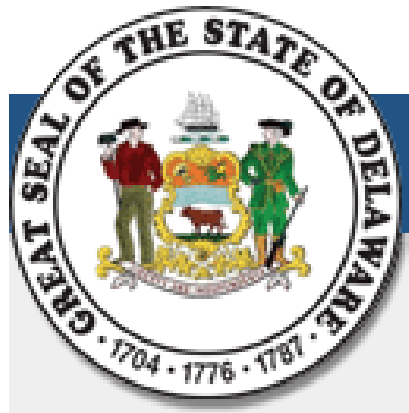


STATE OF DELAWARE



Department of Justice
Carvel State Office Building, 6th Floor
820 N. French Street
Wilmington, DE 19801

Request for Proposals for
Special Litigation Counsel

Bid Number: [LGL 1401](#)

Bid Closing: June 17, 2014; 3:00 p.m. EST

**REQUEST FOR PROPOSALS FOR
SPECIAL LITIGATION COUNSEL
ISSUED BY THE STATE OF DELAWARE**

Executive Summary

The Department of Justice of the State of Delaware (“DDOJ”) is issuing this Request for Proposals (“RFP”). The DDOJ seeks to engage a law firm to act as Special Litigation Counsel (“Special Litigation Counsel”) representing the State of Delaware, the Attorney General of the State of Delaware and wardens of Delaware prisons in their official capacities in numerous actions related to the investigation into the Controlled Substances Laboratory of the Office of the Chief Medical Examiner of the Department of Health and Social Services (the “OCME issue”). Specifically, defendants in numerous criminal actions have filed motions in Delaware Superior Court pursuant to Superior Court Criminal Rules 33 and 61 seeking relief related to the OCME issue; Other criminal defendants have filed petitions for writs of habeas corpus or motions pursuant to Federal Rule of Civil Procedure 60(b) in Delaware District Court seeking relief (collectively, the “Actions”). To date, more than 600 motions or petitions have been filed. Based on statements of the Office of the Public Defender, the DDOJ anticipates that there will be at least several thousand more motions or petitions filed. The Actions seek to vacate convictions for drug-related offenses based on, *inter alia*, claims of ineffective assistance of trial counsel and violations of *Brady v. Maryland* related to the OCME issue.

RFP Schedule

ID	Date/Time	Activity
1	Thursday, June 12	Request for Proposals issued, posted on the State’s Government Support Services Website, the Attorney General’s Department of Justice Website, and the Delaware State Bar Association Listserv
2	Friday, June 13	All Vendor questions regarding RFP due
3	Monday, June 16	The DDOJ issues answers to questions regarding RFP via the Attorney General’s website at http://attorneygeneral.delaware.gov and the State of Delaware’s Bid Solicitation Directory at http://bids.delaware.gov
4	Tuesday, June 17 3:00 p.m. EST	RFP Response due date
5	Wednesday, June 18	Begin vendor interviews (subject to change)
6	Thursday, June 19	Begin negotiations (subject to change)
7	Friday, June 20	Contract awarded (subject to change)

All interested firms should submit an original and three bound copies of their proposals (“Proposal”) to the contact person. Proposals may be mailed or hand-delivered for receipt no later than 3:00 p.m. EST on Tuesday, June 17 (“Closing Date”). All timely Proposals become the property of the State. Requests for extensions of the Closing Date will not be granted. Any Proposal, request for modification, or request for withdrawal received after 3:00 p.m. on the Closing Date is 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:

James R. Adams
Deputy State Solicitor
Carvel State Building; 820 N. French Street, 6th Floor
Wilmington, Delaware 19801
Direct Dial: (302) 577-5036
Fax: (302) 577-6630
Email: James.Adams@state.de.us

Each proposal must be accompanied by a transmittal letter, which briefly summarizes the proposing firm'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 DDOJ 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 offerors. Proposals shall address all the questions posed by the Issuers in the order in which they appear in this request.

RFP Designated Contact:

Please submit all questions and requests for information to:

James R. Adams
Deputy State Solicitor
Carvel State Building; 820 N. French Street, 6th Floor
Wilmington, Delaware 19801
Direct Dial: (302) 577-5036
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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> and the State of Delaware's Bid Solicitation Directory at <http://bids.delaware.gov>.

1.0 GENERAL INFORMATION

1.01 Project Scope and Objectives

This RFP seeks to retain the services of Special Litigation Counsel to provide legal services to the DDOJ representing the State of Delaware, the Attorney General of the State of Delaware and wardens of Delaware prisons in the above-referenced Actions, and in any appeal taken from the Actions. The DDOJ anticipates that such legal services will include: reviewing and categorizing motions and petitions; reviewing and digesting trial transcripts; analyzing the evidence presented by the State and the defense at trial; obtaining affidavits of defendants' trial counsel; drafting responses to motions and petitions and briefs; assisting Deputy Attorneys General with preparation for any hearings or oral arguments.

