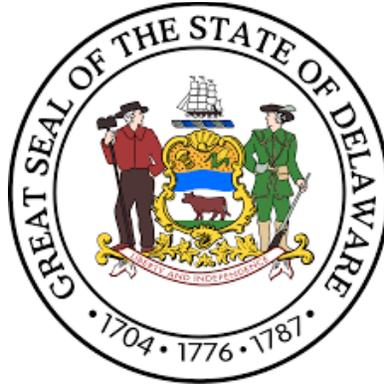


State of Delaware



Department of Justice

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Delaware Department of Justice

Request for Qualifications for

Special Environmental Legal Counsel

RFQ Number: LGL191122-SpEnvCnsl

RFQ Closing: December 31, 2019; 5:00 PM EST

**REQUEST FOR QUALIFICATIONS (“RFQ”) TO PROVIDE
SPECIAL ENVIRONMENTAL LEGAL COUNSEL
ISSUED BY THE DEPARTMENT OF JUSTICE
FOR THE STATE OF DELAWARE**

Executive Summary

The Department of Justice for the State of Delaware (“**DOJ**”) seeks to develop a panel of law firms available to be engaged to act as Special Legal Counsel (“**Special Legal Counsel**”) representing the State of Delaware (“**State**”) and the Attorney General of the State of Delaware (“**Attorney General**”) in connection with investigations and possible court proceedings involving environmental matters, including but not limited to those concerning emissions, discharges, releases of contaminants into the air, ground, and/or water of the State, as well as the marketing and sale of products harmful to the environment of the State.

The DOJ intends to create a list of outside counsel interested in serving as Special Legal Counsel to handle matters covering one or more of the foregoing areas. DOJ anticipates that, after reviewing the proposals submitted and without interviews or presentations, it will designate multiple firms who will be available to engage on a contingency fee basis to act as Special Legal Counsel consistent with the terms of this RFQ.

The DOJ is authorized by the Constitution of the State of Delaware and 29 Del. C. § 2505 to independently retain outside counsel to serve in the role of Special Assistant Attorney General. A Special Assistant Attorney General retained and engaged through this selection process shall be designated to have only such powers, duties, and responsibilities as designated by the Attorney General or her designee. This selection process is for professional legal services and as such is outside the scope of 29 Del. C. § 6901, *et seq.*

This RFQ will define the scope of the work to be performed, requirements an applicant law firm(s) (“**Applicant**”) must address, the method for response and the administrative requirements that must be followed. The DOJ will advise potential Applicants of changes to any dates as may be necessary. The DOJ also reserves the right to modify and/or cancel this solicitation at any time during the RFQ process. The DOJ also reserves the right to re-open this RFQ at a later date or to consider late applicants on a rolling basis.

The term of the Special Legal Counsel designations made pursuant to this RFQ will be two years.

RFQ Schedule

ID	Date/Time	Activity
1	November 22, 2019	Request for Qualifications issued and Posted on DOJ Web Site, http://attorneygeneral.delaware.gov/ , the State Bid Window, http://bids.delaware.gov , and supplied to the Delaware Courts website
2	December 2, 2019	All Applicant questions regarding RFQ are due
3	December 13, 2019	DOJ issues answers to RFQ via http://attorneygeneral.delaware.gov/ and http://bids.delaware.gov
4	December 31, 2019 5:00 pm EST	RFQ Response due date
5	January 2020	Placement on List

The DOJ will advise potential Applicants of changes to any dates as may be necessary. In the event that it becomes necessary to clarify or revise this RFQ, such clarification or revision will be by addendum. Any addendum to this RFQ will become part of this RFQ and part of any designation of a firm as Special Legal Counsel as a result of this RFQ. The DOJ reserves the right to modify and/or cancel this solicitation at any time during the RFQ process.

All interested firms should submit electronic copies of their proposals (“**Proposals**”) to the DOJ email at RFP.Legal@delaware.gov no later than 5:00 p.m. EST on December 31, 2019 (“**Closing Date**”). Applicants should also submit three (3) hard copies of their proposals to the RFQ Designated Contact below. All timely proposals become the property of the DOJ. Requests for extensions of the Closing Date will not be granted. Any Proposal or request for modification received after 5:00 p.m. on the Closing Date is late and may not be considered.

