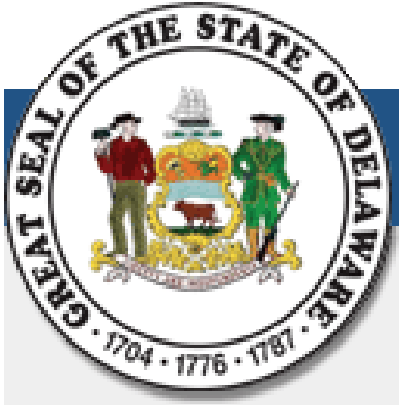


State of Delaware



Department of Justice

Carvel State Office Building
820 N. French Street
Wilmington, DE 19801
Telephone (302) 577-8400

Delaware Department of Justice Request for Proposals for Special Legal Counsel

Proposal Number: DOJ2025-0001

Proposal Deadline: February 18, 2025 3:00 PM EST

**REQUEST FOR PROPOSALS FOR
SPECIAL LEGAL COUNSEL
ISSUED BY THE DEPARTMENT OF JUSTICE
OF THE STATE OF DELAWARE**

Executive Summary

The Delaware Department of Justice (“DOJ”) is issuing this Request for Proposals (“RFP”). The DOJ seeks to engage one or more law firms to act as Special Legal Counsel (“Special Legal Counsel”) in connection with various areas of practice.

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

This RFP will define the scope of the work to be performed, the requirements the Proposing Firms must address, the method for the response and administrative requirements that must be followed.

RFP Schedule

ID	Date/Time	Activity
1	January 21, 2025	RFP issued, posted on the State’s website at http://bids.delaware.gov and the Attorney General’s website at http://attorneygeneral.delaware.gov
2	January 28, 2025	All potential Proposing Firms’ questions regarding RFP are due
3	February 4, 2025	DOJ issues answers to questions regarding RFP via http://bids.delaware.gov , the Attorney General’s website at http://attorneygeneral.delaware.gov.website
4	February 18, 2025 3:00 pm EST	RFP Response due date
5	March 11, 2025	Contracts awarded

All Proposing Firms should submit: (1) an original and 5 bound copies of their proposals (“Proposal”) and (2) one electronic version to the DOJ Designated Contact identified below. Proposals may be mailed or hand-delivered for receipt **no later than 3:00 p.m. EST on February 18, 2025** (“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 Proposing Firm’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:

State of Delaware
Department of Justice
RFP: Special Legal Counsel – Proposal No. 2025-0001
Carvel State Office Building

820 North French Street, 5th floor
Wilmington, DE 19801

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

RFP Designated Contact:

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

Stacey Bonvetti
Delaware Department of Justice
Carvel State Office Building
102 W. Water Street
Dover, DE 19904

Direct Dial: (302) 257-3267
Email: stacey.bonvetti@delaware.gov

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>.

1.0 GENERAL INFORMATION

1.01 Project Scope

This RFP seeks to retain the services of multiple firms to act as Special Legal Counsel to provide advice and legal representation with respect to the following areas of law:

1. Bankruptcy
2. Civil litigation
3. Chancery Court litigation
4. Condemnations
5. Delaware and federal tax law
6. Employment litigation
7. Escheat law
8. Health Insurance Contracting
9. Human and Civil Rights (Fair Housing)
10. Intellectual Property
11. IT Contracting
12. Patent/Trademark/Copyright law
13. State Pension system (Alternative Investment Legal Counsel)
14. State Pension system (Securities Litigation)
15. State Pension system (Special Investment Counsel)
16. State Pension system (Special Tax Counsel)
17. Counsel to Public Advocate on all federal matters before the FERC and PJM
18. Public Service Commission
 - a. Representation before FERC and PJM
 - b. Special Counsel as utility rate counsel.
19. Real estate transactions¹
20. Special Tax Counsel to issue tax certificates and tax opinions on tax exempt bond issuance or financing with the Delaware Sustainable Energy Utility
21. Special Education

Any proposal must identify at least one practice area but may identify multiple areas for consideration. It is the intention that the DOJ will select firms to cover all the areas of law listed.

