

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES (SPECIAL TAX COUNSEL) ISSUED BY THE OFFICE OF THE STATE TREASURER
CONTRACT NUMBER: TRE19101-TAXCOUNSEL**

I. Overview

The Office of the State Treasurer (“OST”), on behalf of the Plans Management Board (“Board”) of the State of Delaware (“State”) is seeking proposals from qualified firms interested in serving as special tax counsel (“Tax Counsel”) to the Board and OST in connection with the administration of the State’s (a) Deferred Compensation Program, (b) College Investment Plan, and (c) Achieving a Better Life Experience (“ABLE”) Plan (collectively, the “Plans”). Qualified firms also should be able to assist OST in carrying out its duties under section 218 of the Social Security Act (42 U.S.C. § 301 *et seq.*) and related implementing provisions under Chapter 57 of Title 29 of the Delaware Code.

The Board is responsible for the oversight of the Plans. The Plans have in excess of \$1.8 billion of assets under management as of September 30, 2018. OST is responsible for providing administrative support to the Board. Furthermore, OST is responsible administering the State’s section 218 Agreement with the Social Security Administration, pursuant to which State and local government employees receive Social Security and Medicare hospital insurance coverage.

The Board and OST anticipate selecting one firm to serve as Tax Counsel but reserve the right to select multiple firms. This RFP defines the scope of the work to be performed by Tax Counsel, sets forth the minimal qualifications a firm must possess to be eligible to be selected as Tax Counsel, and addresses the procedures and other requirements that qualified firms must follow to be selected as Tax Counsel. The Board and OST may, in their discretion, modify this solicitation, including the deadlines and procedures set forth herein, and reserve the right to cancel this solicitation at any time.

II. Timetable

The tentative timetable for this RFP process is as follows:

EVENT	DATE
RFP published	1/18/19
Deadline for qualified firms’ questions	1/25/19
Deadline for OST responses - Q&A closed and published	2/4/19
Deadline for proposal submission (the “Proposal Deadline”)	2/15/19
Estimated date for invitations for oral presentations	2/19/19
Estimated date for finalist oral presentations	2/28/19
Board and OST selection and approval of Tax Counsel	3/5/19
Negotiate Legal Services Agreement (the “Contract”)	3/5/19 -3/15/19
Approval by the Governor and Attorney General	3/29/19
Publication of Award	4/1/19

All qualified firms must submit an original and 5 bound copies of their proposals (“Proposal”) and one electronic version (via USB drive) to the designated contact person identified below. Proposals may be mailed or hand-delivered but must be received by OST no later than 3:00 P.M. EST on the Proposal Deadline. All Proposals become the property of the State when received and shall be subject to the State’s Freedom of Information Act, 29 *Del. C.* § 10001 *et seq.*

Proposals shall be submitted to the following “Designated Contact”:

John Meyer
Director, Contribution and Plans Management
Office of State Treasurer
820 Silver Lake Blvd, Suite 100
Dover, Delaware 19904
Direct Dial: (302) 672-6705
Fax: (302) 677-7031
Email: John.meyer@state.de.us

Each proposal must be accompanied by a transmittal letter that briefly summarizes the qualified firm’s interest in providing the required professional services. The transmittal letter must clearly state and justify all exceptions taken to the requirements, procedures, or other aspects of the RFP. The Board and OST, in their discretion, may grant or deny any such exception.

The cost of preparing Proposals will be borne solely by the bidders. Proposals shall address all of the qualifications and other requirements set forth in the RFP in the order in which they appear.

All questions and requests for information related to this RFP must be submitted to the Designated Contact.

All questions submitted, along with corresponding responses, will be consolidated into a single “Q&A” document. The source of the questions will not be disclosed in the Q&A document. The Q&A document will be posted on the State’s website at <http://bids.delaware.gov>.

III. Project Scope and Objectives

The Board is seeking proposals from qualified firms to act as Tax Counsel and assist the Board and OST with the administration of the Plans. In addition, OST, by this RFP, is seeking a qualified firm to assist with OST’s obligations under section 218 of the Social Security Act and related State law. Tax Counsel will be required to:

- A. Advise the Board, the Board’s subcommittees, and OST on tax-related and other legal issues arising under or related to the State’s Plans;

- B. Advise on issues relating to Plan documents, Plan-related policies and procedures, Plan-related best practices and fiduciary issues, and the terms of the agreements with Plan recordkeepers and other third-party vendors;
- C. Provide specific, written recommendations and strategies to maintain the tax-favored status of the Plans;
- D. Assist with the correction of errors that could result in a Plan losing its tax-favored status;
- E. Prepare and file documents with the Internal Revenue Service (“IRS”) or other regulatory bodies on behalf of the Plans;
- F. Represent the Board before the IRS or other regulatory bodies;
- G. Obtain necessary Plan-related opinions, private letter rulings or other documents from the IRS or other federal or state regulatory bodies;
- H. Assist in the communication of Plan-related issues to plan participants, elected or appointed officials and other parties;
- I. Advise on Plan-related operational and compliance issues;
- J. Attend Board and/or other meetings at the request of the Board or OST; and
- K. Assist with annual Board training on Plan-related fiduciary issues and industry developments.

