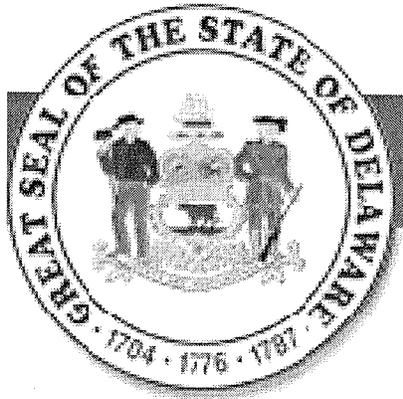


State of Delaware



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 Special Legal Counsel

Proposal Number: DOJ - 08252015

Proposal Deadline: September 11, 2015; 3:00 PM EST

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

Executive Summary

The Delaware Department of Justice (“DOJ”), on behalf of the State agencies it represents, is issuing this Request for Proposals (“RFP”). The DOJ seeks to engage one law firm to act as Special Legal Counsel (“Special Legal Counsel”) to offer legal assistance in negotiation of IT contracts and IT contract litigation, provide strategic legal advice regarding interpretation of complex contracts, as well as guidance as to best practices in IT procurement.

DOJ anticipates that, after conducting interviews, it will select one firm to act as Special Legal Counsel, consistent with the scope of this RFP as it relates to IT contracting, IT contract litigation and best practices in IT procurement. DOJ 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 Firm (“Firm”) must address, the method for response and the administrative requirements that must be followed. DOJ will advise potential 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	August 26, 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	September 11, 2015; 3:00 pm EST	RFP Response due date
3	September 16, 2015	Selected Firms’ oral presentations and interviews (subject to change)

All interested firms should submit: (a) an original and 5 bound copies of their proposals (“Proposal”) and (b) one electronic version to the designated contact person. Proposals may be mailed or hand-delivered for receipt **no later than 3:00 p.m. EST on September 11, 2015** (“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. 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 Justice
RFP: Special Legal Counsel – Proposal Number: DOJ – 08252015
Attention: Mary Page Bailey
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, DE 19801

Each proposal must be accompanied by a transmittal letter that briefly summarizes the firm'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 that the applicant may have taken in presenting the Proposal. DOJ 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 Bidders. Proposals shall address all the questions posed by DOJ in the order in which they appear in this request.

RFP Designated Contact:

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

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

Direct Dial: (302) 577-8361
Fax: (302) 577-6630
Email: marypage.bailey@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

This RFP seeks to retain the services of one law firm to act as Special Legal Counsel to provide advice and legal representation with respect to complex contract negotiation with the ability to address IT contract litigation as well as offer guidance as to best practices in IT procurement as more specifically detailed below.

The Firm should be prepared to offer the following services:

- A. **General.** The Firm will be expected to represent state agencies as identified by the DOJ regarding IT contracts including best practices, negotiations and litigation. Any Firm selected to provide an Oral Presentation will be required to sign a Non-Disclosure Agreement. (Attachment "A"). Once executed, the Firms will be provided with details for the conflicts check.
- B. Timing.** As there are on-going needs relating to the scope of this RFP, the selected firm should be able to prepare quickly.

1.02 Procedures

Selected Special Legal Counsel will work closely with an assigned DAG. All legal services are to be provided only at the request of the DAG. From time to time, the DAG may refer the Special Legal Counsel to work directly with an agency's staff, as necessary to successfully represent that agency's interests. All advice is to be provided directly to the DAG or individuals identified and/or designated by the DAG.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The law firm must have been in business at least five (5) years.
- B. The law firm should have at least five (5) or more years prior experience in IT contracting and IT contract litigation; and
- C. The law firm must designate, as a member of the team proposed for this representation, a lead attorney licensed to practice law with seven (7) or more years experience in complex contract negotiation/litigation.
- D. The law firm should have experience representing government agencies.

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 \$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 DOJ, 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 DOJ, 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.