Each Proposing Firm(s) selected will enter into a legal services Pool Agreement with DOJ and the Office of the Governor (“OGOV”). Once contracted as a Special Legal Counsel, firms may be used for any matter within the relevant areas of law (“Matter”) for which they were contracted during the term of the pool agreement. A Pool Agreement Addendum will be executed to confirm the agreement on each Matter assigned.

1.02 Procedures

Selected Special Legal Counsel will work closely with the DAG assigned to act as general counsel to the State of Delaware agency in need of legal assistance. All legal services are to be provided only at the request of the DAG. From time to time, the DAG may refer the Special Legal Counsel to work directly

¹ See Exhibit A, attached hereto for Real Estate Counsel Specifications

with agency Staff, as necessary to successfully represent the agency's interests. All advice is to be provided directly to the DAG or individuals identified and/or designated by the DAG.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The law firm must have been in business at least five (5) years.
- B. The law firm should have at least five (5) or more years prior experience in the area(s) of law the Proposing Firm identifies in its proposal; and
- C. 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 of experience in the area(s) of law the Proposing Firm has identified in its proposal.

2.02 Professional Liability Insurance

The Proposing Firms shall agree that if selected it will 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 demonstrate its ability to meet this requirement, the Proposing Firms must:

- A. Include a statement in its Proposal affirmatively responding to this requirement; and
- B. Include in its Proposal a certificate of insurance or letter from its insurer demonstrating that the Firms meets this requirement.

2.03 Proposing Firm's Capacity

Each Proposing Firm must demonstrate the capacity to perform the type of services needed by DOJ described in Section 1.01 above. The Proposing Firm 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 Proposing Firm 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 DOJ.

3.01 General

All technical proposals shall be prepared with a concise description of the Proposing Firm's capabilities to satisfy the minimum qualifications of Section 2 above and the information requested under Section 3 below. The Proposing Firm should organize its 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.

A. Proposing Firm's Prior Experience

1. General Experience and 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 a partner or an 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 this matter should leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to DOJ and DeIDOT, whose continuing status as such is an essential element of this contract.

2. Related Legal Experience:

Provide a brief description of areas of the law related to the purpose of this RFP in which the Proposing Firm has an expertise, including, but not limited to, other transactional and litigation practice areas.

3. Special Experience:

Provide a brief description of the Proposing Firm's experience in the last five years representing or advising public sector clients.

B. Conflicts of Interest.

1. In general, if a conflict of interest arises, the Proposing Firm should be willing to continue to represent the State of Delaware agency and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. DOJ and OGOV may entertain a request for a waiver of a Proposing Firm's representation of a party in litigation. DOJ and OGOV reserve the right, in their discretion, to select another approved law firm to work on a particular matter if a conflict is not resolved to its satisfaction.

Each Proposing Firm shall identify any conflicts of interest which may arise if the Proposing Firm 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 or 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. Conflict Check System.

The Proposing Firm shall describe in detail its existing system for identifying conflicts of interest in undertaking new representations and shall report on any conflicts. 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 Proposing Firm 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 Pool Agreement Addendum regarding a particular project, the Proposing Firm shall provide assurances that potential conflicts have been discussed with other existing clients of the Proposing Firm 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

- A. Current billing rates for all attorneys assigned to a particular area(s) of law identified in the Proposing Firm's proposal;
- B. Current billing rates for all para-professionals assigned to a particular area(s) of law identified in the Firm's proposal;
- C. No compensation will be permitted for the services of law school students, law clerks, including summer clerks, and law school graduates not admitted to practice.

4.02 Alternative Billing Proposals

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

5.0 EVALUATION OF PROPOSALS

5.01 Selection Criteria

The selection of the firm to provide legal services will be based upon the following factors in descending order of importance:

- A. Experience of the firm and the individual attorneys representing clients in the particular area(s) of law;
- B. Experience of the firm and the individual attorneys representing governmental agencies generally;
- C. Administrative structure of representation (i.e. proposed staffing assignments), soundness of approach to representation;
- D. Demonstrated ability to perform the services referred to in the Project Scope; and
- E. References and recommendations of other clients.

