



REQUEST FOR QUALIFICATIONS FOR

**SPECIAL COUNSEL FOR  
PROPERTY ACQUISITION AND  
CONDEMNATION LITIGATION**

Date Issued: October 3, 2013

Question & Answer Cut-off Date: October 8, 2013

Proposals Due: October 10, 2013

JOHN JAY HOFFMAN

ACTING ATTORNEY GENERAL OF NEW JERSEY

CHRISTOPHER S. PORRINO

DIRECTOR, DIVISION OF LAW

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF LAW  
Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 112 Trenton, NJ 08625-0112

ADDENDUM NO. 2  
TO  
REQUEST FOR QUALIFICATIONS  
FOR  
SPECIAL COUNSEL FOR PROPERTY ACQUISITION  
AND CONDEMNATION LITIGATION

DATE ISSUED: OCTOBER 3, 2013  
PROPOSALS DUE: OCTOBER 14, 2013

REVISED PROPOSAL DUE DATE: OCTOBER 14, 2013

The proposal due date on the cover of the RFQ is amended as follows: October 14, 2013.

ADDENDUM NO. 1  
TO  
REQUEST FOR QUALIFICATIONS  
FOR  
SPECIAL COUNSEL FOR PROPERTY ACQUISITION  
AND CONDEMNATION LITIGATION

DATE ISSUED: OCTOBER 3, 2013  
PROPOSALS DUE: OCTOBER 10, 2013

ANSWERS TO QUESTIONS RECEIVED BY 5:00 P.M. ON OCTOBER 8, 2013

- Q1. Our firm represents private clients whose FERC-certificated projects may cross Green Acres restricted properties or properties with conservation easements held by the NJDEP, a municipality, or a non-profit. As such, our firm would assist them in the diversion process or the statutory requirements for the partial release of the conservation restriction. We may also assist them in obtaining the necessary permits for a Project from the Land Use Program, etc. Would this be considered a per se conflict?
- A1. Based on the information provided, it does not appear that this would be considered a per se conflict. In accordance with Section 4.1 of the RFQ, Special Counsel should evaluate whether a conflict otherwise exists under the applicable Rules of Professional Conduct.
- Q2. We represent a private client who named NJDEP as a defendant in a multi-defendant condemnation/declaratory judgment action (around December of 2012). The condemnation was for the temporary use of a preexisting access road that crossed several private, County, non-profit, and three NJDEP owned parcels. We expect this matter to be resolved within the next six (6) months. We assume this is a per se conflict. Can you please confirm?
- A2. Based on the information provided, this would appear to be a per se conflict since you represent a client directly adverse to NJDEP in a condemnation matter.
- Q3. Specify what types of costs must be advanced by Special Counsel. Does advancing costs by Special Counsel exclude engineers, environmental, title searches and appraisers?
- A3. Section 4.3 of the RFQ states that Special Counsel "shall have resources sufficient to advance all costs, including

the costs of any necessary experts." The types of experts identified would not be excluded from the costs to be advanced by Special Counsel absent unusual circumstances.

Q4. Page 14 of the RFQ provides, in pertinent part, that "[y]our proposal must include all of the firms and/or certifications required by Exhibit A." However, upon review of Exhibit A, the following additional information appears:

1. Ownership Disclosure (includes Certification of Non-Involvement in Prohibited Activities in Iran): may be completed and submitted "either with the proposal or with the signed Retention Agreement."

2. Affirmative Action Supplement: may be completed and submitted "either with the proposal or with the signed Retention Agreement."

3. New Jersey Business Registration: "must be submitted with the signed Retention Agreement."

4. Certification of Non-Involvement in Prohibited Activities in Iran: See #1, above.

5. New Jersey State W-9 and Vendor Questionnaire: "shall be returned with the Retainer Agreement."

6. Two-Year Chapter 51/ Executive Order 117 Certification and Disclosure of Political Contributions: "prior to finalization of the Retention Agreement."

7. Disclosure Requirement of P.L. 2005, c. 271: "[p]rior to being retained, the Special Counsel anticipated to be selected will be required to submit Chapter 271 disclosures if the cost of the Retention Agreement is anticipated to be in excess of \$17,500."

Accordingly, unless superseded by the terms and conditions of the RFQ, it would appear that none of the forms included in Exhibit A are required at the time of the proposal, but, rather, are conditions precedent to execution of a Retention Agreement with selected Special Counsel. Please confirm which, if any, of the forms included in Exhibit A must be completed and submitted with the proposal.

- A4. None of the forms are required to be signed when the proposal is submitted. However, all are conditions precedent to retention.
- Q5. Could additional information be supplied regarding the above. The Request just came today.
- A5. The Division of Law may only provide information in accordance with Section 5.2 of the RFQ.

