

INDIANA ATTORNEY GENERAL



REQUEST FOR INFORMATION FOR LEGAL SERVICES SUBCONTRACTOR OPIOID INVESTIGATION AND LITIGATION

Date of Issuance: February 1, 2019

Date Proposals Due: March 1, 2019
5:00 PM EST

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**STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL**

**INVITATION FOR LEGAL SERVICES
SUBCONTRACTOR PROPOSALS
REQUEST FOR INFORMATION**

I. INTRODUCTION

The Office of the Indiana Attorney General (“OAG”) has retained the firm of Cohen Milstein Sellers & Toll, PLLC (“CMST”) to assist and support its investigation and potential litigation against manufacturers and distributors of prescription opioid pharmaceuticals, as well as other industry participants. In addition, CMST has been retained in by the OAG in connection with the litigation filed against Purdue Pharma in Marion County, captioned as *State of Indiana v. Purdue Pharma, L.P., Purdue Pharma, Inc., and the Purdue Frederick Company*, Cause Number 49D10-1811-PL-045447. The OAG, in conjunction with CMST (“Lead Outside Counsel”), is looking to retain local trial counsel to assist in one or more matters.

The OAG has statutory responsibility to investigate and prosecute allegations of unfair and deceptive trade practices and unfair methods of competition. Under the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5 *et seq.* (“DCSA”), the OAG protects consumers regarding the unlawful sale and marketing of prescription drugs and health and safety products. Under the Indiana False Claims Act, Ind. Code § 5-11-5.5 *et seq.* the OAG pursues persons who cause a false claim to be presented to the State for payment or approval. The OAG also pursues similar claims under the Indiana Medicaid False Claims Act, Ind. Code § 5-11-5.7 *et seq.* where the claim relates to payments through the State’s Medicaid program. The OAG has other statutory and common law authority regarding these and other related matters.

Opioids, both prescription and illicit, are the main drivers of drug overdose deaths nationwide and in the State of Indiana. Opioids were involved in 33,091 deaths nationwide in 2015, and opioid overdoses have quadrupled since 1999. More than 3,000 Hoosiers died of opioid overdoses between 2010 and 2016 alone. Indiana has expended significant resources combatting the opioid epidemic, the crime related to it, and drug treatment and rehabilitation associated with opioid abuse.

The OAG has been investigating the persons and entities responsible for the marketing and sale of prescription opioid pharmaceuticals. The OAG has initiated these investigations and will continue to determine whether litigation should be brought to protect the State of Indiana, its residents, and the public interest. The work to be performed consists of assisting the OAG and Lead Outside Counsel in conducting the investigations, determining what claims will be brought, drafting the complaints (as appropriate), conducting affirmative and defensive discovery, taking and defending depositions, motions practice, and preparing for and conducting any trials that proceed. Without limitation to the above, it is intended that Local Counsel will take an active role, under the direction of the OAG and Lead Outside Counsel, and that Local Counsel also will serve as trial counsel. The OAG, **at all times**, will direct the litigation in all respects, including but not limited to, whether

and when to initiate litigation, against whom actions will be taken, the claims to be brought in said litigation, approval and rejection of all settlement offers, and the amount and type of damages and injunctive relief to be sought. Local Counsel will serve as a sub-contractor to Lead Outside Counsel. Local Counsel will be expected to work collaboratively and at the direction of Lead Outside Counsel as well as the OAG.

II. SCOPE OF SERVICES

Examples of work which the OAG and Lead Outside Counsel may require of Local Counsel include, but are not limited to:

1. Assist in local court proceedings that arise from opioid litigation including but not limited to the investigation and assessment of claims against persons and entities responsible for the marketing and sale of prescription opioid pharmaceuticals.
2. Prepare and prosecute litigation against potential defendants.
3. Assist in the investigation and litigation, which, at the discretion of the OAG and Lead Outside Counsel, may include:
 - a. assistance in the development of case strategies and tactics against potential defendants;
 - b. providing support to Lead Outside Counsel regarding local rules of practice, assist in all court filings and service of court filings, and act as a liaison to the local court, as needed;
 - c. assisting with motions practice;
 - d. assisting with discovery;
 - e. appearing in court for status conferences or hearings (either in a supporting or primary role, as needed);
 - f. taking or defending depositions;
 - g. identifying and assisting in preparing witnesses to testify on behalf of the State of Indiana;
 - h. representing the State of Indiana in trial;
 - i. representing the State of Indiana in responding to pretrial and post-trial motions; representing the State of Indiana in any appeal of any judgment or verdict rendered in the action, and if applicable, any remand from appeal.
4. Perform related tasks as reasonably needed to facilitate the goals and objectives of the case.
5. Local Counsel shall follow and apply the highest professional standards.
6. Achieve deadlines for deliverables as determined by the OAG and Lead Outside Counsel.

