

State of Delaware



Office of the State Treasurer

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Dover, DE 19904
Telephone (302) 672-6700

Request for Proposals for Special Legal Counsel

Bid Number: TRE1701 – LGLCOUNSEL

Bid Closing: October 7, 2016; 3:00 PM EST

**REQUEST FOR PROPOSALS FOR
SPECIAL LEGAL COUNSEL
ISSUED BY THE OFFICE OF THE STATE TREASURER
FOR THE STATE OF DELAWARE**

Executive Summary

The Office of the State Treasurer (“OST”) for the State of Delaware is issuing this Request for Proposals (“RFP”) to engage a law firm to act as Special Legal Counsel (“Special Counsel”) in connection with various aspects of the OST’s investment, banking and cash management obligations and services, including but not limited to negotiating terms and conditions for current and upcoming banking services and investment manager contracts on behalf of the OST.

The OST, on behalf of the State of Delaware’s Cash Management Policy Board (“Board”), administers and manages various investment and banking engagements for the State of Delaware (“State”). The OST expects several investment manager and banking contracts will be negotiated in the next several years.

The OST anticipates entering into negotiations with several law firms (each a “Vendor”) and intends to select one firm to enter into a contract to act on behalf of the OST as Special Counsel to provide legal services consistent with the scope of this RFP (“Contract”). The OST reserves the right to award multiple Contracts if it determines that such an award is in the best interest of the State.

This RFP will define the scope of the work to be performed, the requirements the Vendor must address, the method for response, and the administrative requirements that must be followed. The OST will advise potential Vendors of changes to any dates as may be necessary. The OST 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 9, 2016	RFP issued, posted on the Attorney General’s website at http://attorneygeneral.delaware.gov/executive/rfp.shtml and the Office of the State Treasurer’s website http://treasurer.delaware.gov/rfps.shtml .
2	September 23, 2016	All Vendor questions regarding RFP are due
3	September 30, 2016	OST issues answers to questions regarding RFP via the Attorney General’s website at http://attorneygeneral.delaware.gov/executive/rfp.shtml and the Office of the State Treasurer’s website http://treasurer.delaware.gov/rfps.shtml .
4	October 7, 2016; 3:00 pm EST	RFP Response Due Date (“Closing Date”)

5	October 14, 2016	Invitations to selected Vendors for oral presentations (subject to change)
6	October 21, 2016	Begin Vendor interviews (subject to change)
7	November 1, 2016	Announce RFP award (subject to change)

All Vendors must submit: (1) an original and six (6) bound copies of their proposals (“Proposal”) and (2) 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 October 7, 2016** (“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 Vendor’s responsibility. 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:

Frank Broujos, Deputy Attorney General
 Delaware Department of Justice
 RFP: Special Legal Counsel – Bid No. TRE1701 – LGLCOUNSEL
 Carvel State Office Building
 820 North French Street, 6th Floor
 Wilmington, DE 19801

Each proposal must be accompanied by a transmittal letter that briefly summarizes the 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 OST 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 Vendors. Proposals shall address all the questions posed by the OST in the order in which they appear in this request.

RFP Designated Contact:

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

Frank Broujos, Deputy Attorney General
 Delaware Department of Justice
 RFP: Special Legal Counsel – Bid No. TRE1701 – LGLCOUNSEL
 Carvel State Office Building
 820 North French Street, 6th Floor
 Wilmington, DE 19801
 Direct Dial: (302) 577-8352
 Fax: (302) 577-5866
 Email: Frank.Broujos@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 Attorney General's website at <http://attorneygeneral.delaware.gov/executive/rfp.shtml> and the OST's website at <http://treasurer.delaware.gov/rfps.shtml>.

1.0 GENERAL INFORMATION

1.01 Project Scope and Objectives

This RFP seeks to retain the services of one Special Counsel firm to provide legal representation, assistance and advice with respect to the OST's investment, banking and cash management obligations and services as more specifically detailed below.