## 1.0 PURPOSE AND INTENT

The Attorney General of New Jersey, through the Department of Law and Public Safety, Division of Law (“the Attorney General”), serves as the legal representative and counsel for the departments, boards, offices, commissions, and other instrumentalities of State government, its officers and employees. The Attorney General issues this Request for Qualifications (“RFQ”) intending to select Special Counsel for the Scope of Services as described in Section 2.0.

### 1.1 MINIMUM QUALIFICATIONS

The Attorney General seeks law firms with five (5) or more years of experience in property acquisition and condemnation litigation.

### 1.2 BACKGROUND

The NJ Department of Environmental Protection (“NJDEP”) and the United States Army Corps of Engineers (“USACE”) propose to construct a system of protective sand dunes, replenished beaches, and other flood hazard risk reduction measures (the “Project”) in certain New Jersey municipalities bordering the Atlantic Ocean and other tidal waters. In connection with the Project, the Governor issued Executive Order No. 140 on September 25, 2013. Among other things, the Order instructs that the Office of Flood Hazard Risk Reduction Measures (“Office”) be created within the NJDEP to lead and coordinate efforts to acquire all easements necessary for the Project. The Order also instructs the Attorney General, in conjunction with the Office, to take action to coordinate those legal proceedings necessary to acquire the needed real property interests. Through this RFQ the Attorney General seeks Special Counsel to assist the Attorney General in carrying out the directives of Executive Order No. 140. Special Counsel will work for the Attorney General in his representation of the Office.

To undertake the Project, approximately 1,000 easements must be acquired from private property owners from Monmouth County to Cape May County. The NJDEP is authorized by,

among other laws, N.J.S.A. 12:3-64 to acquire lands or rights therein by gift, devise or purchase, or by condemnation in the manner provided in the Eminent Domain Act of 1971, N.J.S.A. 20:3-1, et seq. This authority will be delegated to the Office, which will be represented by the Attorney General with the assistance of Special Counsel. The Project will receive federal funding, and all property acquisitions must comply with USACE property acquisition requirements, including the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970.

## 2.0 SCOPE OF SERVICES

The firm(s) selected as Special Counsel must have eminent domain/real property acquisition experience (as set forth in 6.3 below) and will be required to work with the Division of Law to provide legal advice and representation to acquire the easements or other property interests for the Project, including advising on or conducting bona fide negotiations with property owners. When negotiations result in the acquisition of easements without the need for condemnation litigation, the firm will be responsible for assisting the Division of Law in completing the acquisition process by preparing all necessary documents and agreements. In the remaining cases where negotiations are unsuccessful, the firm will be responsible for assisting the Division of Law in handling all phases of condemnation litigation, including filing all pleadings and prosecuting commission hearings, conducting jury trials to determine just compensation, if necessary, and if requested by the Division of Law, handling appeals of trial court orders or judgments.

For each case, Special Counsel will be required to assist the Division of Law to obtain title work, surveys, appraisals, and any other expert reports upon which to base bona fide negotiations, unless such information is provided by the Office. The Office will identify the properties for which easements will be acquired and will provide maps and/or descriptions of the easements. Special Counsel will be expected to follow the condemnation procedures and legal

positions established by the Division of Law, including procedures established to track all property acquisitions and litigation matters and to ensure compliance with State and federal requirements. Sample, standardized pleadings will be provided by the Division of Law.

If there is a voluntary acquisition, Special Counsel shall assist the Division of Law in preparing any required agreements and closing documents in coordination with the Office project officer and legal assistant, properly record all documents, and prepare documentation for the Office and the Division of Law.

For the various property acquisitions, it is possible that Special Counsel, assisting the Division of Law, may work with the local counsel for the involved municipality. The municipality may be a party to various litigations, may be involved in the negotiations with the property owners, and may have other involvements in the acquisition process. In such cases, Special Counsel, assisting the Division of Law, shall coordinate with local counsel for the involved municipality in carrying out the acquisition efforts.

The Division of Law will assign a single point of contact to coordinate the activity of the Special Counsel. In the event that point of contact is not a Deputy Attorney General or Assistant Attorney General, the Division of Law will also designate a Deputy Attorney General or Assistant Attorney General for each retention in accordance with the State of New Jersey, Department of Law and Public Safety, Office of Attorney General Outside Counsel Guidelines (“Guidelines”).

### 3.0 TERM

The term of the Special Counsel designation made pursuant to this RFQ will be for a period of three (3) years, or until such time as the Attorney General designates a new list of Special Counsel for property acquisition and condemnation matters pursuant to a RFQ, provided however that the Special Counsel designation shall also continue for a sufficient period to complete all assigned cases.



