

REQUEST FOR QUALIFICATIONS FOR
SPECIAL COUNSEL IN CONNECTION WITH THE APPLICATION BY
HORIZON HEALTHCARE SERVICES, INC. D/B/A HORIZON BLUE
CROSS BLUE SHIELD OF NEW JERSEY TO CONVERT TO A FOR -
PROFIT HEALTH INSURER AND FOUNDATION PLAN

Issued by the
State of New Jersey
Department of Law & Public Safety

Date Issued:
August 21, 2008

Question and Answer Cut-off Date:
August 29, 2008

Proposals Due:
September 10, 2008

Anne Milgram
Attorney General

Robert Gilson
Director, Division of Law

State of New Jersey
Department of Law and Public Safety
Richard J. Hughes Justice Complex
25 Market St.
Trenton, NJ 08625

REQUEST FOR QUALIFICATIONS ("RFQ")
FOR
SPECIAL COUNSEL IN CONNECTION WITH THE APPLICATION BY HORIZON
HEALTHCARE SERVICES, INC. D/B/A HORIZON BLUE CROSS BLUE SHIELD
OF NEW JERSEY TO CONVERT TO A FOR -PROFIT HEALTH INSURER AND
FOUNDATION PLAN

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 and the Commissioner (the "Commissioner") of the Department of Banking and Insurance (the "Department") seek Special Counsel with expertise to provide such advice, assistance and representation as the Attorney General and the Commissioner and their designees, including staff of the Department may require in carrying out their duties in connection with the proposed conversion of Horizon Healthcare Services, Inc. d/b/a Horizon Blue Cross Blue Shield of New Jersey ("Horizon") to a domestic stock insurance company in accordance with N.J.S.A. 17:48E-49, et seq (the "Conversion Act"). Specifically, and as set forth in detail in Section 4.0, below, Special Counsel will be expected to provide advice related to insurance, regulatory, transactional and federal tax matters, particularly in relation to conversion of Blue Cross Blue Shield plans, negotiations with Horizon concerning stockholder rights, securities law, corporate law, tax law, assistance with public hearings, litigation in the Superior Court and such other matters as may be assigned by the Attorney General or the Commissioner.

2.0 PROPOSAL SUBMISSION

2.1 A sealed original and three (3) sealed copies of the proposal must be marked "Special Counsel RFQ For Horizon Conversion" and delivered or post marked **no later than 5:00 p.m. on SEPTEMBER 10, 2008** to the following:

ROBERT ROMANO (2 copies)
ASSISTANT ATTORNEY GENERAL
DIVISION OF LAW
P.O. BOX 112
TRENTON, N.J. 08625-0112

NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE (2 copies)
ATTN: GALE P. SIMON, ASSISTANT COMMISSIONER
LIFE AND HEALTH
20 WEST STATE STREET, 11TH FLOOR
P.O. BOX 325
TRENTON, N.J. 08625-0325

Proposals may not be delivered by fax or e-mail.

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

RFQ.QUESTIONS@DOL.LPS.STATE.NJ.US

Please note that the "subject" line of your e-mail must specifically reference the RFQ as follows: "Special Counsel RFQ for Horizon Conversion." Questions will be accepted until 5:00 pm on August 29, 2008.

2.3 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.

ALL RFQ ADDENDA WILL BE POSTED ON THE DEPARTMENT OF LAW AND PUBLIC SAFETY'S WEB SITE.

It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this RFQ.

2.4 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 she 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 submitting proposals in response to this RFQ to be insufficient to meet the potential needs of the Division of Law or the Department, the Attorney General reserves the right to re-solicit proposals.

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

2.6 The State will 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.

3.0 BACKGROUND

Horizon is a non-profit health service corporation organized under the laws of New Jersey pursuant to N.J.S.A. 17:48E-1 et seq. The Attorney General and the Commissioner seek to retain legal services to assist them in their review of Horizon's application to convert to a for-profit health insurer and for the establishment of a foundation(s) pursuant to the provisions of N.J.S.A. 17:48E-49 et seq.