The Vendor should be prepared to offer the following services:

- A. General. The Vendor will be expected to familiarize itself with the OST's investment, banking and cash management operations, systems, and policies, as well as the legal obligations, duties and responsibilities of the OST and the Board without cost.
- B. Specialized Legal Memoranda: Upon request, the Vendor shall research and prepare specialized legal memoranda regarding various banking and investment matters, including but not limited to analyzing the existing status of the State's collateral arrangements, range of means to effect collateral arrangements and perfection of security interests in different arrangements.
- C. Transactional Documents. Upon request, the Vendor shall prepare, draft and negotiate on behalf of the OST the terms and conditions for current and upcoming banking services and investment manager contracts, requiring both expertise and current familiarity with the market, and provide advice to the OST regarding same ("Transactional Documents").
- D. Governance and Policy Documents. Upon request, the Vendor shall review and draft governance documents and Investment Policy Statements regarding the Board.
- E. Other Matters.
 - 1. The Vendor may be requested to render advice concerning those laws, including, but not limited to, securities laws, and other laws, that may apply to or otherwise affect the OST's or the Board's investment, banking or cash management obligations, services, and legal risks.

2. The Vendor may be asked to provide legal advice concerning the structuring of investment, banking and cash management operations of the State.
3. The Vendor may be asked to provide legal advice with respect to the Board's or the OST's monitoring, oversight and ongoing administration of its investments, including, but not limited to:
 - (i) Bankruptcy matters (advisory and/or litigation services with a focus on protection of the State's rights in proceedings brought under federal bankruptcy or state receivership laws); and
 - (ii) Securities law issues that may arise in conjunction with the receipt of distributions.

1.02 Procedures

Selected Special Counsel will work closely with the Deputy Attorney General ("DAG") assigned to act as general counsel to the OST and the Board. All legal services are to be provided only at the request of the OST. All advice is to be provided directly to the OST with a copy to its DAG or individuals identified and/or designated by the OST. Vendors are not authorized generally to enter into discussions directly with the Board or the OST, and their staff or other advisors unless directed by the OST.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The law firm must have been in business at least ten (10) years;
- B. The law firm should have at least ten (10) or more years' prior experience in preparing, drafting and negotiating banking services and investment manager Transactional Documents;
- C. The law firm must designate, as a member of the team proposed for this representation, a lead attorney licensed to practice law with ten (10) or more years' experience in the areas stated in 2.01(B) and 2.01(C) above; and
- D. The law firm should have prior experience in representing governmental clients with investment, banking and cash management services.

2.02 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:

- 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 Designated Contact, that the 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 OST, 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 OST.

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 OST.

3.01 General

All Proposals shall be prepared with a concise description of the Vendor's capabilities to satisfy the minimum qualifications of Section 2.0 above and the information requested under this Section 3.0. The 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 firm.

- A. Vendor's Prior Experience
 - 1. Banking and Investment Experience:

- (i) Provide a general description of your experience in the field of banking and investments during the last ten (10) years.
- (ii) Describe the on-line services, publications and other resources maintained by your firm dealing with investment, banking and cash management services, including subscription services and periodicals. Will any of these resources be available to OST staff?
- (iii) Does your firm represent any other governmental entity for investment, banking or cash management services as counsel? If so, list the full name, address, and telephone number of each entity and telephone number of the contact person, administrator and General Counsel.
- (iv) Provide a detailed description of your experience and capacity to provide the types of services described in this RFP using no more than three (3) actual, prior representations as examples (client name not required for confidentiality).

2. General Experience and Other 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 any 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 the OST leaves the firm.

3. Related Legal Experience:

Provide a brief description of areas of the law related to the purpose of this RFP, but not specifically identified in Section 1.01 in which the Vendor has an expertise, including, but not limited to, securities law, transactional finance practice areas, and contract law.

