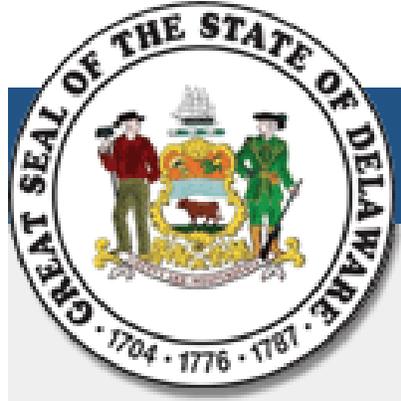


# State of Delaware



## **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: LGL – 15001SPECCNSL**

**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”) is issuing this Request for Proposals (“RFP”). The DOJ seeks to engage a law firm to act as Special Legal Counsel (“Special Legal Counsel”) to represent the State of Delaware in connection with the Petition for Expedited Declaratory Relief (the “Petition”) filed by Norfolk Southern Railway Company and currently pending before the Surface Transportation Board (“STB”). The Petition challenges SB 135, codified at 21 *Del. C.* ch. 85 (the “Anti-Idling Act”) and alleges that the Anti-Idling Act is preempted by the Interstate Commerce Commission Termination Act (“ICCTA”), a federal statute. CSX has also submitted a Notice of Intent to participate in the STB action.

DOJ anticipates that, after conducting interviews, it will select one firm to act as Special Legal Counsel, consistent with the scope of this RFP, to represent the State in responding to the Petition. 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 in its response, 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**

<b>ID</b>	<b>Date/Time</b>	<b>Activity</b>
<b>1</b>	September 4, 2015	RFP issued, posted on the State’s website at <a href="http://bids.delaware.gov">http://bids.delaware.gov</a> and the Attorney General’s website at <a href="http://attorneygeneral.delaware.gov">http://attorneygeneral.delaware.gov</a>
<b>2</b>	<b>September 11, 2015; 3:00 pm EST</b>	<b>RFP Response due date</b>
<b>3</b>	September 16, 2015	Selected Firms’ oral presentations and interviews (subject to change)
<b>4</b>	September 18, 2015	Contract awarded (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: LGL15001-SPECCNSL  
Attention: Jennifer R. Noel  
Carvel State Office Building  
820 North French Street, 6<sup>th</sup> 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 Firm 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 RFP.

RFP Designated Contact:

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

Jennifer R. Noel  
Delaware Department of Justice  
Carvel State Office Building  
820 North French Street, 6<sup>th</sup> Floor  
Wilmington, DE 19801

Direct Dial: (302) 577-8842  
Fax: (302) 577-6630  
Email: jennifer.noel@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 Special Legal Counsel to provide legal services to the State in responding to the Petition. As noted, in the Petition, Norfolk Southern seeks a determination that SB 135, as codified, is preempted by ICCTA. The State has not yet filed a Response to the Petition, having obtained an extension of time to October 23, 2015 to file a responsive pleading in order to engage Special Legal Counsel.

The Firm should be prepared to offer the following services:

- A. General. The Firm will be expected to represent the State in responding to the Petition and defending the State's duly-enacted statutes.
- B. Timing. As there are rapidly-approaching deadlines within 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 the Deputy Attorney General ("DAG") assigned to this project and General Counsel to the Governor ("GC"). 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 the State, defend SB 135, and oppose the Petition. All advice is to be provided directly to the DAG, to the GC, or individuals identified and/or designated by the DAG or the GC.

## **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) years prior experience in transportation law and practice before the STB; 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 five (5) or more years experience in transportation law.
- 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 \$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 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, 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, without limitation, transportation law and practice before the STB. In addition, the Firm shall provide information about any representation of any governmental agency, including the length of the engagement as well as such details of the work performed as the Firm 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 with transportation law issues or before the STB.

**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 pending STB matter 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. 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.

The State recognizes that the Firm may have conflicts due to previous representations. The State 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**

**Each Firm that submits a Proposal shall provide the following information:**

- 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 DOJ 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 the Firm’s Proposal. Not all Firms may be asked to make such oral presentations.

#### **5.01 Selection Criteria**

The selection of a 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 connection with transportation related issues and actions before the STB;
- B. Experience of the Firm and the individual attorneys representing clients in statutory challenges based on preemption, and in particular matters relating to ICCTA or the permissibility of locomotive idling rules or regulations;
- C. Experience of the Firm and the individual attorneys representing governmental agencies generally;
- 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 to open 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 the Proposal 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 and the Governor of the State of Delaware pursuant to 29 *Del. C.* § 2507.

### **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.