Each Proposal must be accompanied by a transmittal letter, which briefly summarizes the Applicant’s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFQ, which the applicant may have taken in presenting the Proposal. The DOJ reserves the right to deny any and all exceptions taken to the RFQ requirements. The cost of preparing Proposals will be borne solely by the Applicants. Proposals shall address all the questions posed by the DOJ in the order in which they appear in this request.

RFQ Designated Contact:

Please submit all questions and requests for information to:

Christian Douglas Wright
Director of Impact Litigation
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 5th Floor
Wilmington, Delaware 19801
Direct Dial: (302) 577-8944
Email: christian.wright@delaware.gov

Questions should be addressed to the contact person. 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 DOJ website at <http://attorneygeneral.delaware.gov/>

1.0 GENERAL INFORMATION

1.01 Project Scope and Objectives

The DOJ contemplates needing to retain the services of one or more law firms to act as Special Legal Counsel to provide advices and legal representation to the State in connection with investigations and possible court proceedings involving violations of laws pertaining to environmental matters, including but not limited to those concerning emissions, discharges, releases of contaminants into the air, ground, and/or water of the State, as well as the marketing and sale of products harmful to the environment of the State (collectively, the “**Subject Matter Areas**”). Each Applicant is encouraged to indicate which area(s) of specialized legal expertise (*i.e.*, type of environmental matter) it wishes to be considered for and to demonstrate its competency in each indicated area.

In furtherance of this anticipated need, the DOJ wishes to have access to counsel with substantial investigation and litigation experience in the Subject Matter Areas. Retention for a particular matter may include significant evaluative and investigative preparatory work and may require the retention of scientific experts. Work may include drafting pleadings, motions, briefs, and all other papers to be filed in court; conducting and responding to discovery; attending all pre-trial, trial and post-trial court appearances; and handling appeals. Special Legal Counsel must also have resources sufficient to advance all costs, including the costs of any experts needed to assess damage and the costs of the preparatory work described below. Special Legal Counsel must also be free of any conflict of interest, and must comply with the conflicts policy referred to in section 3.02, below

1.02 Procedures

An Applicant may be one or more law firms. An Applicant without attorneys admitted in Delaware may apply without associating itself with a Delaware law firm for purposes of this RFQ, but the DOJ reserves the right to require such an association in the event of an engagement or at any subsequent time.

Successful Applicants will be placed upon a list of environmental Special Legal Counsel (the “**Environmental Counsel Panel**” and each successful Applicant, a “**Panel Member**”), from which the DOJ may preliminarily select counsel to provide advice and legal representation in a given matter relating to one or more of the Subject Matter Areas. If a Panel Member is selected, the DOJ will engage in negotiations directly with the Panel Member pursuant to Section 5.03, below. If such negotiations are successful, the DOJ will engage the Panel Member to act as Special Legal Counsel via a legal services contract (“**Contract**”). If they are unsuccessful, the DOJ may choose another Panel Member with whom to negotiate.

If engaged on a given matter, selected Special Legal Counsel will work closely with the Deputy Attorney General (“**DAG**”) assigned to act as the Coordinating Attorney. All legal services are to be provided only at the request of the Coordinating Attorney and shall be subject to the Coordinating Attorney’s active oversight and supervision. All advice is to be provided directly to the Coordinating Attorney or to individuals identified and/or designated by the Coordinating Attorney. The Coordinating Attorney shall retain veto power over any decisions

made by the selected Special Legal Counsel, subject to Special Legal Counsel's right to seek court protection for any alleged conflict with the Special Legal Counsel's ethical duties.

