

Fort DuPont Redevelopment and Preservation Corporation

89 Kings Highway
Dover, DE 19901

Request for Proposals for Outside Counsel

Bid Closing: May 14, 2015, 12:00 PM

**REQUEST FOR PROPOSALS
FOR
OUTSIDE COUNSEL**

Executive Summary

Designated as a National Historic District, the 325-acre Fort DuPont Complex is located along the Delaware River and is bounded by the Chesapeake and Delaware Canal on the south and the Branch Canal, currently separating it from Delaware City, on the north. It includes Fort DuPont State Park, Governor Bacon Health Center, and a complex of state-owned buildings and residences.

In 2013, the State of Delaware Department of Natural Resources and Environmental Control (“DNREC”), in collaboration with the City of Delaware City, led a master planning process to revitalize the historic Fort DuPont Complex. The result of that process was the creation of a master plan (the “Master Plan”) to serve as a blueprint to transform the Fort DuPont Complex into a vibrant mixed-use community, fully integrated with the adjacent Delaware City.

The Master Plan establishes a shared community vision and implementation strategy to evolve Fort DuPont into a model “live-work-learn-play and visit” community. This long-term vision for the reuse of Fort DuPont builds upon the site’s National Historic District status, the existing assets of the State Park, and the area’s extraordinary cultural, natural, and recreational amenities.

In 2014, the Delaware General Assembly passed and the Governor signed the Fort DuPont Redevelopment and Preservation Act, 7 *Del.C.* §§ 4730 *et seq.* (the “Act”), which authorized the creation of the Corporation to manage, oversee, and implement the redevelopment and preservation of the Fort DuPont Complex. Under the Act, the Corporation—which is a public instrumentality of the State, created for the purpose of exercising essential governmental functions—is governed by an 11-member board of directors, with 7 representatives of state government and 4 Delaware City representatives (the “Board”). The Act further authorizes the creation of a 13-member Advisory Council to provide specific subject-matter expertise to the board of the Corporation.

The Corporation intends to select Outside Counsel to provide legal advice and representation to the board in connection with its duties and responsibilities under Title 7, Chapter 47 of the Delaware Code. As described more fully below, such duties and responsibilities may include, but shall not be limited to, legal advice in connection with (i) the acquisition, redevelopment, and disposition of real property at the Ft. DuPont Complex; (ii) the financing of such activities described in (i) above; (iii) the future annexation by the City of Delaware City of lands to be owned by the Corporation, including evaluation of local and county ordinances in connection therewith; (iv) the day-to-day operations and activities of the Corporation, including advice relating to hiring and employee benefits; and (v) the Board’s responsibilities under Delaware’s Freedom of Information Act, 29 *Del.C.* §§ 10001 *et seq.* (“FOIA”).

This RFP will define the scope of the work to be performed, the requirements the vendor (“Vendor”) must address in its response, the method for response, and the administrative requirements that must be followed. The Corporation will advise potential Vendors of changes to any dates as may be necessary. The Corporation also reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

ID	Date/Time	Activity
1	Friday, April 10	Request for Proposal issued, posted on DNREC website at http://www.dnrec.delaware.gov and Attorney General’s website at http://attorneygeneral.delaware.gov
2	Monday, April 20, 4:30p.m.	All Vendor questions regarding RFP due
2	Friday, May 1, 4:30p.m.	Corporation issues answers to questions regarding RFP via DNREC website and Attorney General’s website
5	Thursday, May 14 12:00 p.m.	RFP Response due date
4	Monday, May 25	Begin vendor interviews (subject to change)
5	Monday, June 1	Begin negotiations (subject to change)
6	Friday, June 12	Contract awarded (subject to change)

All interested Vendors should submit an original and five bound copies of their proposals (“Proposal”) to the contact person. Proposals may be mailed or hand-delivered for receipt no later than 12:00 p.m. on Thursday, May 14, 2015 (“Closing Date”). Upon delivery, all Proposals submitted hereunder shall become the property of the State. Requests for extensions of the Closing Date will not be granted. Any Proposal, request for modification, or request for withdrawal received after 12:00 p.m. on the Closing Date is late and shall not be considered. Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), U.S. Mail, or by hand. Proposals shall be submitted to:

Matthew Chesser, Esq.
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901
Phone: (302) 739-9235
Email: matthew.chesser@state.de.us

Each Proposal must be accompanied by a transmittal letter, which briefly summarizes the proposing Vendor’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. The Corporation reserves the right to deny any and all exceptions taken to the RFP requirements.

