

State of Delaware



Office of Pensions

McArdle Building
860 Silver Lake Blvd. Suite 1
Dover, DE 19904
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Board of Pension Trustees of the Delaware Public Employees' Retirement System Request for Proposals for Special Investment Counsel

Bid Number: OMB19433-TAX_COUNSEL

Bid Closing: October 30, 2018; 3:00 PM EST

**REQUEST FOR PROPOSALS FOR
SPECIAL INVESTMENT COUNSEL
ISSUED BY THE BOARD OF PENSION TRUSTEES OF
THE DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM
FOR THE STATE OF DELAWARE**

Executive Summary

The Board of Pension Trustees (“Board or BOPT”) of the Delaware Public Employees’ Retirement System (“DPERS”) is issuing this Request for Proposal (RFP) through the Office of Pensions (“Office of Pensions”) to engage a law firm to act as Special Investment Counsel (“Special Counsel”) in connection with its administration of the DPERS’ Trust Fund.

DPERS administers and manages nine qualified governmental retirement plans of the State of Delaware (“State”) with total assets in excess of \$10.1 billion as of Fiscal Year End 2017. DPERS anticipates entering into negotiations with law firms and intends to select multiple Special Counsels. This RFP will define the scope of the work to be performed, the requirements the vendor (“Vendor”) must address, the method for response and the administrative requirements that must be followed. DPERS will advise potential Vendors of changes to any dates as may be necessary. DPERS also reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

DPERS anticipates entering into negotiations with several law firms and intends to select more than one authorized Special Investment Counsel. As needed, from time to time, DPERS will engage one of the authorized Special Investment Counsel to provide legal services consistent with the scope of this RFP related to Alternative Investments.

This RFP will define the scope of the work to be performed, the requirements the vendor (“Vendor”) must address, the method for response and the administrative requirements that must be followed. DPERS will advise potential Vendors of changes to any dates as may be necessary. DPERS 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 | September 28, 2018 | Request for Proposal issued, posted on the State’s website at http://bids.delaware.gov and the Attorney General’s website at http://attorneygeneral.delaware.gov . |
| 2 | October 12, 2018 | All Bidder questions regarding RFP are due |
| 3 | October 19, 2018 | Office of Pensions issues answers to RFP via http://bids.delaware.gov and the Attorney General’s website at http://attorneygeneral.delaware.gov .website |
| 4 | October 30, 2018; 3:00 pm EST | RFP Response due date |

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|----------|-------------------|---|
| 5 | November 7, 2018 | Invitations to Selected Vendors for Oral Presentations (subject to change) |
| 6 | November 14, 2018 | Vendor Oral Presentations (subject to change) |
| 7 | December 14, 2018 | Recommendation made to Board |
| 8 | December 14, 2018 | Decision by Board |
| 9 | December 31, 2018 | Contract complete |

All Bidders must submit: (1) an original and 5 bound copies of their proposals (“Proposal”) and (2) one electronic version to the contact person. Proposals may be mailed or hand-delivered for receipt no later than 3:00 p.m. EST on October 30, 2018 (“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 of October 30, 2018. Any Proposal received after 3:00 p.m. on the Closing Date will be late and may 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:

Ann Marie Johnson
Deputy Attorney General
Carvel State Building
820 N. French Street, 6th Floor
Wilmington, Delaware 19801
Direct Dial: (302) 577-8423
Fax: (302) 577-6630
Email: AnnMarie.Johnson@state.de.us

Each proposal must be accompanied by a transmittal letter that briefly summarizes the Bidder’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 BOPT 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 the Board in the order in which they appear in this request.

RFP Designated Contact:

Please submit all questions and requests for information to:

Ann Marie Johnson
Deputy Attorney General
Carvel State Building
820 N. French Street, 6th Floor
Wilmington, Delaware 19801
Direct Dial: (302) 577-8423
Fax: (302) 577-6630
Email: AnnMarie.Johnson@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>.

I. GENERAL INFORMATION

A. Project Scope and Objectives

This RFP seeks to retain the services of several Special Investment Counsel to provide advice with respect to DPERS' alternative investment program ("Alternative Investments") as more specifically detailed below.