5.02 Contract Negotiation

DOJ intends on opening negotiations with each Proposing Firm that DOJ determines has a reasonable likelihood of being awarded a contract based on the proposal and supplemental submissions (if any) that are requested. Negotiations will focus on any weaknesses or deficiencies in proposals as well as cost and pricing issues.

A written contract (“Pool Agreement”) with each Proposing Firm selected will be required and must be approved by DOJ and OGOV pursuant to 29 *Del. C.* § 2507. Each selected firm will be required to comply with the DDOJ Outside Counsel Billing Policy².

² See Exhibit B, Delaware Department of Justice Outside Counsel Billing Policy (as of January 21, 2025).

5.03 Contract Award

DOJ reserves the right to award all, part, or none of the contracts in the various legal practice areas and intends to award contracts to more than one law firm in each of the various legal practice areas, if deemed appropriate and desirable.

5.04 Contract Term

Each Proposing Firm's Pool Agreement shall be valid for two (2) year period from the date of execution. Each Pool Agreement may be renewed for one additional two (2) year period. Negotiation for any renewal must be initiated no later than ninety (90) days prior to the termination of the original agreement.

The State reserves the right to extend this contract on a month-to-month basis for a period of up to three (3) months after the term of the full contract has been completed.

EXHIBIT A

Specifications for Real Estate Transactions Counsel

- A. The Proposing Firm must have an escrow account, separate and apart from the operating account, which is used to handle funds for each real estate transaction. The State must provide for the deposit of good funds into the escrow account prior to closing. Proposing Firm must provide the State advance notice of the deposit at least one week prior to closing. The Proposing Firm escrow account must comply with regulations and reporting requirements imposed by the DRPC and the Delaware Supreme Court and must have withstood all audits conducted by the Court and any Title Insurance Companies;
- B. If Proposing Firm has a multi-state practice, there must be an escrow account for Delaware money only;
- C. The paralegals and staff members employed by Proposing Firm must have undergone and withstood background checks;
- D. Proposing Firm shall be experienced handling real estate transactions in Delaware for at least five (5) years, no disciplinary actions actual or pending, no title insurance claims, no judgments against Proposing Firm, no investigations by the CFPB, the IRS, or the DOJ;
- E. The legal fee due to the Proposing Firm shall appear on the settlement sheet as a flat fee and be paid at closing. The exception to the legal fee being on the settlement sheet is when the Proposing Firm is retained to do additional work related to the transaction, i.e. subdivision activity, appearances at a planning & zoning commission meeting, a board of adjustment meeting, a town council meeting, or a county council meeting;
- F. Proposing Firm may not accept surveys from surveyors who have not been approved by the State agency or have been disciplined by the Board of Professional Land Surveyors;
- G. If the State purchases title insurance, Proposing Firm must have a license from the Insurance Commissioner. Proof of that license will be required;
- H. After closing, Proposing Firm shall provide a disbursement sheet showing a balanced escrow account;
- I. Proposing Firm shall require that the State agency has a reasonable opportunity to conduct a walk through inspection of the property before closing;
- J. Proposing Firm shall use Title Express or an equivalent software program for handling transactions and document production; and
- K. If the State does not accept title insurance when it purchases real estate, Proposing Firm shall provide a certificate of title showing the State has acquired marketable title free and clear of any liens and encumbrances except those specifically accepted by the State and identified as exceptions within the certificate of title.

EXHIBIT B

Delaware Department of Justice Outside Counsel Billing Policy

As of January 21, 2025

I. Introduction/Purpose

The Delaware Department of Justice (“DOJ”), through the Civil Division, serves as legal representative and counsel for the department, boards, offices, commissions, and other instrumentalities of government of the State of Delaware (the “State”), along with its officers and employees. At times, the DOJ will retain or assist clients in the retention of outside counsel to represent the State for a variety of reasons, including the need for specialized legal expertise, representation of the State in matters venued outside Delaware, and to handle matters requiring additional resources.