The decision to settle any matter shall be reserved exclusively to the Attorney General, subject to Special Legal Counsel's right to seek court protection for any alleged conflict with the Special Legal Counsel's ethical duties.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The Applicant must have been in business at least five years or otherwise demonstrate consistency and stability of practice of its lead attorneys.
- B. The Applicant should present a team of attorneys with significant experience in the area of environmental litigation, preferably dealing with the Subject Matter Areas.
- C. The Applicant must designate, as a member of the team proposed for the representation, a lead attorney licensed to practice law with seven (7) or more years' experience in the one or more of the Subject Matter Areas.
- D. The Applicant should have experience representing a state attorney general or other governmental agencies.

2.02 Professional Liability Insurance

The Applicant 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 Applicant 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 the DOJ, that the Applicant will have such coverage as of the date the Contract commences.

2.03 Applicant's Capacity

Each Applicant must demonstrate the capacity to perform the type of services needed by the DOJ described in Section 1.01 and 2.01 above. The Applicant must be available at all times to render services required under the Contract with minimum notice.

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

3.01 General

All technical proposals shall be prepared with a concise description of the Applicant's capabilities to satisfy the minimum qualifications of Section 2.01 and 2.02 above and the information requested under Section 3.02 below. Applicants should organize their proposals so that their responses correspond to the specific subsections to the extent possible without unnecessary repetition. Proposals are generally within the definition of "public records" as set forth in the Delaware Freedom of Information Act ("FOIA"), *see 29 Del. C. § 10001, et seq.*, upon the conclusion of the selection process. In the event that a proposal contains content that meets the definition of any exception to the definition of "public records" as set forth in FOIA, Applicants should separate such materials, place them in an envelope marked "confidential", and submit them with the remaining portion of the proposal. Any such envelope shall include a written statement explaining the basis for designating such content is not subject to disclosure pursuant to FOIA.

3.02 Required Information

The proposal shall contain the information described below.

- A. Applicant's Experience.
 1. General Experience and Information:
 - (a) 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 next two years? Please describe.
 - (b) Describe the on-line services, publications and other resources maintained by your firm dealing with the Subject Matter Areas, including subscription services and periodicals.
 - (c) Has your firm or an attorney in your firm's employ who will have any involvement with the provision of legal assistance,

advice, or representation pursuant to this RFQ ever been disciplined or censured by any regulatory body? If so, describe the principal facts.

- (d) 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.
- (e) Does your firm represent the Attorney General of another state? If so, list the full name, address and telephone number of each Attorney General and provide a contact and telephone number.
- (f) Does your firm represent any other states, counties, cities, political subdivisions, or other governmental entities? If so, list the entity, and provide a contact and telephone number.
- (g) Please describe your firm's backup procedures in the event one or more attorneys assigned to a matter contemplated by this RFQ leave the firm.
- (h) Describe your disaster recovery plan and facilities.

Each Applicant is encouraged to indicate While the Applicant may select one or more of these areas, the Applicant must indicate which area(s) of specialized legal expertise (i.e., type of environmental matter) it wishes to be considered for and be prepared to demonstrate its competency in each indicated area.

2. Specialized Litigation Counsel.

- (a) For each area of specialized legal expertise (*i.e.*, type of environmental matter) for which the Applicant would like to be considered, provide a detailed description of the Applicant's experience in that area, including identification of the approximate number of engagements during the last five (5) years. Of those engagements, the Applicant should select no more than three (3) illustrative matters and provide the following information:
 - (1) Nature of the matter and the Applicant's role;
 - (2) The year and the approximate dollar amount of the claim;

- (3) Status of case and range of responsibilities; and
 - (4) Disposition of case, and if relevant, a description of damages negotiated/awarded or other relief obtained.
- (b) Representation of Attorney General Offices (“AGO”) as listed in Section 3.02.A.1.(e) above. List the approximate number of engagements for AGOs during the last five (5) years. Of those transactions, the Applicant should select no more than five (5) illustrative matters and provide the following information:
- (1) Nature of the litigation and the Applicant’s role;
 - (2) The year and the dollar amount (stated within a range of \$5 million increments) of the claim;
 - (3) Status of case and range of responsibilities; and
 - (4) Disposition of case, and if relevant, a description of damages negotiated/awarded, governance and/or process changes achieved.