The Vendor should be prepared to offer the following services:

- 1. General.** The Vendor will be expected to familiarize itself with DPERS' retirement system, Alternative Investments, and other specialized investment strategies, investment policy, and the fiduciary duties and responsibilities of the Board of Pension Trustees without cost.
- 2. Transactional Documents.** Upon request, the Vendor shall review and provide advice concerning manager agreements, limited partnership and limited liability company agreements, and/or hedge funds, subscription agreements, trust agreements, contracts, side letters, opinions and/or any other documents required in connection with DPERS' commitment of funds to an alternative investment (collectively, the "Transactional Documents"). The Vendor may be required to prepare, draft and negotiate Transactional Documents on behalf of DPERS.
- 3. Structuring Alternative Investment Entities.** Upon request, the Vendor may be requested to assist DPERS in developing and creating alternative investment structures, which may include limited partnerships, offshore vehicles, hedge fund structures, and/or venture funds. The Vendor may be required to prepare, draft and/or negotiate Transactional Documents on behalf of DPERS.
- 4. Due Diligence.** The Vendor shall provide advice on matters relating to prospective Alternative Investments, including (but not limited to) the following:
 1. Issues raised by confidential offering memoranda, prospectuses, or similar offering materials;
 2. Due diligence issues identified by the Deputy Attorney General ("DAG") assigned to the Office of Pensions, staff and/or consultants;
 3. Indemnification provisions;
 4. Key economic terms (e.g., distribution waterfalls and partnership clawback provisions);
 5. Power of Attorney provisions;

6. Arbitration clauses;
7. Offshore entities and UBTI tax implications;
8. Choice of law and venue provisions;
9. Confidentiality issues;
10. Other liability issues; and
11. Any other matters pertaining to due diligence, including the general partner/lead member's status and authorization, pre-closing and post-closing issues, and to the extent required, drafting documents relating to all of these matters.

5. Other Matters.

1. The Vendor may be requested to render advice concerning those laws, including, but not limited to, securities laws, ERISA, and tax laws, that may apply to or otherwise affect DPERS' Alternative Investments.
2. The Vendor may be asked to provide advice concerning the structuring of DPERS' Alternative Investments (e.g., use of single asset entities to limit DPERS' liability).
3. The Vendor may be asked to provide advice with respect to DPERS' monitoring, oversight, compliance and ongoing administration of its Alternative Investments, including, but not limited to:
 - (i) Situations in which the limited partners are considering removal of the General Partner and/or alerting terms of the Alternative Investment;
 - (ii) Bankruptcy matters (advisory and/or litigation services with a focus on protection of DPERS' rights in proceedings brought under federal bankruptcy or state receivership laws); and
 - (iii) Securities law issues that may arise in conjunction with the receipt of distributions consisting of restricted stock or other securities.

B. Procedures

Selected Special Investment Counsel will work closely with the DAG assigned to act as general counsel to DPERS. All legal services are to be provided only at the request of the DAG. All advice is to be provided directly to the DAG or individuals identified and/or designated by the DAG. Vendors are not authorized generally to enter into discussions directly with the DPERS Board of Pension Trustees or staff, DPERS investment consultants or other advisors.

II. MINIMUM REQUIRED QUALIFICATIONS

A. Experience and Reputation

1. The law firm must have been in business at least five years.
2. The law firm should have at least five (5) or more years prior experience in representing governmental pension plans in the alternative investment legal field; and
3. 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 providing advice to governmental pension plans.

B. 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 \$10 million. In order to satisfy this requirement, the Vendor must

1. Include a statement in its Proposal affirmatively responding to this requirement; and
2. Include in its Proposal either -
 - i. A certificate of insurance or letter from its insurer demonstrating that the Vendor meets this requirement, or
 - ii. A commitment letter or other evidence, satisfactory to the Procurement Officer, 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 Procurement Officer, 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 Office of Pensions.

C. Vendor's Capacity

1. Each Vendor must demonstrate the capacity to perform the type of services needed by the Office of Pensions described in Section 1.01 above. The Vendor must be available at all times to render services required under the Contract.

III. 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 Office of Pensions.

A. General

All technical proposals shall be prepared with a concise description of the Vendor's capabilities to satisfy the minimum qualifications of Section 2 above and the information requested under Section 3 below. The Vendors should organize their proposals so that their responses correspond to the specific subsections to the extent possible without unnecessary repetition.

B. Required Information

The proposal shall contain the information described below. Joint ventures should provide the information separately for each firm.

