection with public utility rate cases and other public utility regulatory matters as assigned.

PSC works to ensure safe, reliable, and reasonably priced electric, natural gas, water, and wastewater services. PSC also has limited regulatory authority over telecommunications and cable television rates and services. PSC does not regulate the Delaware Electric Cooperative or utilities that are owned by municipalities. Rate Counsel will represent the PSC during rate cases and other regulatory actions and legal proceedings conducted in accordance with the PSC’s jurisdiction, as set forth in 26 *Del. C. Ch. 1*.

DOJ anticipates that, after conducting interviews, it will select one firm to act on behalf of PSC as Rate Counsel, consistent with the scope of this RFP. DOJ anticipates that this contract will be awarded for a one year period, with an option to renew for up to an additional two years.

This RFP will define the scope of the work to be performed, the requirements a bidding law firm must address, the method for response, and the administrative procedures that must be followed. DOJ will advise candidate firms of changes to any dates as may be necessary. DOJ 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	May 22, 2015	RFP issued, posted on the State’s website at http://bids.delaware.gov and the Attorney General’s website at http://attorneygeneral.delaware.gov
2	June 19, 2015; 3:00 p.m. EST	RFP Response due date
3	Week of June 29, 2015	Selected firms’ oral presentations and interviews (subject to change)

Any interested firm should submit: (1) one original and five bound copies of its proposal (“Proposal”) to the address immediately below, and (2) one electronic version of its Proposal to the RFP Designated Contact below. Proposals must be received by DOJ **no later than 3:00 p.m. EST on June 19, 2015** (“Closing Date”). Timely delivery of the Proposal is the bidder’s

responsibility. Any Proposal received after 3:00 p.m. on the Closing Date will be late and may not be considered. All timely Proposals shall become the property of the State.

Requests for extensions of the Closing Date will not be granted. Any request for modification of the terms of this RFP must be received and approved by DOJ prior to the Closing Date.

Proposals may be submitted by Express Delivery (e.g., FedEx, UPS, etc.), U.S. Mail, or hand delivery. Proposals shall be submitted to:

Delaware Department of Justice
Attn: Mary Catherine McTaggart
Carvel State Office Building
820 N. French Street, 6th Floor
Wilmington, DE 19801
RFP: Rate Counsel – Proposal Number: DOJ – 06012015.
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8922

RFP Designated Contact:

Please submit all questions and requests for information, via email, to:

Mary Catherine McTaggart
Delaware Department of Justice
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, DE 19801

Direct Dial: (302) 577-8922
Fax: (302) 577-6630
Email: Mary.McTaggart@state.de.us

1.0 GENERAL INFORMATION

1.01 Project Scope

This RFP seeks to retain the services of one law firm to act as Rate Counsel to provide advice and legal representation with respect to the regulation and rates of electric, natural gas, water, wastewater, telecommunication, and cable television companies. Legal services requested pursuant to this RFP will include the following:

1. Providing legal review and analysis of Delaware public utility applications.
2. Representing the PSC in rate cases and investigations.
3. Briefing the PSC on key legal issues and updates as they relate to rate and regulatory proceedings.
4. Providing monthly status reports.

1.02 Procedures

Selected Rate Counsel will work closely with the Deputy Attorney General (“DAG”) assigned to represent the PSC. All legal services are to be provided only at the request of the DAG. From time to time, the DAG may refer the Rate Counsel to work directly with PSC and its staff as necessary to successfully represent PSC interests. All advice is to be provided directly to the DAG or individuals identified and/or designated by the DAG. All invoices will be submitted to the PSC DAG and the Office of the Governor for approval of payment pursuant to 29 *Del. C.* § 2507.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The law firm must have been in business for at least three years; and
- B. The attorneys of the law firm must be members of the Delaware Bar who have been admitted for at least three years; and
- C. The law firm must have at least three or more years of experience in representing clients before the Delaware Courts; and
- D. The law firm must have at least five years of experience in representing clients in matters related to the regulation of public utilities; and
- E. The law firm must have a thorough understanding of rate setting concepts for public utilities and regulation of public utilities in general as well as five years of demonstrated experience in these areas; and

- F. The law firm must designate a lead attorney, licensed to practice law, with five or more years of experience in rate case litigation and regulation of public utilities.