4. Special Experience:

- (i) Provide a brief description of your experience and capacity in providing banking services advice regarding collateralization and perfection issues.
- (ii) Provide a brief description of your involvement with any review or drafting of investment policy statements for public boards.

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 and the type of banking or investment-related transactions and/or 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 RFP.
2. Resumes of each member of the team and the office where they are based, 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 availability of individuals proposed for this representation during the term of the contract, specifically including the other major clients represented by each member of the team.
5. 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 OST.

C. Conflicts of Interest.

1. In general, if a conflict of interest arises, the Vendor should be willing to continue to represent the OST and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The Attorney General of the State of Delaware 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 OST or the Board, but does not expect to waive any other conflicts. The OST 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 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 OST or the Board, by any other member of the firm, regardless of whether that attorney is in the same office or a different office of the firm. For purposes of determining whether or not there is a conflict, the Vendor has a conflict if any other attorney in the firm undertakes to represent:

- (i) A sponsor (including the general partner or lead member of a fund) or placement agent of a specific investment agent or bank being contemplated by the OST or the Board;
- (ii) A counterparty in a secondary market transaction being contemplated by the OST or the Board; or
- (iii) The sponsors of the OST's or the Board's existing investments.

2. Conflict Check System.

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.

3. Potential Conflicts.

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 following items:

- A. Current billing rates for all attorneys assigned to represent the OST pursuant to this RFP and any applicable discounts; and
- B. Current billing rates for all para-professionals assigned to represent the OST pursuant to this RFP and any applicable discounts.

No compensation will be permitted for the services of law clerks and law school graduates not admitted to practice, and no retainer fee(s) will be permitted.

4.02 Alternative Pricing Proposals

Although each Vendor is required to submit a price proposal containing the information set forth in Part 4.01, the OST 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

A selection committee shall be appointed by OST to evaluate the Proposals. During the evaluation process the selection committee may, at its discretion, request any or all Vendors to make oral presentations. Such presentations will provide Vendors with an opportunity to answer questions about a Vendor's Proposal. Not all Vendors may be asked to make such oral presentations.

5.01 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 the OST as determined by

the OST in its sole discretion. The selection of the firm to provide legal services will be based upon the following technical factors together with the cost of services:

- A. Experience of the firm and the individual attorneys in providing legal research and advice regarding banking and investment matters (e.g., legal memoranda analyzing current status of the State's collateral arrangements, range of means to effect same, and perfection of security interests in different arrangements);
- B. Experience of the firm and the individual attorneys in providing specialized transactional experience in negotiating terms and conditions for current and upcoming banking services and investment managers;
- C. Experience of the firm and the individual attorneys in providing legal research and advice regarding governance and drafting investment policies for an entity's investment board;
- D. Experience of the firm and the individual attorneys in representing governmental agencies generally;
- E. Administrative structure of representation (i.e., proposed staffing assignments), soundness of approach to representation and understanding of the needs of the OST;
- F. Demonstrated ability to perform the services referred to in Section 1.01 above; and
- G. References and recommendations of other clients.

5.02 Contract Negotiation

The OST intends to open negotiations with the Vendor that the OST 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 the Proposal as well as cost and pricing issues.

A written Contract with the Vendor(s) selected will be required, which must be approved by the Attorney General of the State of Delaware, Delaware Department of Justice ("DDOJ") and the Governor of the State of Delaware pursuant to 29 *Del. C.* § 2507. The successful Vendors will be required to comply with the DDOJ Outside Counsel Billing Policy. ("Attachment A").

5.03 Contract Award and Term

The OST reserves the right to award all, part, or none of this contract and may award contracts to more than one law firm if deemed appropriate or desirable. The Contract will be for an initial term of one year, with the option of a one-year renewal, subject to approval by the OST and the Board. The Contract can be terminated by OST at any time at its discretion.