#### 4.0 OUTSIDE COUNSEL GUIDELINES

Counsel designated as Special Counsel and retained on any specific matter shall be required to comply with the Guidelines available for review at:

*[http://www.nj.gov/oag/law/pdf/rfqs/oag-dol-Outside-Counsel-Guidelines-v4\\_012111\\_MBW.pdf](http://www.nj.gov/oag/law/pdf/rfqs/oag-dol-Outside-Counsel-Guidelines-v4_012111_MBW.pdf)*

The Guidelines may be updated from time to time. Such updates will be available at the same link. If your firm is designated as Special Counsel, by submitting a proposal you agree that whenever your firm is retained, it shall abide by the Guidelines as written, as well as with any updates that may be made during the term.

#### 4.1 CONFLICT OF INTEREST

Section III of the Guidelines requires that counsel be free of any conflict of interest. Please note that the State, as a public entity, is precluded by the Rules of Professional Conduct from waiving conflicts of interest. See R.P.C. 1.7(a)(2), (b)(2). If your firm is designated as Special Counsel, you have a continuing obligation during the term to disclose to the Attorney General any actual or potential conflicts. Additionally, retained counsel shall not disclose any confidential information learned or received in any way as part of a retention, either during the retention or at any time after the retention has concluded.

For purposes of this engagement, the client will be the Office. As such, the fact that your firm may represent private parties in unrelated matters adverse to the NJDEP (or any of its units) does not act as a per se conflict of interest. The only circumstance that the Attorney General will consider a per se conflict is if your firm represents a client adverse to the NJDEP (or any of its units) in a condemnation matter. Thus, if your firm represents another client in a non-condemnation matter adverse to the NJDEP (or any of its units), there is no per se conflict. But if your firm represents another client in a condemnation matter adverse to the NJDEP (or any of its units), there is a per se conflict.

If there is not a per se conflict, then there will only be a conflict of interest if one exists pursuant to the standards of R.P.C. 1.8(k) or any other applicable Rule of Professional Conduct.

#### 4.2 ELECTRONIC BILLING

Special Counsel retained for a specific matter(s) shall be required to electronically bill the Division of Law for their services in accordance with the Guidelines.

#### 4.3 COSTS

Special Counsel shall have resources sufficient to advance all costs, including the costs of any necessary experts. Billing for costs shall be done in accordance with the Guidelines.

#### 5.0 RFQ PROCESS

##### 5.1 SUBMISSION

A sealed original and three (3) sealed copies of the proposal, including the cover sheet provided in Exhibit B, and all forms and certifications required in Exhibit A, must be marked **“Special Counsel RFQ for PROPERTY ACQUISITION AND CONDEMNATION LITIGATION”** and delivered no later than 3:00 p.m. on the proposal due date appearing on the cover of this RFQ, to:

LESLIE M. GORE  
ASSISTANT ATTORNEY GENERAL  
DIVISION OF LAW  
25 MARKET STREET, FIRST FLOOR  
TRENTON, N.J. 08625-0112

Proposals may not be delivered by fax. Proposals may be delivered by e-mail (with attached MS Word or .pdf files) with the subject line of the email specifically marked **“PROPERTY ACQUISITION AND CONDEMNATION PROPOSAL”** to:

[rfquestions@dol.lps.state.nj.us](mailto:rfquestions@dol.lps.state.nj.us)

##### 5.2 RFQ QUESTION AND ANSWER PERIOD

The Division of Law will accept questions pertaining to this RFQ from all potential bidders electronically. Questions shall be directed to Leslie M. Gore, AAG, at the following email address:

rfquestions@dol.lps.state.nj.us

Please note that the subject line of your email must specifically be marked "Question about Special Counsel RFQ for PROPERTY ACQUISITION AND CONDEMNATION LITIGATION." Questions will be accepted until 5:00 p.m. on the date for question and answer cut-off appearing on the cover of this RFQ. Answers to all questions received will be published solely as an addendum posted on the Division of Law's website.

#### 5.3 ADDENDA TO THE RFQ

In the event that it becomes necessary to clarify or revise this RFQ, such clarification or revision will be by addendum. Any addendum to this RFQ will become part of this RFQ and part of any designation of a firm as special counsel as a result of this RFQ. The due date for proposals may be changed by an addendum.

Any addendum will be published solely on the Division of Law's website:

<http://www.nj.gov/oag/law/rfqs.htm>

No addendum will be mailed to any bidder, even if the bidder received the RFQ by mail for any reason.

#### 5.4 SOLE RESPONSIBILITY OF THE BIDDER TO MONITOR FOR ADDENDA

It is the sole responsibility of the bidder to make itself knowledgeable of any addendum to this RFQ. Any addendum will be published solely on the Division of Law's website.

#### 5.5 PUBLIC RECORDS

All documents and information submitted in response to this RFQ generally shall be made available to the general public as required by applicable law.

## 5.6 STATE NOT RESPONSIBLE FOR COSTS

The State shall not be responsible for any expenses in the preparation and/or presentation of the proposals and oral interviews, if any, or for the disclosure of any information or material received in connection with the solicitation, whether by negligence or otherwise.