Horizon has applied to convert to a for-profit health insurer pursuant to the provisions of the Conversion Act. The Conversion Act contemplates that Horizon will file with the Commissioner a conversion plan which will transfer ownership of Horizon to a publicly traded stock holding company ("Holding Company") and that 100% of the fair market value of the converted insurer will be contributed to one or more foundations ("Foundations"). Horizon's decision to effectuate the conversion and form the Foundation(s) is subject to review by the Attorney General and approval by the Superior Court, upon recommendation from the Attorney General. The transfer may involve a reorganization of ownership of Horizon's subsidiaries and affiliates. The contribution of value to the Foundation(s) may be in the form of stock, cash, or other assets. Stock contributed to the Foundation(s) may be subject to certain restrictions, including restrictions on divestiture and voting rights. An initial public offering ("IPO") and secondary offerings of Holding Company stock are anticipated, and other capital raising transactions are possible.

The Conversion Act further provides that the costs of advisors and consultants engaged by the Commissioner or the Attorney General are to be paid by Horizon.

4.0 SCOPE OF SERVICES

4.1 The Attorney General and the Commissioner wish to have access to counsel with substantial experience and expertise in the practice areas that are within the Scope of Services of this RFQ, as set forth in detail below. Counsel must also be free of any conflict of interest, and must comply with the conflicts policy referred to in Section 6.1.

4.2 Special Counsel shall provide guidance, analysis, and advice on the following issues, and if requested, provide formal opinions confirming their findings on these issues:

- 1) the completeness and reasonableness of both the conversion application, including the conversion plan, the forms of notice and corporate governance material, and the plan for the Foundation(s);
- 2) in consultation with the investment banking advisor engaged by the State, any proposed agreements between or among the Foundation(s), the converted insurer, or its parent corporation affecting the value of stock or other consideration received by the Foundation(s), including but not limited to, limitations on voting or sale of stock owned by the Foundation(s), and the effect of such limitations or other restrictions on the value of the stock;
- 3) in consultation with the investment banking advisor engaged by the State, whether the full fair market value of Horizon will be transferred to the Foundation(s), including matters relating to the necessity of or desirability of appraisals, the independence and expertise of the persons conducting appraisals, the completeness or deficiency of any appraisals, and the results or findings of appraisals;

- 4) assist in the conduct of public hearing(s), in the drafting of the Commissioner's final decision and the drafting of the Attorney General's recommendation to the Superior Court;
- 5) whether the plan for the Foundation(s) is fair and equitable, in accordance with law, and promotes the public interest;
- 6) the adequacy of the plan for the Foundation(s), including whether Horizon's Board of Directors exercised due diligence in deciding to effectuate the conversion and whether it established appropriate criteria in deciding how to pursue a conversion and considered the proposed conversion as the only alternative or the best alternative in relation to carrying out its mission and purposes.;
- 7) impact of any transactions occurring at the same time as the conversion, such as dividends and realignment of subsidiaries;
- 8) issues of corporate governance;
- 9) confidentiality issues, including those arising under the New Jersey Open Public Records Act;
- 10) stock based compensation and employee benefit programs post conversion; and
- 11) any other matters which the Attorney General and/or the Commissioner deem necessary in connection with the proposed conversion.

4.3 Special Counsel shall be available to meet with representatives of the Attorney General and Department staff, their consultants, Horizon, and Horizon's consultants as necessary to discuss the review and analysis of the Horizon conversion and any related transactions, including an IPO or other public or private sale of securities.

4.4 Special Counsel shall be available as necessary to attend or testify at public hearings or Superior Court proceedings, and shall assist the Attorney General and the Commissioner in preparation for such hearings or proceedings.

4.5 In carrying out this engagement, Special Counsel will perform all reviews of documents and hold and attend meetings necessary to adequately perform this engagement.

4.6 It is anticipated that the Attorney General and the Commissioner will engage consultants to provide investment banking, actuarial, accounting, and other services. Special Counsel is expected to work in concert with these other consultants. It is not contemplated that Special Counsel will need to separately engage such consultants in connection with its work on this matter.

5.0 MINIMUM QUALIFICATIONS

AT A MINIMUM, RESPONDING FIRMS MUST HAVE THE FOLLOWING QUALIFICATIONS:

- (1) Experience as regulatory counsel for a public entity;
- (2) Experience in transactional work for a public entity;
- (3) Expertise in insurance law and regulations, corporate law, corporate governance, shareholders' rights, securities law and federal tax law.

Failure by a firm to meet these minimum requirements will result in the proposal's immediate rejection.