2.03 Firm's Capacity

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

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 DOJ and DSCYF, 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, IT contract law and other transactional and litigation practice areas. In addition, the Firm shall provide detailed information about any representation of any governmental agency, including the length of the engagement as well as details of the work performed as it is able to provide.

3. Special Experience:

Provide a brief description of the Firm's experience in the last five years representing or advising public sector clients in contract law issues

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 Attorney General 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. 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 Special Legal 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, 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 State agencies pursuant to this RFP;

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

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 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

The DOJ shall evaluate the proposals. During the evaluation process the 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 provide legal services will be based upon the following factors in descending order of importance:

- A. Experience of the firm and the individual attorneys representing clients in complex contract negotiations and litigation, including IT contracts;
- B. Experience of the firm and the individual attorneys representing governmental agencies generally;
- C. Knowledge of the firm and the individual attorneys representing clients in best practices for the procurement of IT.
- D. Administrative structure of representation (i.e. proposed staffing assignments), soundness of approach to representation and understanding of the needs of the DOJ and the State agencies;
- 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

DOJ intends on opening negotiations with the Firm that the DOJ determines has a reasonable likelihood of being awarded a contract based on the proposal, interview and, if any,

supplemental submissions. Negotiations will focus on any weaknesses or deficiencies in proposals as well as cost and pricing issues.

A written contract with the law firm(s) selected will be required, which must be approved by the Attorney General of the State of Delaware, Delaware Department of Justice (“DDOJ”) 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.

5.03 Contract Award

DOJ 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.

ATTACHMENT A
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidential and Non-Disclosure Agreement (“Agreement”) is entered into by and between the Delaware Department of Justice (“DOJ”) and _____ (“Recipient”). Whenever used in this Agreement, the term Recipient will mean a Firm, Contractor, Vendor, Agency, and/or Individual.

Recipient acknowledges that DOJ has certain confidential or sensitive information and/or material. Recipient requires access to this information and or material to assist in the Recipient’s participation in Proposal Number DOJ-08052015, Request for Proposals for Special Legal Counsel. DOJ agrees to release this information to Recipient for those purposes pursuant to the terms and conditions contained in this Agreement. Recipient agrees to the terms and conditions herein.

NOW THEREFORE, in consideration of the above premises and the promises contained herein, the parties agree as follows:

1. Whenever used in this Agreement, the term “Confidential Information” will mean (i) information exempt from disclosure to the public or other unauthorized persons; or (ii) information related to the DOJ’s network, its architecture and network security unless otherwise identified as non-confidential at the time of disclosure; or (iii) any other information which DOJ has identified to Recipient in writing as confidential at the time of disclosure or within thirty (30) days after disclosure; or (iv) information which would ordinarily be considered confidential or proprietary in the light of the circumstances surrounding disclosure. For the purposes of the Request for Proposals, Confidential Information may take the form of (but is not limited to) materials, instructions, explanations, any other material or information supplied by or on behalf of DOJ or that is disclosed to or becomes known by Recipient as a result of its dealings with DOJ. Confidential Information may be tangible or intangible, electronic, microfilm, tape, and or disk form. Confidential Information may also include information disclosed to a party by third parties at the direction of DOJ. DOJ’s failure to expressly identify Confidential Information as such shall not in any way lessen or negate Recipient’s obligation to keep such information confidential in accordance with this Agreement.
2. Notwithstanding the foregoing, the term “Confidential Information” shall not be construed to include information that is (i) is or becomes readily available in public records or documents, other than as a result of a disclosure by Recipient or other entity acting on behalf of Recipient, or (ii) which can be documented to have been known by Recipient prior to its disclosure by DOJ, or (iii) which is disclosed pursuant to applicable law, judicial action, or government regulations.
3. The Recipient acknowledges that the Confidential Information is confidential and proprietary information of DOJ and that its protection is essential to the security and mission of DOJ. The purpose of this agreement is to enable DOJ to make disclosure of the Confidential Information to the Recipient while still maintaining rights in and control over the Confidential Information. The purpose is also to preserve confidentiality of the Confidential Information and to prevent its unauthorized disclosure. It is understood that this agreement does not grant Recipient an express or implied license or an option on a license or any other right to or interests in the Confidential Information.
4. The Recipient shall, and require its employees, officers, independent contractors, and subcontractors and any other entities acting on its behalf (collectively “Affiliates”) to:
 - a. Copy, reproduce, or use Confidential Information only for the purpose described herein and not for any other purpose unless specifically authorized to do so in writing by DOJ; and

