



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA DEPARTMENT OF REVENUE

TITLE: CONTINGENCY FEE CONTRACT

CASE ID: 2018-07-0207

DATE: July 23, 2018

After examination and review, Inspector General Chief Legal Counsel Tiffany Mulligan reports as follows:

The purpose of this Report is to fulfill the statutory requirements of Ind. Code § 4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (IG) to review contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics set forth in Ind. Code 4-2-6 and 42 IAC 1-5 (Code of Ethics) or any statute or agency rule concerning conflicts of interests.

On July 19, 2018, the Indiana Department of Revenue (DOR) notified the IG that it wished to enter into a contingency fee contract with Mattingly Burke Cohen & Biederman LLP, an Indianapolis based law firm (the Firm). DOR has requested representation by the Firm in connection with a Tax Court case entitled *Somal Oil, Inc. v. Indiana Department of State Revenue* (the Case). The State will compensate the Firm through a contingency fee in the

amount of fifteen percent of any amount recovered. The Firm will also charge the State a reduced hourly rate of \$225 an hour instead of their normal hourly rate of \$365 an hour.

Pursuant to Ind. Code § 4-6-3-2.5(b), DOR is required to make a written determination before entering into the contract that the contingency fee representation is cost effective and in the public interest. DOR must consider five factors when making this determination as outlined by Ind. Code § 4-6-3-2.5(c). DOR made such a determination and considered all of the factors outlined in the statute.

DOR's determination explains that the Case will require substantial initiative and time to litigate successfully and DOR's counsel will need to invest considerable energy in discovery and analysis of the taxpayer's claims. It also explains that the Case is a high priority for DOR because it offers an opportunity to mitigate the negative effects of an adverse decision, *Von Erdmannsdorff v. Indiana Department of State Revenue*. DOR believes the Case requires experienced litigators with particular skill in the discovery process. Lastly, DOR notes that the Firm as well as the court which will hear this case, are located in Indianapolis, and a large majority of witnesses are in Marion County or nearby counties.

Ind. Code § 4-6-3-2.5(d) requires an agency to request proposals from private attorneys wishing to provide services on a contingency fee basis unless the agency, in this case DOR, determines in writing that requesting proposals is not feasible under the circumstance. DOR did not request proposals from private attorneys wishing to provide services on a contingency basis; however, they conducted a search of Marion County litigators before selecting the Firm. DOR's determination explains that requesting such proposals was not feasible under the circumstances due to DOR's unique needs and the unique nature of the Case.

After careful examination and review, the IG has determined that the contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interests. According to DOR, no employee of DOR has any ownership interest in the Firm, nor do any of the DOR personnel involved in any of the contracting decisions work for or have any relatives working at the Firm. Because of that, it does not appear that any DOR employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer or sole proprietor.

Based on the information provided, we find that entering into the contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interests. This Report is issued in compliance with the above noted statutory requirements.

Dated: July 23, 2018.

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive, flowing style.

Lori Torres, Inspector General