The DOJ is committed to providing the highest quality legal services in the most cost-effective manner. We require our outside counsel to agree with and honor that commitment. Outside counsel is expected to represent the State with integrity, professionalism, and a sense of urgency in resolving the legal problems for which their services are retained. While the DOJ requires outside counsel to provide legal services of the highest quality, outside counsel is also expected to make all efforts to render those services efficiently and cost-effectively.

The DOJ has issued this Outside Counsel Billing Policy (the “Policy”) in order to provide direction regarding processes and procedures in connection with the billing of services rendered by outside counsel. The Policy sets forth the DOJ’s expectations and is intended to help guide an effective working relationship with outside counsel. Outside counsel should promptly contact the Coordinating Attorney (defined below) with any questions relating the application of this Policy.

This Policy is incorporated by reference into and shall form a material part of every outside counsel engagement agreement. This Policy is effective for all work performed beginning March 12, 2025, and supersedes any previously issued billing policies for outside counsel.

All attorneys, professional staff, and third-party vendors who work on behalf of the DOJ must be familiar with and adhere to the terms in this Policy. However, nothing in this Policy is intended to interfere with the outside counsel’s ethical obligations, professional judgment, or duties as an advocate representing the interests of the State. The DOJ reserves the right to amend the Policy at any time. The most current version of the Policy will be publicly available on the DOJ’s website.

II. Responsibilities of the DOJ

The DOJ shall designate a Deputy Attorney General as the “Coordinating Attorney” to supervise the services rendered pursuant to the outside counsel contract. The Coordinating Attorney will provide clear, specific instructions, communicate the State’s objectives, follow the progress of the matter, keep outside counsel informed of important developments, and act as a liaison between outside counsel and the State. The Coordinating Attorney, or their designee, shall review the invoices submitted by outside counsel for compliance with the terms of this Policy. The New Castle County Deputy State Solicitor and the Governor’s office retain ultimate approval authority for bills submitted by outside counsel.

III. General Billing practices

Billing rates will be in effect for entire matter as provided for in the engagement agreement. Any change must be approved by the Department of Justice and the Office of the Governor in writing 60 days in advance of the effective date of the change in a billing rate.

Invoices are to be rendered monthly within 30 days after end of month for the entire month, with no carry-over billing (example cannot bill from May 1 - June 15).

Each invoice must reference the name of the matter being worked on and an invoice number. Invoices also must include:

- A. A detailed statement of the time spent by each timekeeper, including a statement of the date each service was rendered, the type of activity, the subject matter, and all persons involved. Narrative descriptions of work performed that lack sufficient detail will be rejected. Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail, with each service showing a separate time entry and not combined or "lumped" together; however, tasks performed on a project which total a de minimis amount of time can be combined or lumped together if they do not exceed 0.5 hours on a daily aggregate. Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.
 - 1. 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 of an unacceptable billing entry would be merely listing "Telephone calls" instead of "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."
 - 2. Time billed for each activity should be identified separately. Do not combine different types of activities in one entry on the invoice. Again, "Block billing" of fees is not acceptable, even if the same individual performed the activities.
- B. The State does not negotiate prompt pay discounts and will not be responsible for late fees or other administrative charges.
- C. Details of fees by lawyer or paralegal by number of hours per task and a description of the work completed.