1. Vendor's Prior Experience
 - i. 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 future? Please describe.
 - b. Describe the on-line services, publications and other resources maintained by your firm dealing with public pension plans, including subscription services and periodicals. Will any of these resources be available to DPERS staff?
 - c. Has your firm or an attorney in your firm's employ 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 board of trustees of any other pension plan as general fund counsel? If so, list the full name, address and telephone number of each of the pension plan and telephone number of the Executive Director or Pension Administrator and General Counsel.
 - f. Please describe your firm's backup procedures in the event one or more attorneys assigned to DPERS leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to DPERS, whose continuing status as such is an essential element of this contract.
 - g. Describe your firm's disaster recovery plan and facilities.
 - h. Describe your firm's cyber security measures.
- ii. Alternative Investment Experience:
- a. Provide a detailed description of the Vendor's experience in the field of Alternative Investments during the last five (5) years.
 - b. Representation of Institutional Investors as Limited Partners in Alternative Investments. List the approximate number of Alternative Investment transactions (initial closings, subsequent closings, secondary market transactions, and other depositions) in which the Vendor has represented public pension plans or other institutional investors as limited partners during the last five (5) years. Of those transactions, the Vendor should select no more than five (5) illustrative transactions and provide the following information. Please include at least two (2) transactions which were on behalf of governmental pension plans:
 - c. Type of Alternative Investment (i.e., venture capital limited partnership, buyout fund, hedge fund or other type of Alternative Investment included in the diversified Alternative Investment portfolios of large institutional investors);
 - d. The year and dollar amount (stated within a range of \$5 million increments) of each transaction;
 - e. Type of party represented (e.g., public pension plan, endowment, other pension plan, investment manager or advisor);
 - f. Range of responsibilities: due diligence reviews; negotiating the transaction; crafting unique documents (specify).

- included on resume.
- f. 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.
 - g. The planned division of responsibilities among the members of the team, including an approximate percentage of the time each individual is expected to devote to performing services for the Office of Pensions (the total of the percentages shall equal 100%).
 - h. For a joint venture, discuss the division of responsibilities between the venturing entities, including the type and approximate amount of work to be performed by each party, and the approximate percentage of time each party expects to devote to performing services for the Office of Pensions.
- iv. Conflicts of Interest.
- a. In general, if a conflict of interest arises, the Vendor should be willing to continue to represent DPERS 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 Vendor's representation of a party in litigation involving a unit of State government other than the Board, or DPERS, but does not expect to waive any other conflicts. DPERS 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.
 - b. Each Vendor shall identify any conflicts of interest which may arise if the Vendor serves as Special 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 Board, or DPERS by any other member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.
- v. Conflict Check System.
- a. The 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 stage of 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.

- vi. Potential Conflicts.
 - a. 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.

IV PRICE PROPOSAL FORMAT

A. Billing Rates

1. Current billing rates for all attorneys assigned to represent DPERS pursuant to this RFP;
2. Current billing rates for all para-professionals assigned to represent DPERS pursuant to this RFP;
3. No compensation will be permitted for the services of law clerks and law school graduates not admitted to practice.

B. Alternative Pricing Proposals

Although each Vendor is required to submit a price proposal containing the information set forth in Part IV, DPERS 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.

V EVALUATION OF PROPOSALS

The selection committee shall evaluate the proposals. During the evaluation process the selection committee 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.

A. Selection Criteria

The selection of the firm or firms to provide legal services will be based on an evaluation of the Proposals to determine which Proposal reflects the best value to DPERS in which technical factors will be considered significantly more important than cost of services. The selection of the firm to provide legal services will be based upon the following technical factors in descending order of importance:

1. Experience of the firm and the individual attorneys representing governmental pension plans before the IRS in alternative investment, regulatory, and tax matters;
2. Experience of the firm and the individual attorneys representing governmental pension plans generally in alternative investment, regulatory, and tax matters;
3. Proposed work plan, soundness of approach and understanding of the needs of DPERS;

4. Demonstrated ability to perform the services referred to in the Scope of Special Counsel Legal Services; and
5. References and recommendations of other clients.

B. Contract Negotiation

DPERS intends on opening negotiations with the firm(s) that DPERS determines has a reasonable likelihood of being awarded a contract based on the proposal, interview, and supplemental submissions (if any) that are submitted. Negotiations will focus on any technical 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 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.

C. Contract Award

DPERS 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.