1.02

Selected Litigation Counsel will work closely with and pursuant to the direction of the Chief of Appeals of the Criminal Division. The Chief of Appeals may refer the Special Litigation Counsel to work with other Deputy Attorneys General, as necessary to successfully defend the pending Actions. All advice is to be provided directly to the Chief of Appeals or to one of the Deputy Attorneys General as designated by the Chief of Appeals.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The Vendor must have been in business at least five (5) years.
- B. The Vendor shall have at least five (5) or more years' prior experience representing clients in each of the Delaware Superior Court, the Delaware Supreme Court and the United States District Court for the District of Delaware.
- C. The Vendor shall have experience with respect to post-conviction proceedings in Delaware Superior Court.
- D. The Vendor shall have experience litigating claims under the United States and Delaware Constitutions, particularly claims relating to ineffective assistance of counsel and violations of *Brady v. Maryland*.
- E. The Vendor must designate a lead attorney licensed to practice law with five (5) or more years' litigation experience in the Delaware Superior Court.

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 \$1 million. In order to satisfy this requirement, the Vendor must:

- A. Include a statement in its Proposal affirmatively responding to this requirement; and
- B. Include in its Proposal either:
 - 1) A certificate of insurance or letter from its insurer demonstrating that the Vendor meets this requirement, or
 - 2) A commitment letter or other evidence, satisfactory to the contact person, that Vendor will have such coverage as of the date the Contract commences.

If the Vendor is a joint venture, and one party of the joint venture does not presently have such liability insurance, this requirement may be satisfied if the members of the joint venture include in their proposal evidence, satisfactory to the contact person, that all members of the joint venture will have such coverage as of the date the Contract commences, either through actual insurance policies or an indemnity agreement by the properly insured firm, in form and substance acceptable to the DDOJ.

2.03 Vendor's Capacity

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

3.0 TECHNICAL PROPOSAL FORMAT

The following information shall be provided in each proposal in the order listed below. A Vendor is expected to provide a response for each requirement listed in this RFP. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the DDOJ.

3.01 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. 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. General Information:

- (i) Within the past three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the future? Please describe.
- (ii) Has your firm or an attorney in your firm's employ even been disciplined or censured by any regulatory body? If so, describe the principal facts.
- (iii) Within the last five years, has your firm, or a partner or attorney in your firm, been involved in litigation or other legal proceedings relating to provision of legal services? If so, provide an explanation and indicate the current status or disposition.
- (iv) Please describe your firm's backup procedures in the event one or more attorneys assigned to the DDOJ matter leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to the DDOJ, whose continuing status as such is an essential element of this contract.

2. Litigation Experience:

- (i) Describe the Vendor's experience in litigating state post-conviction matters in the last five (5) years.
- (ii) Describe the Vendor's experience in litigating federal habeas corpus matters in the last five (5) years.
- (iii) Describe the Vendor's experience in representing or advising public sector clients in the last five (5) years.
- (iv) Describe the Vendor's experience in litigating matters before the Delaware Superior Court in the last five (5) years.
- (v) Describe the Vendor's experience in litigating matters before the Delaware Supreme Court in the last five (5) years.

- (vi) Describe the Vendor's experience in litigating matters before the Delaware District Court in the last five (5) years.

B. Conflicts of Interest.

- 1. In general. If a conflict of interest arises, the Vendor must be willing to continue to represent the State and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The State 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 DDOJ, but does not expect to waive any other conflicts. The DDOJ 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 complete a conflicts check for the State and the DDOJ. Each Vendor shall identify any conflicts of interest which may arise if the Vendor serves as Special Litigation Counsel and shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys names on the contract but also from representation of parties involved in the transactions or other matters involving the DDOJ by any member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

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

4.0 PRICE PROPOSAL FORMAT

4.01 Billing Rates

Vendors shall provide the following items:

- A. Current billing Rates for all attorneys assigned to represent the State pursuant to this RFP and any applicable discounts;
- B. Current billing Rates for all para-professionals assigned to represent the State pursuant to this RFP and any applicable discounts;
- C. No compensation will be permitted for the services of law clerks and law school graduates not admitted to practice.

4.02 Alternative Pricing Proposals

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

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

5.01 Selection Criteria

The selection of the firm to provide legal services will be based on an evaluation of the Proposals to determine which Proposal reflects the best value to the State, with technical factors generally being considered 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.

- A. Experience of the firm and the individual attorneys representing clients in each of the Delaware Superior Court, the Delaware Supreme Court and the United States District Court for the District of Delaware;
- B. Experience of the firm and the individual attorneys with respect to post-conviction proceedings in Delaware Superior Court;
- C. Experience of the firm and the individual attorneys litigating claims under the United States and Delaware Constitutions, particularly claims relating to ineffective assistance of counsel and violations of *Brady v. Maryland*;
- D. Administrative structure of representation (i.e., proposed staffing assignments), soundness of approach to representation and understanding of the needs of the State;
- E. Demonstrated ability to perform the services referred to under Project Scope and Objectives; and
- F. References and recommendations of other clients.

5.02 Contract Negotiation

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

A written contract with each of the selected the law firms will be required. Each contract 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*.

5.03 Contract Award

The DDOJ reserves the right to award all, part, or none of this contract. The DDOJ intends to award a contracts to one law firm if deemed appropriate and desirable.