



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA DEPARTMENT OF REVENUE
TITLE: CONTINGENCY FEE CONTRACT
CASE ID: 2018-10-0295
DATE: October 30, 2018

After examination and review, Office of Inspector General Staff Attorney Kelly Elliott 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 October 26, 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 *Pilot Travel Centers, LLC 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 fee of \$225 an hour, as opposed to 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 time and initiative to litigate successfully. The Case presents factually and legally complicated issues that will require extensive discovery and the retention of expert witnesses to develop the facts relevant to the Case. DOR believes the Case requires experienced litigators with particular skill in the discovery process. DOR's determination explains that the Firm is comprised of such situated litigators who have well-established skills and experience in discovery disputes. Lastly, DOR notes that both the Firm and the court that will hear the Case are located in Indianapolis, and most of the witnesses and documents are located 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 or other interest in the Firm, nor do any of the DOR personnel involved in the contracting decision 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: October 30, 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