IV. Procedures for Legal Services

Tax Counsel will work closely with the Deputy Attorney General (the “DAG”) assigned to act as general counsel to OST. The DAG will be the primary point of contact and will serve as local Delaware counsel if and as needed. Legal services are to be provided only at the request of the DAG. All advice must be provided to, or discussed with, the DAG prior to being communicated to OST staff or Board members. Unless authorized by the DAG, Tax Counsel should not enter into direct discussions or otherwise communicate with OST staff or Board members.

V. MINIMUM REQUIRED QUALIFICATIONS

V.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’ experience in representing: (i) sponsors of plans under sections 401(a), 403(b), 457(b),

529 and 529A of the Internal Revenue Code (“IRC”); and (ii) state offices or officials charged with responsibilities under section 218 of the Social Security Act.

- C. The law firm must designate, as a member of the team proposed for this representation, a lead attorney licensed to practice law with at least ten (10) years of experience in the providing the type of advice listed in part (i) of paragraph B above.

V.02 Professional Liability Insurance

Tax Counsel shall maintain in full force and effect during the term of the Contract professional liability insurance in an aggregate amount of not less than \$5 million. In order to satisfy this requirement, a bidder 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 bidder meets this requirement, or
 - 2) A commitment letter or other evidence, satisfactory to OST, that the Tax Counsel will have such coverage as of the effective date of the Contract.

If the qualified firm 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 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 OST.

V.03 Vendor's Capacity

Each qualified firm must demonstrate the capacity to perform the type of services described in Section V.01 above. Bidders must demonstrate that they have a sufficient number of qualified attorneys on staff to be available at all times to render services required under the Contract in a timely fashion, including services requested on short notice.

VI. TECHNICAL PROPOSAL FORMAT

The following information shall be provided in each Proposal in the order listed below. A bidder is expected to provide a response for each requirement listed in this RFP. Failure to respond

to a request for information within this RFP may result in the rejection of the Proposal at the sole discretion of OST.

VI.01 General

All Proposals shall include a concise description of the bidder's capabilities to satisfy the minimum qualifications of Section V above and the information requested under Section VI.02 below. Bidders should organize their Proposals so that their responses correspond to the specific subsections to the extent possible without unnecessary repetition.

VI.02 Required Information

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

A. Firm's Information and Experience

1. General Information

- (a) 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.
- (b) Describe the on-line services, publications and other resources maintained by your firm dealing with the services referenced above, including subscription services or periodicals. Will any of these resources be available to OST?
- (c) Has your firm or an attorney in your firm ever been disciplined or censured by any regulatory body? If so, please explain the circumstances and the firm's response.
- (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 with a client relating to provision of legal services? If so, provide an explanation and indicate the current status or disposition.
- (e) Does your firm currently represent a fiduciary body or official with oversight responsibility for a defined benefit, deferred compensation, college investment or ABLE plan? If so, identify and list the assets and number of participants of each such plan and provide the full name, address and

telephone number of the primary contact for each such engagement.

- (f) Does your firm currently represent a government official or body with oversight responsibility for agreements under section 218 of the Social Security Act? If so, identify all such officials and/or bodies and provide the full name, address and telephone number of the primary contact for each such engagement.
- (g) Please describe your firm's backup procedures in the event one or more attorneys assigned to this engagement leaves the firm. Identify the lead attorney who will be the primary contact for this engagement and the other attorneys whose continuing status will be an essential element of this contract.
- (h) Describe your disaster recovery plan and facilities.

2. Relevant Experience

- (i) Provide a representative list of short- or long-term engagements over the past five (5) years where the firm acted as counsel with respect to a governmental deferred compensation, college investment or ABLE plan. Unless confidential, please include for each such engagement the name of the client. If applicable, provide a brief description of any complicated or novel issues addressed or notable results achieved for the client.
- (ii) Provide a representative list of short- or long-term engagements over the past five (5) years where the firm provided advice with respect to agreements, modifications or responsibilities under or related to section 218 of the Social Security Act. Unless confidential, please include for each such engagement the name of the client. If applicable, provide a brief description of any complicated or novel issues addressed or notable results achieved for the client.

3. Related Legal Expertise

Provide a brief description of areas of the law related to the purpose of this RFP in which the firm has expertise that may be helpful in this engagement, including, but not limited to, securities law, trust law, corporate or partnership law, pension law (public or private), or bankruptcy law.

B. Specific Individuals Responsible for Engagement

Provide a list of all of the attorneys you would expect to render legal services to the Board and OST if qualified firm is engaged to serve as Tax Counsel and for all such individuals include a resume and provide the following information:

1. The area(s) of specialization and years of experience;
2. The courts in which each member of the team 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;
3. The role each member will play in the engagement;
4. The availability of each member of the team to perform services during the term of the Contract in light of other major clients represented by each member; and
5. A Martindale Hubbell rating.

