

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
RESPONSES TO QUESTIONS REGARDING RFQ # 050517DOJ

Q1. Section #: 3.02(A)(d)

It is my assumption that this refers to an attorney who is a party in a proceeding relating to provision of legal services, and not to an attorney who represents other attorneys in professional liability litigation and other proceedings. Is that correct?

Answer (A)1.

You are correct that this question refers to instances where an attorney in your firm has been involved in legal proceedings relating to the provision of legal services by that attorney.

Q2. *I assume that an attorney's prior work in the Attorney General Office of a state is something that could form part of the basis for a proposal, but is not a fact that independently requires disclosure. Is that correct?*

Answer (A)2.

You are correct that this question does not independently require disclosure of an attorney's prior work in a State Attorney General's Office. However, such work experience may be viewed as helpful and relevant in assessing credentials.

Q3. Section #: 3.02(C) (Conflicts of Interest)

Conflicts. Will the representation of the State of Delaware and/or the DOJ be limited to defending claims or providing defensive advice, or is it conceivable that a firm could be asked to represent the State of Delaware in an offensive capacity?

My firm represents a client that currently is involved in an investigative proceeding, in which adverse parties include the Delaware Department of Justice and other states. Obviously, (i) we could not represent Delaware in that matter and (ii) we would need the client's consent prior to submitting our proposal to represent Delaware in other unrelated matters. Are matters of this nature the sorts of things that Delaware might refer to one of the firms on its list of conflicts counsel?

Answer (A)3.

As stated in the RFQ, the representation by Special Civil Litigation Conflict Counsel for each of (1) Employment Litigation, and (2) Expedited Court of Chancery Litigation is anticipated to be limited to defense counsel. However, it is conceivable that Special Civil Litigation Conflict Counsel will be asked to represent the State of Delaware in either an offensive or defensive capacity with regard to General Litigation.

Q4. Section #: 1.01 (Project Scope and Objectives)

My firm represents a client that currently is involved in an investigative proceeding, in which adverse parties include the Delaware Department of Justice and other states. Obviously, (i) we could not represent Delaware in that matter and (ii) we would need the client's consent prior to submitting our proposal to represent Delaware in other unrelated matters. Are matters of this nature the sorts of things that Delaware might refer to one of the firms on its list of conflicts counsel?

Answer (A)4.

While it is possible – depending on the specific nature of the matter – that the State of Delaware would seek involvement of Special Civil Litigation Conflict Counsel in certain “investigative proceedings,” it is not anticipated that such matters will routinely require the services of Special Civil Litigation Conflict Counsel.

Q5. Section #: 3.02(C)(1) (Conflicts of Interest)

Prospective conflict avoidance: My firm's clients are not likely to file a proceeding against the State of Delaware. When entering into an engagement going forward, what is the scope of the prospective “anti-waiver” that the DOJ contemplates? Is it enough to advise clients that they will need different counsel if they want to bring a proceeding offensively against the State of Delaware, or is the law firm also expected to advise clients that they may need different counsel if the law firm client is sued by Delaware?

Answer (A)5.

Conflicts are determined on a case-by-case basis. Where appropriate, the Attorney General's Office, after consultation with the affected state agency and the Governor's Office, will issue a waiver of the conflict of interest for a particular matter after receiving assurances that 1) the existing representation of the State

will be partitioned and entirely screened off from the other attorney's representation; 2) the two representations are not substantially related; and 3) the firm will advise us in writing should they become aware that any aspect of the conflict waiver's factual underpinning has changed.

Q6. *The RFQ lists three practice area designations: (1) General litigation; (2) Employment and related litigation; and (3) Chancery litigation. The question is whether we would be able to submit the RFQ on just the two areas noted (general and Chancery).*

Answer (A)6.

You can list in your proposal only the areas your firm is interested in. The RFQ was not meant to require a firm to be willing to make a proposal for all 3 areas.

Q7. Section # 3.02(A)(1)(f) (Law Firm Experience)

Clarification for Question 3.02(A)(1)(f). Could you confirm if you are only looking for a list of state government entities or would you also want for us to include a listing of federal and local entities that the firm has represented?

Answer (A)7.

This Section calls for a list of all federal, state and local governmental agencies your firm represents. See also answer to Q9, below.

Q8. *Is there a range or specific proposed rate that the DOJ is looking for to fill this role?*

Answer (A)8.

There is no range or specific proposed rate sought. However the DOJ seeks to achieve the best value possible in selecting among qualified Applicants.

Q9. *Per question [3.02(A)](f), how does the DOJ define "governmental entities"? (i.e., does that include state controlled universities?)*

Answer (A)9.

“[G]overnmental entities” means any federal, state or local governmental entity. Insofar as a state controlled university may be considered a governmental entity, Applicants are encouraged to disclose such representation to the extent that they believe it helps to illustrate their qualifications.

Q10. *Is the lead attorney per Section 2.01 B. required to be a partner in the law firm?*

Answer (A)10.

It is not required that the identified lead attorney be a “partner” or have any specified status within his or her organization.

Q11. *Is there a specific external legal budget? (for example, what are the number of matters and amount of fees incurred for the matters that DOJ has referred in prior years to its Special Civil Litigation Conflict Counsel?)*

Answer (A)11.

There is no specific external legal budget governing the selection or retention of Special Civil Litigation Conflict Counsel, and thus no discrete, predetermined minimum or maximum expenditure for such services. The amount of fees incurred for outside counsel, as well as the source(s) of funding for payment of such fees, can vary considerably from year to year based on the specific nature of matters being handled by outside counsel.

Q12. *Can the fee arrangement be reviewed and revised on an annual basis?*

(A)12.

The DOJ will consider an Applicant’s request to review or revise fee arrangements on a case by case basis in the context of the final negotiation of such Applicant’s contract for legal services.

Q13. *The RFQ mentions advancing costs for an expert witness. That might be something I could do on a 30-60 day repayment turnaround, but I couldn’t advance, say \$5000 for a report and wait until the end of litigation to recoup. I’m assuming the intent of the provision was the former and not the latter.*

(A)13.

The Delaware Department of Justice (DOJ) Billing Policy (Attachment A to the RFQ) allows for the use of outside experts and provides that the fees be reasonable, necessary and subject to approval by the DOJ. The Billing policy also provides for monthly billing, with details to be given for expenses and disbursements.

Q14. *I have a law clerk who does paralegal work also. Can I bill her for paralegal work (only) even though she is in law school? I understand law clerk work per se is not billable.*

(A)14

The billing rates for paralegals is a matter that can be negotiated prior to engagement, at which time you may present their paralegal credentials.