The cost of preparing Proposals shall be borne solely by the offerors. Proposals shall address all the questions posed by the Corporation hereunder in the order in which they appear in this request.

Please submit all questions and requests for information to:

Matthew Chesser, Esq.
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901
Phone: (302) 739-9235
Email: matthew.chesser@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 DNREC's website at www.dnrec.delaware.gov and the Attorney General's website at <http://attorneygeneral.delaware.gov>.

1.0 PROJECT SCOPE AND OBJECTIVES

This RFP seeks to retain the services of Outside Counsel to provide legal services to the Corporation in connection with its duties and responsibilities under Title 7, Chapter 47 of the Delaware Code. Such duties and responsibilities may include, but shall not be limited to, providing advice and representation in connection with:

1.01 the **acquisition, redevelopment, and disposition of real property** at the Ft. DuPont Complex, including property currently owned by the State of Delaware. Such representation may include transactions having environmental remediation and/or flood mitigation components;

1.02 the **financing** of such activities described in (i) above, as well as other activities of the Corporation;

1.03 the future **annexation** by the City of Delaware City of lands to be owned by the Corporation, including evaluation of local and county ordinances in connection therewith;

1.04 the **day-to-day operations and activities of the Corporation**, including matters relating to (a) the hiring and retention of an executive director and other employees; (b) the provision of benefits to such employees; (c) the procurement of office space for the Corporation; and (d) other matters relating to the operations and activities of the Corporation as may be determined by the Board; and

1.05 the Board's **responsibilities under Delaware's Freedom of Information Act**, 29 *Del.C.* §§ 10001 et seq. ("FOIA"), including but not limited to open meeting requirements under Delaware law.

2.0 QUALIFICATIONS

2.01 Minimum Qualifications

A. The Vendor shall have at least five (5) or more years' prior experience representing clients in matters relating to the acquisition, redevelopment, and disposition of real property, which experience shall include at least five (5) or more years' prior experience representing clients in real estate financing transactions.

B. The Vendor shall have at least five (5) or more years' prior experience representing clients in matters relating to the application of local or county land use ordinances, as well as local or county ordinances relating to building requirements, utilities, and similar local and county ordinances relating to development.

C. The Vendor shall have experience representing clients in real property transactions having environmental remediation and/or flood mitigation components.

D. The Vendor shall have experience representing clients in matters relating to the hiring and retention of employees, which experience shall include matters relating to the provision of benefits to employees.

2.02 Additional Qualifications

In addition to the foregoing minimum requirements, additional consideration shall be given to Vendors with demonstrated experience:

A. representing public or quasi-public entities in real estate or land use transactions;

B. representing clients in real estate or land use transactions involving multiple levels of government (municipal, county, state, and federal);

C. representing clients in real estate or land use transactions involving the application of environmental law; and

D. representing clients in real estate or land use transactions having a significant historic preservation component.

Professional Liability Insurance

The Vendor 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 Vendor 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 Vendor meets this requirement, or
- 2) A commitment letter or other evidence, satisfactory to the contact person, that Vendor will have such coverage as of the date the Contract commences.

If the Vendor 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 contact person, 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 Corporation.

2.03 Vendor's Capacity

Each Vendor must demonstrate the capacity to perform the type of services needed by the Corporation described in Section 1.0 above. The Vendor 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 Vendor 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 the Corporation.

3.01 General

All technical proposals shall be prepared with the information requested under § 3.02 below. Vendors 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 Vendor.

A. Vendor's Prior Experience

1. General Information:

i. 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 future? Please describe.

ii. Has your firm or an attorney in your firm's employ even been disciplined or censured by any regulatory body? If so, describe the principal facts.

iii. 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.

iv. Please describe your firm's backup procedures in the event one or more attorneys assigned to the Corporation leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to the Corporation, whose continuing status as such is an essential element of this contract.