Your response to this section should include a detailed description of the firm's planned division of responsibilities among the members of the team. 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.

C. Conflicts of Interest

1. **Conflict and Waiver Policy.** In general, if a conflict of interest arises, the firm should be willing to continue to represent the Board and 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 may entertain a request for a waiver of Tax Counsel's representation of a unit of State government other than the Board or OST but does not expect to waive any other conflicts. 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.
2. **Disclosure of Conflicts.** Each bidder shall identify and describe generally any conflicts of interest that will exist or that may arise if the firm is selected to serve as Tax Counsel and shall describe in its Proposal how it proposes to deal with such conflicts. .
3. **Conflict Check System.** Each bidder 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 conflict checks are performed and the person or persons responsible for clearing conflicts. Each bidder shall provide a copy of its written conflicts policy or explain in detail why there is no written policy.

4. Assurances Regarding Potential Conflicts. Each bidder shall provide assurances that potential conflicts have been discussed with other existing clients of the firm, and that those existing clients are amenable to waiving any actual conflict that may arise if the firm is selected as Tax Counsel.

VII. PRICE PROPOSAL FORMAT

The Proposal shall contain the following mandatory information on billing rates and expenses:

- A. Current and proposed discount billing rates for all attorneys who will be assigned to this engagement;
- B. Current and proposed discount billing rates for all para-professionals who will be assigned to this engagement;
- C. A list of expenses by category and amounts or rates that the firm expects to charge in connection with the engagement; and
- D. Confirmation that the firm has read, understands and accepts the Delaware Department of Justice's Outside Counsel Billing Policy, dated April 30, 2015, a copy of which is attached hereto as **Exhibit A**, and the billing and expense reimbursement limitations listed below.

No compensation will be permitted for the services of law clerks and law school graduates not admitted to practice. No travel expenses will be reimbursed unless specifically approved by OST prior to being incurred.

The Board and OST may accept Proposals that include alternative billing arrangements that enhance the value and efficiency of the services to be provided. Bidders wishing to propose an alternative billing arrangement should submit a statement, not more than one page in length, detailing such proposal.

VIII. EVALUATION OF PROPOSALS

VIII.01 Overview of the Selection Process

The selection process for the retention of Tax Counsel is governed by the Delaware Department of Justice's Policy for the Procurement of Special Counsel, dated April 13, 2016 (the "Procurement Policy"), a copy of which can be found at:

<https://attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2017/03/SpecialCounselRetentionPolicy.pdf> .

Pursuant to the Procurement Policy, OST will form a selection committee to evaluate the proposals and make recommendations respecting the selection of Tax Counsel and the terms of the engagement. OST and the Board may, in their discretion, request one or more firms to make oral presentations. Not all bidders may be asked to make an oral presentation.

VIII.02 Selection Criteria

The selection of the firm or firms to provide legal services will be based on an evaluation of the Proposals using the following criteria:

- A. The experience and reputation of the firm and the individual attorneys with respect to the subject matter of the engagement;
- B. If applicable, the performance of the firm and relevant attorneys on past special counsel engagements by the State;
- C. The firm's proposed work plan, the soundness of the approach and the firm's understanding of the needs of the Board and the OST;
- D. The cost of the firm's services and strategy, relative to that of other bidders and relative to the experience and qualifications of the bidder;
- E. References and recommendations from former clients;
- F. Any potential or actual conflicts of interest;
- G. The extent and success of the firm's efforts to encourage the hiring, promotion and inclusion of women and minority attorneys, including the firm's commitment to including women and minority attorneys in the project under bid; and
- H. Such other factors as may be relevant to the subject matter of the engagement.

VIII.03 Oral Presentations

The selection committee will make recommendations to OST as to those firms that should be invited to make oral presentations. Firms receiving invitations will make oral presentations to OST staff, the DAG, and one or more members of the Board or a standing committee of the Board.

IX. THE APPROVAL AND CONTRACTING PROCESSES

IX.01 Tentative Approval and Negotiations

After the oral presentations, the Board and OST will tentatively approve a firm to serve as Tax Counsel. The Board, as a public body, must convene a public meeting to vote on the approval of Tax Counsel. The State Treasurer or her designee will approve the identified firm on behalf of OST. Thereafter, the Board and OST will invite that firm to negotiate the terms of a written Contract. Pursuant to 29 *Del. C.* § 2507, the final selection and approval of Tax Counsel and the Contract is subject to the approval of the Governor and the Attorney General.¹

IX.02 Contract Award

After execution of the Contract, the Board and OST will issue an award to the successful firm. The Board and OST reserve the right to issue more than one award.

¹ Pursuant to the Procurement Policy, the Attorney General has delegated responsibility for approving the selection of outside counsel to the Chief Deputy Attorney General, the State Solicitor, or the Deputy State Solicitor. The Attorney General will not receive information on the bidding process, including the identity of persons or firms that have submitted Proposals, until an award has been issued.