## 6.0 REQUIRED COMPONENTS OF PROPOSAL IN RESPONSE TO THIS RFQ

Proposals submitted in response to this RFQ must respond to each of the following requests in the order indicated. Please do not place each response on a separate piece of paper. Please provide the information requested below for all counsel who may perform any of the requested services.

### 6.1 COVER SHEET

Complete the cover sheet attached as Exhibit B with the name, address of your firm, contact information for this proposal and the number of attorneys in your firm. The number of attorneys in your firm shall be used to determine if your firm is a large or small law firm for purposes of developing lists of large and small firms to be designated as Special Counsel in order to further the State's interests in promoting small businesses and in facilitating the handling of matters for the State.

### 6.2 FIRM PROFILE

- A. Indicate the date your firm was established.
- B. Describe your firm's specialty and/or area(s) of expertise.
- C. Identify the number of employees in your firm in the following categories:  
licensed attorneys; legal support staff; other support staff.
- D. Indicate whether you are a small firm. For the purposes of this RFQ, a small firm has fewer than twenty (20) full- or part-time attorneys. Any

firm with twenty (20) or more full- or part-time attorneys will be deemed a medium/large firm.

- E. Describe the participation of women and minorities in your firm. Please note the number of women partners and associates and minority partners and associates and indicate the percentage of your firm that is owned by women and by minorities.
- F. Provide a description of your firm's presence in New Jersey. Note the location of each office, the number of attorneys resident in each office, whether they are partners or associates, and whether attorneys not licensed in the State of New Jersey will be assigned to provide any of the requested legal services if your firm receives a designation pursuant to this RFQ.
- G. Identify any State agencies or departments represented by the firm during the last five (5) years. For each matter, provide the name of the State agency or department, a description of the matter, the dates of the engagement, and the name and contact information of the State employee responsible for overseeing the work of the firm on that matter.
- H. Identify any State agencies or departments before or against which the firm has regularly appeared on behalf of other clients. Please note that the State, as a public entity, is precluded by the Rules of Professional Conduct from waiving conflicts of interest. See R.P.C. 1.7(a)(2), (b)(2).
- I. Identify any State agency that the firm would be unwilling to represent if, as a consequence of that representation, the firm would be precluded from representing other clients in matters adverse to or pending before that agency. In evaluating the possibility of conflicts of interest, counsel are directed to review Section III of the Guidelines, as well as Section 4.1 of

this RFQ. If your firm is designated as special counsel, you have a continuing obligation to disclose to the Attorney General of New Jersey any actual or potential conflicts. Additionally, retained counsel must agree not to disclose any confidential information learned or received in any way as part of any retention.

- J. Identify any governmental entities, agencies, or political subdivisions, other than the State of New Jersey, that the firm represents or has represented. Include the time period during which the firm represented each such agency and the nature of the work performed.
- K. Describe the firm's approach to maintaining responsive communication with the Division of Law and keeping the State informed of problems and progress.
- L. Provide a representative listing of the firm's major private and public sector clients.

### 6.3 QUALIFICATIONS AND EXPERIENCE IN AREA OF LAW

- M. Describe your firm's experience in litigation pertaining to property acquisition and condemnation litigation generally, and list matters the firm has handled or litigated in this practice area since 2005 (identifying by case name and legal citation, if any), including the result of such litigation, and the attorneys from the firm assigned to the case.
  - 1. For the general explanation, explain the firm's level of familiarity with using appraisals and presenting expert testimony in fields of appraising, planning, and engineering (including "cost-to-cure" testimony and supporting testimony to underlying assumptions of

appraisals), as well as specific experience with regard to condemnation hearings and jury trials.

2. For the list of matters handled or litigation, indicate whether each matter was resolved by property acquisition without need for litigation, or whether and to what stage litigation was required. Briefly explain the nature of the case, whether the taking was entire or partial, and the specific outcome of the case. For each case state whether it involved the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq., the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, or uniform federal condemnation requirements.

N. Identify and give the office location of each attorney who practices in the area of the law relevant to this RFQ.

O. Please indicate the percentage of your firm's practice that is in this area.

P. List all attorneys in your firm that have at least five (5) years of experience in litigation pertaining to this area.

Q. Proposed Staffing Plan: Provide a proposed and scalable staffing plan for the work that the firm may be assigned as Special Counsel that includes:

a. The qualifications and experience of the particular attorneys proposed to staff the work. For each attorney that would be involved in handling the work as Special Counsel pursuant to this RFQ, provide detailed information including information as to the areas listed below. You may also attach a résumé for each attorney.