2. Minimum Qualifications:

i. Describe the Vendor's experience in the last five (5) years in matters relating to the acquisition, redevelopment, and disposition of real property. In addition, please describe the Vendor's experience in matters relating to the Vendor's representation of clients in real estate financing transactions in connection therewith.

ii. Describe the Vendor's relevant experience in matters relating to the application of local or county land use ordinances, as well as local or county ordinances relating to building requirements, utilities, and similar local and county ordinances relating to development.

iii. Describe the Vendor's relevant experience with respect to the representation of clients in real property, land use, or related transactions having environmental remediation and/or flood mitigation components.

iv. Describe the Vendor's relevant experience with respect to the representation of clients in matters relating to the retention of employees, including any relevant experience in matters relating to the provision of benefits to employees.

3. Additional Qualifications:

To the extent applicable:

i. Describe the Vendor's relevant experience representing public or quasi-public entities in real estate or land use transactions.

ii. Describe the Vendor's relevant experience representing clients in real estate or land use transactions involving multiple levels of government (municipal, county, state, and federal).

iii. Describe the Vendor's relevant experience representing clients in real estate or land use transactions involving the application of environmental law.

iv. Describe the Vendor's relevant experience representing clients in real estate or land use transactions having significant historic preservation components.

B. Vendor's Team (Specific Individuals Responsible for Performance of Contract.) Provide a detailed description of the team that would provide services identified in this RFP and include the following information:

1. The identity of the individuals, the areas of law in which each specializes, 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 RFP.

2. Resumes of each member of the proposed 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 the resume.

4. State the availability of individuals proposed for this representation during the term of the contract, specifically including the availability of senior members of the team.

C. Conflicts of Interest.

1. In general, if a conflict of interest arises, the Vendor must be willing to continue to represent the Corporation and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The Corporation reserves the right, in its sole discretion, to select another Vendor to work on a particular matter if a conflict is not resolved to its satisfaction.

2. Each Vendor shall identify any conflicts of interest which may arise if the Vendor serves as Outside 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 Corporation, by any other member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

3. The Corporation recognizes that Vendors may have conflicts due to previous representations. The State encourages Vendors with conflicts to submit proposals, identify the conflicts and describe recommended resolutions.

4. Conflict Check System.

i. Each Vendor 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 state of the representation the check is made. The Vendor shall provide a copy of its written conflicts policy or explain in detail why there is no written policy.

ii. Prior to entering into any contract, the Vendor shall provide assurances that potential conflicts have been discussed with other existing clients of the Vendor 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.

Vendors shall provide the current billing rates for all attorneys and para-professionals assigned to represent the Corporation pursuant to this RFP, including any applicable discounts. No compensation will be permitted for the services of law clerks and law school graduates not admitted to practice.

4.02 Alternative Pricing Proposals

Although each Vendor is required to submit a price proposal containing the information set forth in § 4.01, the Corporation will also accept proposals for alternative billing arrangements, which enhance the value and efficiency of the services to be provided. The Vendor may submit a statement, not more than one page in length, with respect to any alternative pricing proposal.

5.0 EVALUATION OF PROPOSALS

Vendor proposals shall be evaluated by a committee established the Board in accordance with the Bylaws of the Corporation (the “Committee”). During the evaluation

process the Committee may, at its discretion, request any or all firms to make oral presentations or participate in a formal interview. Such presentation or interviews will provide firms with an opportunity to answer questions about a firm's Proposal. Not all firms may be asked to make an oral presentation or to attend an interview.

5.01 Selection Criteria

The selection of a Vendor hereunder will be based on an evaluation of the Proposals to determine which Proposal reflects the best value to the Corporation. Proposals will be evaluated in accordance with the factors set forth in §§ 3.02(A)(2) and (A)(3) above, as well the cost considerations as set forth in § 4.0 hereunder.

5.02 Contract Negotiations

A written contract with selected Vendor shall be required. The Corporation intends on opening negotiations with Vendors that the Corporation determines have a reasonable likelihood of being awarded a contract based on the proposals that are submitted. Negotiations will focus on any technical weaknesses or deficiencies in proposals as well as cost and pricing issues.

5.03 Contract Award

The Corporation reserves the right to award all, part, or none of this contract. The Corporation intends to award a contract to one Vendor if deemed appropriate and desirable.

5.04 Equality of Employment Opportunity

The Vendor will not discriminate against any employee or applicant for employment because of race, creed, sex, color, sexual orientation, gender identity or national origin. The Vendor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, sex, color, sexual orientation, gender identity or national origin.