3. Related Legal Experience.

Provide a brief description of areas of the law related to the purpose of this RFQ in which the Applicant has an expertise.

B. Applicant’s Team (Specific Individuals Responsible for Performance of Services).

Provide a detailed description of the team that would provide services identified in this RFQ and include the following information:

1. The identity of the individuals, the areas of law in which each specializes, and the type of related litigation which the attorney has handled, the number of years of experience in such areas, and the extent to which each has analyzed laws and provided advice on issues relevant to the purpose of this RFQ.
2. Résumés of each member of the team, attached to the Proposal as Appendix A.
3. The courts in which each is admitted to practice, the year of admission, and the location of the principal place or places of business, if not included on resume.

4. The identity of the attorneys who would serve as (i) lead attorney for purposes of interacting with DOJ; (ii) lead discovery attorney for purposes of collecting defensive discovery materials on behalf of the State; (iii) lead trial attorney who would serve in the “first chair” role in a litigation. With respect to the lead trial attorney, include the number of bench trials and jury trials completed over the course of his or her career.

C. Conflicts of Interest.

1. In general, if a conflict of interest arises, the Applicant should be willing to continue to represent the State and the Attorney General, 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 an Applicant’s representation of a transactional nature, or if the matter relates to litigation involving a unit of State government other than the DOJ, and may waive any other conflicts when such waiver does not have the possibility of damaging the State’s position in the litigation or other matters. The 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 Applicant shall identify any conflicts of interest that may arise if the Applicant 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 involving the State of Delaware 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. Applicant shall describe in detail its existing system for identifying conflicts of interest in undertaking new representations. Applicant must include information about who maintains the records, how often the information is updated and at what stage of representation the check is made. Applicant 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 Applicant shall provide assurances that potential conflicts have been discussed with other existing clients of the Applicant 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 Contingent Fee Arrangement

All engagements of Special Legal Counsel resulting from this RFQ will be on a contingent fee basis. An Applicant must identify in the Proposal:

- A. The contingent fee rate sought for the services contemplated by this RFQ. Such fee may be presented separately for each area of specialized legal expertise (*i.e.*, type of environmental matter) for which the Applicant proposes to be engaged.
- B. The Applicant’s willingness to accept a fee matrix that provides differential recoveries based on the stage of litigation, the size of recovery, or both. Where appropriate, Applicants are encouraged to present their proposed contingent fee in the following format:

Amount of Recovery	Stage of Litigation at which Recovery is Obtained				
	Before filing of complaint	Before ruling on motion to dismiss	Before close of discovery	Before Trial	During or After Trial
\$0 to \$[AAAA]; plus	___%	___%	___%	___%	___%
\$[AAAA] to \$[BBBB]; plus	___%	___%	___%	___%	___%
\$[BBBB] to \$[CCCC]; plus	___%	___%	___%	___%	___%
Any Portion of Recoveries Exceeding \$[CCCC]	___%	___%	___%	___%	___%

- C. Whether the contingent fee rate will be an “all in” rate, inclusive of all fees, expenses, and costs, including but not limited to expert witness fees and court costs.
- D. Whether the Applicant is willing to cap its fees at a specified dollar amount and, if so, the level of such fee cap.
- E. Whether the Applicant is willing to cap its fees at a multiple of its hourly rate times the number of hours worked (*i.e.*, a “lodestar cap”) and, if so, the proposed lodestar multiple and the published billing rates on which such multiple would be based.
- F. If the Applicant has been engaged by another State (whether through its Attorney General, environmental protection agency, or otherwise) with respect to a substantially similar subject matter area, the contingent fee arrangement agreed to with respect to each such matter.

5.0 EVALUATION OF PROPOSALS

5.01 Selection Process

The selection committee shall evaluate the proposals. During the evaluation process the selection committee may, at its discretion, request any or all Applicants to make oral presentations. Such presentations will provide an Applicant with an opportunity to answer questions about its Proposal. Not all Applicants may be asked to make such oral presentations. The selection committee will make a recommendation to the Chief Deputy Attorney General regarding the selection of the firm or firms for the Environmental Counsel Panel, as described below

5.02 Selection Criteria

Selection of a firm or firms for designation as Special Legal Counsel will be based on an evaluation of the Proposals to determine which Proposals reflect the best value to the DOJ in which technical factors will be considered significantly more important than cost of services.