- b. Not permit any other person to use or disclose the Confidential Information for any purpose other than those expressly authorized by this Agreement; and
 - c. Disclose such Confidential Information only to those of its Affiliates who require knowledge of the same for the purpose described in herein; provided such Affiliates are obligated to maintain the confidentiality of the Confidential Information and otherwise comply with the terms of this Agreement; and
 - d. Implement physical, electronic, and managerial safeguards to prevent unauthorized access to or use of Confidential Information, including without limitation, providing Affiliates a copy of the terms of this Agreement. Such restrictions will be at least as stringent as those applied by the Recipient to its own most valuable confidential and proprietary information.
5. The acts or omissions of Recipient's Affiliates with respect to the Confidential Information shall be deemed to be acts or omissions of Recipient.
6. Recipient will not remove, obscure, and or alter any confidentiality and or trade secret notation from the Confidential Information without DOJ's prior written authorization.
7. Confidential Information will remain the exclusive property of DOJ; upon completion of the project described in Section 1, or whenever requested by DOJ, Confidential Information and all copies thereof, including summaries, reports or notes based thereon, unless otherwise expressly authorized by DOJ in writing will be returned to DOJ.
8. Recipient agrees that the breach of the terms of this Agreement would cause irreparable damage to DOJ. Therefore, Recipient agrees that if it should breach its obligations hereunder, Recipient will defend, indemnify, and hold DOJ harmless from actual damages from losses that result from its breach, including attorneys' fees and costs. Also, the DOJ has the right to seek an order to restrain Recipient from breaching this agreement. If DOJ does seek such an order, Recipient agrees at this time to waive any claim or defense that DOJ has an adequate remedy at law or in damages.
9. This Agreement sets forth the entire agreement of the parties with respect to the use and disclosure of the Confidential Information and may be modified only by a writing signed by both parties. This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Delaware, without regards to its conflicts of laws principles. Each Party irrevocably consents to the jurisdiction of the courts of the State of Delaware, in connection with any action to enforce the provisions of this Agreement or arising under or by reason of this Agreement.
10. Term. The Term of this Agreement shall be three years from the date of the last signature, provided however, the obligations of confidentiality shall continue and survive this Agreement.

SIGNATURE PAGE TO FOLLOW

Signed on behalf of the **Delaware Department of Justice**

BY

DATE

TITLE

RECIPIENT'S NAME

BY

DATE

TITLE

EXHIBIT B

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

More than 12 hours per day by one member of outside counsel staff will be closely reviewed.

- x. 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.
 - xi. Excessive number of attorneys performing services in a matter will be closely reviewed, unless prior approval is received from the Coordinating Attorney in writing.
 - xii. Billing for research on general legal issues which should be within the knowledge of the firm and/or associate will be closely reviewed.
 - xiii. Billing of hours for work done by multiple attorneys in the firm for similar work on the same issue will be closely reviewed.
 - xiv. Billing attorney and/or paralegal time for invoice preparation, review, or for corrections to the invoice is not acceptable.
 - xv. Excessive time spent in “file review” will be closely reviewed.
 - xvi. Excessive time spent in “review and revision” of documents that you prepare will be closely reviewed.
 - xvii. 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.
 - xviii. Hours charged at a more senior attorney rate when a matter should be handled by a less senior attorney will be closely reviewed.
 - xix. 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.