6.0 REQUIRED COMPONENTS OF THE RFQ PROPOSAL

Proposals must respond to each of the following requests in the order indicated. Please provide the information requested below for all counsel who may perform any of the requested services

6.1 Firm Profile and Experience

- A. Indicate the date your firm was established.
- B. Describe the legal services provided by your firm.
- C. Describe your firm's specialty and/or area(s) of expertise.
- D. Identify the number of employees in your firm (licensed attorneys; legal support staff; other support staff).
- E. Indicate whether you are a small firm. For the purposes of this RFQ, a small firm has less 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.
- F. 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.
- G. Describe any special training or experience members of your firm possess that may assist in providing the requested legal services.
- H. 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 is selected as Special Counsel pursuant to this RFQ.

- I. 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.
- J. 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 RPC 1.7(a)(2) and RPC 1.7(b)(2).
- K. 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 the August 2, 1984 Opinion Letter of Attorney General Irwin I. Kimmelman (attached). 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 undertake any future representation that might result in the disclosure of the State's work product to potential or actual adversaries of the State.
- L. 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.
- M. Describe the firm's approach to maintaining responsive communication with the Division of Law and the Commissioner and keeping the Division of Law and the Commissioner informed of problems and progress.
- N. Provide a representative listing of the firm's major private and public sector clients.
- O. Provide the name, address, telephone number, e-mail address, and facsimile number for the contact person in your firm.

6.2 Qualifications and Experience

- A. Demonstrate specifically how the firm meets the Minimum Qualifications set forth above.
- B. Provide a comprehensive list of representations of a similar size and scope undertaken and successfully completed by the firm. Identify and give the office

location of each attorney who has expertise in the practice areas required by the Scope of Services. Please indicate what percentage of your firm's practice is in the practice areas referred to in the Minimum Requirements in Section 5.0 .

- C. List all attorneys in your firm that have at least five years experience pertaining to the practice areas set forth in the Minimum Requirements in Section 5.0.
- D. State the qualifications and experience of the particular attorneys proposed to staff the work. For each member of the firm that would be involved in handling the assignment as Special Counsel on behalf of the State, provide a detailed resume including information as to:
 - 1. Education, including advanced degrees;
 - 2. Years and jurisdictions of admission to practice
 - 3. Number of years engaged in practice in the designated practice area;
 - 4. General work experience
 - 5. Any professional distinctions in litigation or other legal practice (e.g., trial certification, teaching experience)
 - 6. Area(s) of specialization.
 - 7. Office location of the attorney.
- E. As to the members of the firm who would be involved in handling this assignment as Special Counsel, describe the role each would play in this assignment and the approximate percentage of the work that each would perform. Percentages for junior lawyers may be listed separately or in the aggregate.

6.3 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 acts as Special Counsel for this engagement.
- D. Identify your firm's malpractice insurer and describe the insurance limits.
- E. Confirm that your firm agrees to abide by the Standards for Submittal and Review of Special Counsel Invoices.

- F. Confirm that upon selection as Special Counsel your firm will provide all vender certifications required by Public Law 2005, Chapters 51 and 271.
- G. All Horizon contracts, including contracts with Horizon affiliates, with the bidder or any personnel proposed for this project must be disclosed in the proposal.

6.4 Additional Information

The terms and conditions set forth in this section are material terms of any contract resulting from this RFQ.

- A. The forms listed below must be completed and submitted with the bid proposal. They can be downloaded from the Department of Treasury website:
<http://www.state.nj.us/treasury/forms.html#pb>
 - Ownership Disclosure
 - MacBride Principles and Northern Ireland Act of 1989
 - Vendor Certification - Executive Order # 129 Compliance

NOTE: A copy of a valid New Jersey Business Registration must be submitted by the selected firm. If not already registered with the New Jersey Division of Revenue, registration can be completed online at the Division of Revenue website:
<http://www.state.nj.us/treasury/revenue/index.html>.