1. Education, including advanced degrees.

2. Years and jurisdictions of admission to practice.

3. Number of years engaged in practice in the area of law relevant to this RFQ.
  4. General legal or other relevant work experience including an indication of whether the individual has tried any cases and, if so, approximately how many.
  5. Any professional distinctions in property acquisition and condemnation litigation (e.g., articles published, teaching experience, professional awards, or any other professional distinction in property acquisition and condemnation litigation).
  6. Area(s) of specialization.
  7. Office location of the attorney.
- b. A description of the role each would play and the approximate percentage of the work that each would perform. Percentages for junior lawyers may be listed separately or in the aggregate.
  - c. A description of your firm's approach, manpower, and technical resources to handle document intensive matters, including handling electronically stored information. Indicate whether your firm uses a vendor for any aspect of these approaches, and if so when and to what extent.

#### 6.4 Other Qualification Information

- A. Identify all adverse determinations against your firm or any of its partners, associates or employees or persons acting on its behalf, with respect to actions, proceedings, claims, or complaints of any kind under any local, State or Federal laws, regulations, court rules, or Rules of Professional Conduct.



- B. Identify and describe in detail any indictments, convictions, or civil offenses arising directly or indirectly from the conduct of business by your firm or any of its partners, associates, employees, or agents.
- C. Identify any material arrangements, relationships, associations, employment, or other contacts that may cause a conflict of interest or the appearance of a conflict of interest if your firm is retained as Special Counsel.
- D. Identify your firm's malpractice insurer and describe the insurance limits.
- E. Confirm that your firm covers litigation costs, any bonds required by a court, and any potential liability under Fed. R. Civ. P. 11.
- F. Confirm that your firm agrees to abide by the Outside Counsel Guidelines billing procedures.
- G. Confirm that upon retention, your firm will provide updated Ownership Disclosure, Affirmative Action Supplement with Affirmative Action Employee Information Report, and the certifications required by Public Law 2005, Chapters 51 and 271, and Executive Order 117 (2005) as further explained in Exhibit A. These forms are initially required by this RFQ and then required by law again at any retention.

## 7.0 FEES

For the Property Acquisition and Condemnation Litigation practice area, the rates will be \$200 per hour for partners, \$150 per hour for other lawyers, \$125 per hour for clerks and law assistants (summer associates or law school graduates awaiting bar results), and \$90 per hour for paralegals.

## 8.0 ADDITIONAL TERMS

### 8.1 ADDITIONAL REQUIREMENTS FOR ALL OFFICE OF ATTORNEY GENERAL, DIVISION OF LAW RETENTION AGREEMENTS – EXHIBIT A

The Additional Requirements set forth in Exhibit A are material terms of any Retention Agreement resulting from this RFQ. Your proposal must include all of the forms and/or certifications required by Exhibit A. Note, however, that a firm selected as Special Counsel shall have to submit updated certifications or forms if it also is retained for a specific matter(s), when required by law.

### 8.2 NO ENDORSEMENT

Designation as Special Counsel does not constitute an endorsement by the State of New Jersey, the Attorney General, or the Department of Law and Public Safety. A firm designated as Special Counsel may not promote or advertise its designation without permission of the Attorney General.

### 8.3 EFFECT OF SUBMITTING A PROPOSAL

Submission of a proposal in response to this RFQ will not bind or otherwise obligate the State of New Jersey to include the responding firm on the list of Special Counsel.

### 8.4 EFFECT OF INCLUSION ON LIST

Inclusion of a firm on the list of designated Special Counsel will not bind or otherwise obligate the State of New Jersey to retain the listed firm for legal services. Inclusion on the list of designated Special Counsel will not guarantee any other form of employment or engagement.

### 8.5 ATTORNEY GENERAL AUTHORITY NOT CONSTRAINED

Nothing in this RFQ is intended to limit or constrain the discretion of the Attorney General in exercising any authority, duty, prerogative, or power established or recognized by the Constitution, statutes, executive orders, regulations, or case law.

## 9.0 SELECTION PROCESS

### 9.1 PROPOSAL RESPONSIVENESS

All proposals will be reviewed to determine responsiveness. The Attorney General may reject non-responsive proposals without evaluation, but may waive minor non-compliance.

### 9.2. PROPOSAL MINIMUM QUALIFICATIONS

Proposals that fail to meet the Minimum Qualifications set forth in Section 1.1 will be immediately rejected and will not be evaluated or ranked.

### 9.3 EVALUATION OF PROPOSALS

An evaluation committee, with a minimum of three (3) members, will evaluate responsive proposals using the following evaluation criteria categories, separate or combined in some manner, and not necessarily listed in order of significance:

1. Knowledge and experience of attorneys in the area of condemnation.
2. Additional resources, relevant practice areas and experience of the firm.
3. Proposed staffing plan.
4. Number of condemnation proceedings the firm can accommodate under the proposed staffing arrangement.
5. The firm's approach to communication with the Division of Law and ability to communicate electronically.
6. Past experience of the firm with DEP, U.S. Army Corps of Engineers and/or the State in general.