- D. Reference to the hourly discounted rate per attorney and other staff billed on the invoice.
- E. Expense/disbursement details and charges by category along with copies of expenses attached with the invoice.
- F. All invoices shall be in increments of no less than 0.1 billing hour (6 min.). Block Billing of Services is unacceptable.
- G. Invoices should be sent electronically to the Coordinating Attorney. The Coordinating Attorney, or their designee, shall conduct an initial review of each invoice and request any necessary or appropriate corrections or modifications. The Coordinating Attorney shall then circulate the invoice to the New Castle County Deputy State Solicitor and the Governor's office for final approvals.
- H. The DOJ reserves the right to audit all fees and disbursements submitted by outside counsel, and the corresponding legal file.
- I. While it is important to have an adequate number of personnel at the right levels involved, the State expects outside counsel to exercise care to avoid overstaffing.
- J. Unless preapproval is obtained from the Coordinating Attorney, no more than two outside counsel attorneys are permitted at meetings (internal and external), depositions, mediations, negotiations, and/or hearings.
- K. No firm paralegals at meetings, depositions, mediations, negotiations, or hearings unless pre-approved by the Coordinating Attorney.
- L. Billable hours for summer interns/clerks are not allowed unless pre-approved by the Coordinating Attorney. Pre-approval is required for each assignment.
- M. More than 10 hours per day by one member of outside counsel staff will be closely reviewed.
- N. Internal conferences accounting for more than 10% total monthly billings will be closely reviewed. Excessive intra-office conferences between attorneys or paralegals for providing instruction or status will be closely reviewed.
- O. Billing for research on general legal issues which should be within the knowledge of the firm and/or associate will be closely reviewed.
- P. Billing of hours for work done by multiple attorneys in the firm for similar work on the same issue will be closely reviewed.
- Q. Billing for phone calls and emails with Deputy Attorneys General in furtherance of outside counsel's representation of the State will be closely reviewed.

- R. Billing attorney and/or paralegal time for invoice preparation, review, or for corrections to the invoice is not acceptable.
- S. Excessive time spent in "file review", "updating file", or similar tasks will be closely reviewed.
- T. Excessive time spent in "review and revision" of documents prepared by outside counsel will be closely reviewed.
- U. 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, we do not allow charging attorney time for arranging logistics for a deposition.
- V. Hours charged at a more senior attorney rate when a matter should be handled by a less senior attorney will be closely reviewed.
- W. Charging for secretarial time and overtime for other staff members is not permitted.

I.

IV. Expenses/Disbursements

- a. The State will reimburse outside counsel for reasonable, documented, and itemized out-of-pocket disbursements and costs incurred on behalf of the State, with the exceptions and limitations as set forth herein. Invoices should reflect the actual cost and should not include any markup. All disbursements must be fully itemized with a description sufficient for review, identifying the number of units, price per unit, and total cost. The State may refuse to pay for disbursements billed as "miscellaneous" billed in a group (e.g., Travel Expenses - \$5,000.00) or disbursements without description. Should there be any question or concern as to whether a fee or expense is reasonable or otherwise subject to reimbursement, outside counsel should contact the Coordinating Attorney for an approval.
- b. The State will reimburse outside counsel for actual costs incurred for court reporters and transcripts. Outside counsel should obtain the lowest possible charge for court reporting fees, including any possible volume discounts. Pre-approval from Coordinating Attorney is required for expedited requests or multiple copies.
- c. Express mail and courier fees are reimbursable with proper documentation but should be incurred only when necessary.
- d. The State will reimburse photocopying charges not exceeding \$0.10 per page. Oversized and custom copying projects should be handled using the most economical plan.

- e. Non-reimbursable expenses:
 - i. Computer, e-mail, word processing charges
 - ii. Online research charges (for example Westlaw, Lexis)
 - iii. Fax charges and telephone charges
 - iv. Conference room charges, rent
 - v. Office supplies
 - vi. Library use, staff
 - vii. Clerks, proofreader charges, support salaries
 - viii. Transportation charges for travel to hearings/client agencies when travel is within the State of Delaware. Prior to incurring any travel costs outside of Delaware to be billed to the State, outside counsel shall consult with the Coordinating Attorney and obtain approval in writing.
 - ix. Meals

V. 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 the Coordinating Attorney. These fees should be reasonable and necessary, should not be subject to additional mark-up by the firm, and are subject to prior approval by the DOJ and the Governor's office.