- B. Pursuant to Public Law 2005, Chapter 51 ("Chapter 51") State departments, agencies and authorities are precluded from awarding contracts exceeding \$17,500 to vendors who make certain political contributions on and after October 15, 2004, to avoid any appearance that the selection of State contractors is based on the contractors' political contributions. Chapter 51 also requires the disclosure of all contributions to any political organization organized under 26 U.S.C. 527 that also meet the definition of a continuing political committee within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The firm shall submit the required certification form(s) and disclosure form(s) which are attached with its proposals. Failure to submit such forms and/or failure of such forms to evidence compliance with Chapter 51 shall be cause for rejection of the firm's proposal. The firm selected as Special Counsel shall maintain compliance with Chapter 51, during the term of its engagement as Special Counsel.
- C. Pursuant to Public Law 2005, Chapter 271 ("Chapter 271"), amended by L. 2007, c.304 your firm is required to disclose its (and its principals') political contributions within the immediately preceding twelve (12) month period. No prospective firm will be precluded from serving as Special Counsel by virtue of the information provided in the Chapter 271 disclosure provided the form is fully and accurately completed. Prior to formal appointment, the firm anticipated to be selected as

Special Counsel for this engagement will be required to submit Chapter 271 disclosures.

Please also be advised of your responsibility 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) if your firm receives contracts in excess of \$50,000 from a public entity during a calendar year. It is your firm'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 www.elec.state.nj.us.

D. In accordance with Public Law 2005, Chapter 92, all services performed pursuant to this engagement shall be performed within the United States of America.

6.5 Fees

The firm should submit a blended hourly rate including the percentage discount the proposed hourly fee represents from the firm's customary hourly fee for similar work applicable to: (i) all attorneys; and (ii) all other persons, including law clerks and paralegals. Special Counsel hourly fees do not include reimbursables, such as computer time, postage, telephone charges, travel, duplicating, etc. Reasonable expenses will be reimbursed to your firm in accordance with the Attorney General's Standards for Submittal and Review of Special Counsel Invoices. Please see a copy of these Standards attached to this RFQ.

7.0 ADDITIONAL TERMS

- 7.1. No endorsement: Designation as Special Counsel does not constitute an endorsement by the State of New Jersey, the Attorney General, the Department of Law and Public Safety, the Commissioner or the Department of Banking and Insurance.
- 7.2. Effect of RFQ response: A response to this RFQ will not bind or otherwise obligate the State of New Jersey to retain the responding firm for legal services. Selection of a firm as Special Counsel for this engagement will not guarantee any other form of employment or engagement..
- 7.3. 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.

8.0 SELECTION PROCESS

- 8.1 All proposals will be reviewed to determine responsiveness. The Attorney General and the Commissioner may reject non-responsive proposals without evaluation, but may waive minor non-compliance. An Evaluation Committee consisting of the Attorney General and the Commissioner or their designees will evaluate responsive proposals. The following

evaluation criteria categories, separate or combined in some manner, and not necessarily listed in order of significance, will be used to evaluate proposals received in response to this RFQ:

Knowledge and experience of attorneys in the practice areas named in the Minimum Qualifications;

Knowledge and experience of the firm in the practice areas named in the Minimum Qualifications;

Resources of the firm;

Approach to communication with the Division of Law and the Department;

Past experience of the State with the firm and/or attorneys; and

Fees

- 8.2 Proposals will be ranked based on the above criteria. Special Counsel will be selected by the Attorney General after consultation with the Commissioner. The Attorney General reserves the right to reject any and all responses to the RFQ; waive any requirements or minor informalities; modify or amend, with the consent of the submitting firms, any statement; and to effect any agreement deemed by the Attorney General to be in her best interest or in the best interests of the State and the Department.

9.0 OUTSIDE COUNSEL DESIGNATIONS AND RETAINER AGREEMENTS

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.

10.0 EVALUATIONS

No less frequently than annually, the Attorney General or designee shall evaluate the firm's performance. The evaluation will focus on responsiveness; quality of work; adequacy and appropriate utilization of resources; adherence to invoice submittal standards; and cost effectiveness. The Attorney General or designee will advise the firm of any problem areas. If, as result of one or more evaluations, the Attorney General determines, in her sole discretion, that a firm should be removed from designation as Special Counsel for this engagement, the firm may be removed after written notice is provided to the firm. Other than this written notice, nothing in this RFQ creates any rights, entitlements, privileges, or presumptions in favor of a law firm that would constrain the Attorney General's authority to remove the firm as Special Counsel for this engagement.

Attachments:

Kimmelman Opinion
Standards for Submittal and Review of Special Counsel Invoices

Chapter 51
Chapter 271

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