### 9.4 RANKING AND RECOMMENDATION OF PROPOSALS

The evaluation committee will rank proposals based on the criteria in Section 9.3, and will recommend to the Attorney General the firms whose proposals it finds to be most advantageous to the State for designation at Special Counsel. The recommended firms may be

divided into two lists, large firms (firms with twenty (20) or more attorneys) and small firms (firms with fewer than twenty (20) attorneys) in order to further the State's interests in promoting small businesses and in facilitating the handling of matters for the State.

#### 9.5 OPTIONAL INTERVIEWS OR ORAL PRESENTATIONS

The Attorney General reserves the right, in his sole discretion, to require interviews or oral presentations from the most qualified firms that submitted proposals prior to making a final determination.

#### 9.6 DESIGNATION AND APPROVAL

The recommendation(s) are submitted to the Attorney General for his determination, in his discretion, as to which firm(s), if any, shall be designated as Special Counsel, and his designations must be approved by the Governor, in his discretion.

#### 9.7 NOTIFICATION

The Division of Law shall notify any firm in writing of its selection as Special Counsel, and the firms designated as Special Counsel shall be posted on the Division of Law's website at:

<http://www.nj.gov/oag/law/outside-counsel.htm>

#### 9.8 RESERVED RIGHTS

The Attorney General reserves the right to reject any and all proposals received in response to this RFQ when determined to be in the State's best interest, and to waive minor noncompliance in a proposal. The Attorney General further reserves the right to make such investigations as he deems necessary as to the qualifications of any and all firms submitting proposals in response to this RFQ. In the event that all proposals are rejected or if the Attorney General, at any time, deems the number of qualified firms receiving designations as the result of this RFQ to be insufficient to meet the potential needs of the Division of Law, the State reserves the right to re-solicit proposals.

## 10.0 SPECIAL COUNSEL DESIGNATIONS AND RETAINER AGREEMENTS

### 10.1 SPECIAL COUNSEL DESIGNATION

A firm selected pursuant to this RFQ for designation as Special Counsel, with the approval of the Attorney General and the Governor, will be the subject of a Special Counsel designation, pursuant to N.J.S.A. 52:17A-13. A firm may not represent the State unless it is given a Special Counsel designation. A Special Counsel designation, however, is not a retention for a specific matter and does not entitle a firm to be retained for a specific matter. The terms and conditions set forth in this RFQ shall be the terms and conditions of the Special Counsel Designation.

### 10.2 RETENTION LETTER

A firm may not represent the State unless it also executes a retention letter for a specific matter or class of matters. A firm selected as Special Counsel and placed on a list may, from time to time, be contacted by the Division of Law for retention on a specific matter. At that time, if the firm agrees to the retention, the firm may be required to submit updated certifications, as required by Exhibit A, and will receive a retention letter to countersign. The terms and conditions set forth in this RFQ shall be included in addition to the terms and conditions in the Retainer Letter.

## 11.0 ATTACHMENTS

Attachments to this RFQ are:

Exhibit A – Additional Terms

Exhibit B – Cover Sheet

## Exhibit A to Special Counsel Retention Agreements

These additional terms and conditions are required by law, as indicated herein (Additional Terms) and shall be executed by the Special Counsel prior to the Division of Law executing any Special Counsel Retention Agreement with the Division of Law on behalf of any of its clients. These Additional Terms shall be incorporated into any Special Counsel Retention Agreement (Retention Agreement) executed by the Division of Law.

These Additional Terms are incorporated in the Retention Agreement identified as:

\_\_\_\_\_

**I. The Special Counsel shall complete the following forms or otherwise satisfy the following requirements prior to the State executing a Retention Agreement with Special Counsel:**

**A. Ownership Disclosure**

The Ownership Disclosure addresses the requirements of N.J.S.A. 52:25-24.2, for any contract or retention agreement and must be completed and submitted either with the proposal or with the signed Retention Agreement. The Retention Agreement cannot be completed unless and until the Ownership Disclosure is properly completed and accepted. The form can be downloaded from the Department of Treasury website under the heading Vendor Forms. It is located on the first two pages of this pdf:

<http://www.state.nj.us/treasury/purchase/forms/StandardRFPForms.pdf>

**B. Affirmative Action Supplement with Affirmative Action Employee Information Report**

The Affirmative Action Supplement with Affirmative Action Employee Information Report addresses the requirements of N.J.S.A. 10:5-31 to -34 and N.J.A.C. 17:27.3.1 et seq., for any contract or retention agreement and must be completed and submitted either with the proposal or with the signed Retention Agreement. The terms of the Affirmative Action Supplement with Affirmative Action Employee Information Report are incorporated into this Retention Agreement. The Retention Agreement is not completed unless and until the form is properly completed and accepted. The forms can be downloaded from the Department of Treasury website under the heading Vendor Forms:

[http://www.state.nj.us/treasury/purchase/forms/AA\\_%20Supplement.pdf](http://www.state.nj.us/treasury/purchase/forms/AA_%20Supplement.pdf)

The specific language of N.J.A.C. 17:27-3.5 and 17:27-3.7, contains specific requirements for Special Counsel Retention Agreements and is hereby incorporated as if set forth at length herein.