2.02 Professional Liability Insurance

The law firm shall agree to maintain in full force and effect during the term of the representation professional liability insurance in an aggregate amount of not less than \$10 million. In order to satisfy this requirement, the law 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 law firm meets this requirement, or
 - 2. A commitment letter or other evidence, satisfactory to DOJ, that the law firm will have such coverage as of the date the representation commences.

2.03 Capacity

Each law firm must demonstrate the capacity to perform the type of services needed by DOJ, as described in Section 1.01 above. The law firm must be available at all times to render services required.

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 RFP. Failure to respond to any request for information within this proposal may result in rejection of the Proposal at the sole discretion of DOJ.

3.01 General

All technical proposals shall be prepared with a concise description of the law firm's capabilities to satisfy the minimum qualifications of Section 2, above, and the information requested under Section 3.02, below. The applicant should organize its Proposal so that 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. Law Firm's 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 if one or more attorneys assigned to this matter leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to DOJ and PSC, 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 RFP in which the firm has an expertise, including, but not limited to, representation of clients in administrative hearings and in court cases, advising clients on regulatory issues, and advising clients on appeals before the Superior Court.

3. Special Experience:

Provide a brief description of the firm's experience in the last five years for representing or advising clients in administrative proceedings related to rate cases, regulation of public utilities and other related matters.

B. Conflicts of Interest.

1. In general, if a conflict of interest arises, the firm should be willing to continue to represent PSC, and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The DOJ 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 PSC, but does not expect to waive any other conflicts. DOJ 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 identify any conflicts of interest which may arise if the firm serves as Rate Counsel and shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys named on the contract but also from representation of parties involved in the transactions or other matters or members of any panel of arbitrators, as set forth above, by any other member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

2. Conflict Check System.

The firm shall describe in detail its existing system for identifying conflicts of interest in undertaking new representations, and shall report on any conflicts with the arbitration panel members identified above. 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.

Prior to entering into any contract, the firm shall provide 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 transaction, and that those existing clients are amenable to such an inconvenience.

4.0 PRICE PROPOSAL FORMAT

4.01 Billing Rates

- A. Current billing rates for all attorneys assigned to represent PSC pursuant to this RFP;

- B. Current billing rates for all para-professionals assigned to represent PSC pursuant to this RFP; and
- C. All billing shall be in accordance with the DDOJ Outside Counsel Billing Policy (“Attachment A”).

4.02 Alternative Pricing Proposals

Although each firm is required to submit a price proposal containing the information set forth in Part 4.01, DOJ will also consider proposals for alternative billing arrangements that 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

DOJ shall evaluate the proposals. During the evaluation process DOJ may, at its discretion, request any or all firms to make oral presentations. Such presentations will provide firms with an opportunity to answer questions about a firm’s Proposal. Not all firms may be asked to make such oral presentations.

5.01 Selection Criteria

The selection of the firm to serve as Rate Counsel will be based upon the following factors, in descending order of importance:

- i. The experience and reputation of the firm and relevant attorneys in representing governmental agencies and other types of clients in public utility rate cases;
- ii. If applicable, the performance of the firm and relevant attorneys on past outside counsel engagements by the State of Delaware;
- iii. The firm’s proposed approach to the representation of PSC and its staff;
- iv. The cost to the state of the firm’s services and strategy, relative to that of other bidders and relative to the experience and qualifications of the bidder;
- v. References and recommendations from former clients or members of the bar in the jurisdiction(s) in which the firm will provide legal services;
- vi. The experience and reputation of the firm and relevant attorneys in the jurisdictions(s) in which the firm will provide legal services;
- vii. Any potential or actual conflicts of interest and the potential for securing a waiver from relevant parties;

- viii. The extent and success of the firm’s efforts to encourage the hiring, promotion and inclusion of women and minority attorneys, including its ability and commitment to include women and minority attorneys in the project under bid; and
- ix. Such other factors as may be relevant to the subject matter of the anticipated litigation or dispute.

5.02 Contract Negotiation

DOJ intends on opening negotiations with the firm that PSC determines has a reasonable likelihood of being awarded a contract based on the proposal, interview and supplemental submissions (if any) that are submitted. Negotiations will focus on any weaknesses or deficiencies in proposals as well as cost and pricing issues.

A written contract with the law firm selected will be required, which must be approved by the Attorney General of the State of Delaware, DOJ and the Governor of the State of Delaware pursuant to 29 *Del. C.* § 2507. The successful firm will be required to comply with the DDOJ Outside Counsel Billing Policy. (“Attachment A”).