The selection of the firm to be a Panel Member will be based upon the following technical factors:

- A. Experience of the firm and the individual attorneys in connection with investigations and litigation in the Subject Matter Areas and, if appropriate, within the indicated area of specialized legal expertise (*i.e.*, type of environmental matter);
- B. Experience of the firm and the individual attorneys in the representation of a State, state agency, or an attorney general in litigation in the Subject Matter Areas;
- C. Administrative structure of the representation (*i.e.*, proposed staffing assignments), proposed work plan, soundness of approach and understanding of the needs of the DOJ;
- D. Demonstrated ability to perform the services referred to in Section 1.01;
- E. Contingent fee arrangements; and
- F. References and recommendations of other clients.

Depending on the number of Applicants and the relative experience of different Applicants in different Subject Matter Areas, the selection committee may select Applicants based on the foregoing criteria as they apply to a given area of specialized legal expertise (*i.e.*, type of environmental matter), or as they apply to the Applicants' Proposal as a whole

5.03 Environmental Counsel Panel Designations

An Applicant selected pursuant to this RFQ for designation as Special Legal Counsel will become a Panel Member on the Environmental Counsel Panel, which shall be a list of law firms

eligible to be engaged as Special Legal Counsel to provide advice and legal representation to the State in a given matter relating to the Subject Matter Areas.

If a particular matter requires expertise in practice areas outside those encompassed by the Environmental Counsel Panel, a separate RFP will be advertised for that retention, if time permits. If the matter requires confidentiality or if time does not permit the issuance of an RFP, the DOJ may select a firm from among those that have submitted proposals in response to this RFQ or may choose another method of retention.

5.04 Contract Negotiation

In selecting a Panel Member to be retained for a particular matter, the DOJ will choose from the list based on the following factors, combined or separate, and not necessarily listed in order of significance:

- A. Magnitude or complexity of the matter;
- B. The firm and/or attorney's past success in handling similar matters;
- C. Whether the experience and knowledge of the firm and attorney coincide with the type of legal work to be performed;
- D. The firm's capacity to staff and perform the required work;
- E. For Panel Members without a Delaware-based practice, the ability to associate with Delaware counsel acceptable to the DOJ;
- F. Any current adversarial position or conflict of interest between the firm/attorney and the State; and
- G. The Selection Criteria listed in Section 5.02, above.

Upon selection of a Panel Member to be retained for a particular matter, DOJ will open negotiations with the Panel Member. Negotiations will focus on any weaknesses or deficiencies in the Proposal as well as cost and pricing issues.

DOJ will require a written contract with the selected Panel Member, which will include the terms set forth in Section 1.02 above, will incorporate the DOJ Outside Counsel Billing Policy in relevant part, and will be approved by the Chief Deputy Attorney General, pursuant to 29 *Del. C.* § 2505(a).

6.0 ADDITIONAL TERMS

- A. No endorsement: Designation as special counsel does not constitute an endorsement by the State of Delaware or the Attorney General.
- B. Effect of RFQ response: A response to this RFQ will not bind or otherwise obligate the State of Delaware to include the responding Applicant on the list of Special Legal Counsel or to retain the Applicant in any matter.
- C. Nothing herein shall operate to modify, alter, or amend any currently existing legal services agreement between the State and any firm. Firms with active engagements with the State of Delaware need not apply for consideration through this RFQ in order to maintain such engagements.
- D. Effect of Inclusion on Panel: Inclusion of a firm on the Environmental Counsel Panel will not bind or otherwise obligate the State of Delaware to retain the listed firm for legal services. Inclusion will not guarantee any other form of employment or engagement.
- E. Attorney General authority not constrained: Nothing in this RFQ is intended to limit or constrain the discretion of the Attorney General in exercising any authority, duty, prerogative or power established or recognized by the Constitution, statutes, Executive Orders, regulations, or case law.