**C. New Jersey Business Registration**

Pursuant to N.J.S.A. 52:32-44 (b), a copy of a valid New Jersey Business Registration must be submitted with the signed Retention Agreement. If not already registered with the New Jersey Division of Revenue, registration can be completed on line at the Division of Revenue website:

<http://www.state.nj.us/treasury/revenue/busregcert.shtml>

**D. Certification of Non-Involvement in Prohibited Activities in Iran**

Pursuant to N.J.S.A. 52:32-58, Special Counsel must certify that neither Special Counsel, nor one of its parents, subsidiaries, and/or affiliates (as explained in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If Special Counsel is unable to so certify, Special Counsel shall provide a detailed and precise description of such activities. The form is on the fifth page of the pdf available at:

<http://www.state.nj.us/treasury/purchase/forms/StandardRFPForms.pdf>

**E. New Jersey State W-9 and Vendor Questionnaire**

No Special Counsel shall be paid unless Special Counsel has properly completed New Jersey State W-9 and Vendor Questionnaire on file with the State. If the Special Counsel does not have a New Jersey State W-9 and Vendor Questionnaire on file with the State, the properly completed W9 shall be returned with the Retainer Agreement signed by the Special Counsel. A copy may be obtained from your Division of Law Contact.

**F. Two-Year Chapter 51/Executive Order 117 Certification and Disclosure of Political Contributions**

Prior to entering any Retention Agreement retention agreement under which the State will pay more than \$17,500 to the Business Entity proposed as the Special Counsel, the Business Entity shall submit the Certification and Disclosure form, certifying that no contributions prohibited by Chapter 51 have been solicited or made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C. §527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7.

The required form and instructions for completion and submission to the Deputy Attorney General prior to the finalization of the Retention Agreement are available for review on the Purchase Bureau website, under the heading "Political Contributions Compliance" at

<http://www.state.nj.us/treasury/purchase/forms.shtml>

If the Special Counsel has a currently valid Two-Year Chapter 51/Executive Order 117 Vendor Certification it may be submitted instead of a new form.

**Special Counsel is required, on a continuing basis, to report any contributions and solicitations Special Counsel makes during the term of the Retention Agreement, and any extension(s) thereof, at the time any such contribution or solicitation is made. Failure to do so is a breach of the Retention Agreement.**

Special Counsel's failure to submit the form will preclude the Division of Law's execution of the Retention Agreement. The State Treasurer or his designee shall review the Disclosures submitted by the Special Counsel pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended Special Counsel, prior to award, or during the term of the retention agreement. If the State Treasurer determines that any contribution or action by the Special Counsel violated Chapter 51 and EO 117 the State Treasurer shall disqualify the Special Counsel from award of such contract. If the State Treasurer or his designees determines that any contribution or action constitutes a breach of contract that poses a conflict of interest, pursuant to Chapter 51 or EO 117, the State Treasurer shall disqualify the Special Counsel from award of such contract.

**G. Disclosure Requirement of P.L. 2005, c. 271**

Pursuant to P.L. 2005, c.271 ("Chapter 271") every Business Entity is required to disclose its (and its principals') political contributions within the immediately preceding twelve (12) month period. No prospective Special Counsel will be precluded from being retained by virtue of the information provided in the Chapter 271 disclosure, provided the form is fully and accurately completed. Prior to being retained, the Special Counsel anticipated to be selected will be required to submit Chapter 271 disclosures if the cost of Retention Agreement is anticipated to be in excess of \$17,500. The form is available for your review at:

<http://www.state.nj.us/treasury/purchase/forms/CertandDisc2706.pdf>

## II. Special Counsel Certification

### A. Source Disclosure Certification

Special Counsel's execution of these Additional Terms to the Retention Agreement will confirm that Special Counsel agrees, in accordance with Executive Order 129 (2004) and N.J.S.A. 52:34-13.2 (P.L. 2005, c. 92), that all services performed for the Retention Agreement shall be performed within the United States. In the event that all services performed for the Retention Agreement shall NOT be performed within the United States, Special Counsel shall send the Deputy Attorney General who executes the Retention Agreement a letter that states with specificity the reasons why the services cannot be so performed. Any such letter shall require review and approval pursuant to N.J.S.A. 52:34-14.2 prior to execution of this Retention Agreement.