ATTACHMENT A
STATE OF DELAWARE DEPARTMENT OF JUSTICE
OUTSIDE COUNSEL BILLING POLICY

**State of Delaware Department of Justice
Outside Counsel Billing Policy**

I. Budgeting, billing and staffing

A. Billing rates will be in effect for entire matter as provided for in the outside counsel contract. Any change must be approved by the Coordinating Attorney in writing 60 days in advance of the effective date of the change in a billing rate.

B. General Billing practices:

1. Bills to be rendered monthly within 30 days after end of month for entire month. No carry-over billing (example cannot bill from May 1 – June 15).
2. Details of fees by lawyer, paralegal, number of hours by task, description.
3. Expenses/disbursements detail and charges by category.
4. Block Billing of Services is unacceptable. All bills shall be billed in increments of no less than 0.1 billing hour (6 minutes).
5. Time billed for each activity should be identified separately. Do not combine different types of activities in one entry on the invoice. “Block billing” of fees is not acceptable, even if the same individual performed the activities.
6. The description of services or activity should be brief and informative. For example merely listing “Research” is not an acceptable billing entry. An acceptable entry would be "Legal research on statute of limitations issues related to [Insert issue]. Another example would be merely listing “Telephone calls” would not be acceptable, instead "Telephone calls to J. James of [Firm] and M. Smith [of firm] re: motion to dismiss." Be sure to identify the who, what and where.
7. No more than 2 outside counsel attorneys at meetings, depositions, mediations, negotiations, and/or hearings unless pre-approved by the Coordinating Attorney.
8. No firm paralegals at meetings, depositions, mediations, negotiations, and/or hearings unless pre-approved by the Coordinating Attorney.
9. Billable hours for summer interns/clerks will not be allowed unless pre-approved by the Coordinating Attorney.
10. More than 12 hours per day by one member of outside counsel staff will be closely reviewed.

11. Internal conferences accounting for more than 10% total monthly billings will be closely reviewed. Excessive intra-office conferences between attorneys or paralegals for the purpose of providing instruction or status will be closely reviewed.

12. Excessive number of attorneys performing services in a matter will be closely reviewed, unless prior approval is received from the Coordinating Attorney in writing.

13. Billing for research on general legal issues which should be within the knowledge of the firm and/or associate will be closely reviewed.

14. Billing of hours for work done by multiple attorneys in the firm for similar work on the same issue will be closely reviewed.

15. Billing attorney and/or paralegal time for invoice preparation, review, or for corrections to the invoice is not acceptable.

16. Excessive time spent in “file review” will be closely reviewed.

17. Excessive time spent in “review and revision” of documents that you prepare will be closely reviewed.

18. Charging attorney time for tasks that should be performed efficiently and effectively at less expense by a paralegal or secretary, or charging paralegal time for tasks that should be performed by clerical workers will be closely reviewed. For example charging attorney time for arranging logistics for a deposition.

19. Hours charged at a more senior attorney rate when a matter should be handled by a less senior attorney will be closely reviewed.

20. Charging for secretarial time, and or overtime or other staff members is not acceptable.

C. Expenses/Disbursements

1. Reasonable expenses and fees will be reimbursed. Should you have any questions or concerns whether or not a fee or expense falls within the reasonable expense range or will be reimbursed please contact your Coordinating Attorney for an approval.

2. Examples of non-reimbursable overhead

- a) Computer, e-mail, word processing charges
- b) Conference room charges, rent
- c) Supplies

- d) Library use, staff
- e) Clerks
- f) Proofreaders charges
- g) Support salaries
- h) Local telephone calls
- i) Fax charges

D. Use of Outside Consultants, Experts and Contract Attorneys. There may be instances where the use of consultants, experts and contract attorneys may be required to staff a case. This should be done as part of the case planning in conjunction with your Coordinating Attorney. These fees should be reasonable and necessary and are subject to approval by the Delaware Department of Justice.