7. Local Counsel shall operate under the direction of the OAG and Lead Outside Counsel as lead outside counsel. The OAG, at all times, will exercise final discretion and direction in all respects, including but not limited to, whether and when to initiate litigation, against whom actions will be taken, the claims to be brought in said litigation, litigation strategies and tactics, approval and rejection of all settlement offers, and the amount and type of damages and injunctive relief to be sought.

III. COMPENSATION

Compensation will be negotiated between Lead Outside Counsel and Local Counsel under a separate, contingency fee contract. It is expected that local counsel's compensation will be proportional to its lodestar in the case, the specifics of which will be negotiated with Lead Outside Counsel.

IV. SELECTION CRITERIA

In the selection of Local Counsel, this RFI seeks:

- Exceptional civil trial experience;
- An excellent reputation within the legal community and beyond;
- A firm with staffing and resources sufficient to contribute meaningfully to the pursuit of this matter and the scope of services above;
- Admitted to practice in the State of Indiana and its federal courts;
- A willingness to work under the direction of the OAG and Lead Outside Counsel on this matter;
- No conflicts of interest under section V3, below.

V. PROPOSAL FORMAT

The proposal should include the following information:

1. A description of your areas of expertise and experience, including experience with the matters identified above in this RFI.
2. A description of your law firm.
3. A description of the existence of any possible conflicts of interest, including any lawsuits and disputes where you or your firm represents interests adverse to the State of Indiana, a known client of Lead Outside Counsel, or represents a manufacturer or distributor of opioid drugs or an insurer of same; a representation that you and your firm would forgo the representation of interest that would conflict with interest of the State of Indiana or Lead Outside Counsel during the pendency of this matter. **RESPONSES TO THIS PART OF THE PROPOSAL MAY BE SEPARATELY MARKED AS CONFIDENTIAL AND NON-DISCLOSABLE IF DISCLOSURE WOULD BE A VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT.** Also, an agreement to cooperate and work with Lead

Outside Counsel regarding a complete conflicts check of clients of Lead Outside Counsel and Local Counsel, and disclosure of same to the OAG, prior to finalizing any agreement.

4. Please report any professional sanctions or other pending or threatened governmental or regulatory proceedings which would have an adverse impact on you or any member of the firm where you work.
5. Within the last five (5) years, have you or your firm, or a partner or attorney in your firm, been involved in litigation or other legal proceedings related to the provision of legal services? If so, please provide an explanation and indicate the current status or disposition.
6. Please provide three (3) references.

Please be aware that the State of Indiana is subject to the Access to Public Records Act. Ind. Code § 5-14-3 et seq. As a consequence, the State cannot assure the confidentiality of an RFI response except as set forth in paragraph V (3) above for submissions separately marked as confidential

Requirements for Submission:

If interested in serving the OAG in the capacity described above, please submit an electronic copy of the proposal no later than 5:00 pm on March 1, 2019, to Richard M. Bramer at Richard.Bramer@atg.in.gov. All proposals must have the e-mail heading: **Opioid Investigation and Litigation.**

Proposals received after the submission deadline will not be considered.

Proposal Inquiries:

Questions concerning this request for proposal should be sent in writing to: Betsy M. DeNardi at Betsy.DeNardi@atg.in.gov.

Statement of Rights

This RFI and all submissions received as a result does not obligate the OAG to select a Local Counsel as a result of this RFI. The OAG may provide answers or clarifications to inquiries received, and will make a good faith effort to share these responses to inquiries with the persons who have received this RFI. The final selection of Local Counsel will be based not only on the Submission but also on personal interviews and presentations to be conducted by the OAG and Lead Outside Counsel upon invitation.