## III. The Special Counsel acknowledges that the Retention Agreement is subject to the following additional terms and conditions:

### A. Breach of Requirements of Chapter 51 and Executive Order 117 (2008) (Also referred to as "Pay to Play Restrictions," N.J.S.A. 19:44A-20.13 to -20.25, or Executive Order 134(2004))

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts, including retention agreements, from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted P.L. 2005, c.51 (codified at N.J.S.A. 19:44A-20.13 - 25) (Chapter 51), on March 22, 2005, effective retroactive to October 15, 2004, superseding the terms of Executive Order 134(2004). In addition, on September 24, 2008, Executive Order 117 was issued and made effective on November 15, 2008 (EO 117) which set forth additional limitations on the ability of executive branch agencies to contract with business entities that have made or solicited certain contributions. Pursuant to the requirements of Chapter 51 and EO 117, it shall be a material breach of the terms of the Retention Agreement for the Business Entity to do any of the following:

1. make or solicit a contribution in violation of the Chapter 51 or EO 117;
2. knowingly conceal or misrepresent a contribution given or received;
3. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
4. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor, or of Lieutenant Governor, or to any State, county or municipal party committee, or any legislative leadership committee;
5. engage or employ a lobbyist or Special Counsel with the intent or understanding that such lobbyist or Special Counsel would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of Chapter 51 or EO117;
6. fund contributions made by third parties, including Special Counsels, attorneys, family members, and employees;
7. engage in any exchange of contributions to circumvent the intent of the Chapter 51 or EO 117; or
8. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Chapter 51 or EO 117.



## **B. New Jersey Conflict of Interest Law**

The New Jersey Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq. and Executive Order 189 (1988), prohibit certain actions by persons or entities which provide goods or services to any State Agency. Specifically:

1. No Special Counsel shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such Special Counsel transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
2. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any Special Counsel shall be reported in writing forthwith by the Special Counsel to the Attorney General and the Executive Commission on Ethical Standards.
3. No Special Counsel may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Special Counsel to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
4. No Special Counsel shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
5. No Special Counsel shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Special Counsel or any other person.
6. The provisions cited above in paragraph H(I). through H(V) shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with Special Counsel under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

## **C. Obligation to Maintain Records**

Special Counsel shall maintain all records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment under the Retention Agreement unless otherwise specified in the Retention Agreement. Such records shall be made available to the State, including the Comptroller, for audit and review upon request.

**IV. The Special Counsel is hereby notified of the following:**

**A. Chapter 271 Annual Disclosure Statement Filing Requirement**

If Special Counsel receives contracts in excess of \$50,000 from a public entity during a calendar year, the Special Counsel is responsible to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3) It is Special Counsel's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financing penalties by ELEC. Additional information about this requirement is available from ELEC at (888)313-3532 or <http://www.elec.state.nj.us/>

**B. Set-off for State Taxes**

Pursuant to N.J.S.A. 54:49-19 et seq. (P.L. 1995, c159), and notwithstanding the provision of any other law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-19. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

**Special Counsel hereby agrees to and executes these Additional Term and Conditions:**

**Special Counsel Signature:** \_\_\_\_\_

**Special Counsel Name:** \_\_\_\_\_

**Special Counsel Firm:** \_\_\_\_\_

**Date:** \_\_\_\_\_



EXHIBIT B:  
COVERSHEET, AGREEMENT AND CERTIFICATION FOR  
STATE OF NEW JERSEY DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF LAW  
PROPOSAL FOR SPECIAL COUNSEL DESIGNATION

Name of Special Counsel RFQ to which you are responding:

PROPERTY ACQUISITION AND CONDEMNATION PROPOSAL

Firm Name: \_\_\_\_\_

Firm Address: \_\_\_\_\_  
\_\_\_\_\_

Number of Attorneys in the Firm: \_\_\_\_\_

Attorney to Contact for this Proposal: \_\_\_\_\_

Telephone Number of Contact for this Proposal: \_\_\_\_\_

Email Address of Contact for this Proposal: \_\_\_\_\_

AGREEMENT AND CERTIFICATION

By submitting this proposal:

I agree, on behalf of my firm, that my firm will abide by the Outside Counsel Guidelines available at: <http://www.nj.gov/oag/law/rfqs.htm> and with any updates thereto during the term of a Special Counsel Designation and in the event that my firm is retained by the Division of Law.

I understand that in the event that my firm is selected and receives a Special Counsel Designation, the Special Counsel Designation is not a guarantee that my firm will be retained for any matter.

I agree that in the event that my firm receives a Special Counsel Designation and is retained, my firm shall bill at the rates [set forth in the RFQ/set forth in the Special Counsel Designation], and that the rates shall not increase during the term of the Special Counsel Designation.

I am confirming all of the Statements in the RFQ that my firm is required to confirm.

I warrant that I have the authority to bind my firm to the Proposal submitted and to any retention my firm may receive as a result.

I certify that the information in this proposal has been reviewed by me and is true and accurate to the best of my knowledge.

\_\_\_\_\_  
Signature of Contact Attorney

\_\_\_\_\_  
Date