



**REQUEST FOR QUALIFICATIONS FOR
BOND COUNSEL FOR
NEW JERSEY HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY
TO SERVE FOR A THREE-YEAR PERIOD (2018, 2019 AND 2020)**

Date Issued: September 5, 2017

Question & Answer Cut-off Date: September 19, 2017

Proposals Due: October 5, 2017

CHRISTOPHER S. PORRINO

ATTORNEY GENERAL OF NEW JERSEY

MICHELLE L. MILLER

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, N.J. 08625-0112

**REQUEST FOR QUALIFICATIONS (“RFQ”)
FOR BOND COUNSEL
NEW JERSEY HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY
APPOINTMENT AS BOND COUNSEL FOR A THREE-YEAR PERIOD
2018, 2019 AND 2020**

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, and represents the New Jersey Higher Education Student Assistance Authority (“HESAA”). Proposals are being sought by the Attorney General on behalf of HESAA for the appointment of Bond Counsel in connection with the issuance of its Student Loan Revenue Bonds (the “Bonds”). The Bonds are expected to be issued on a tax exempt basis and in a principal amount of approximately \$225,000,000 to \$275,000,000 annually. You are invited to submit a proposal for appointment as Bond Counsel to serve for a three-year period in connection with the issuance of the Series 2018, Series 2019 and Series 2020 Bonds as described herein.

- 1.2 The Attorney General will designate one or more attorneys from the Division of Law in the Department of Law and Public Safety who will be the sole point(s) of contact for all matters pertaining to this engagement and who will oversee and coordinate the activities of Bond Counsel.
- 1.3 The firm selected to serve as Bond Counsel must comply with all local, State and federal laws, rules and regulations applicable to the engagement and to the services to be performed thereunder.
- 1.4 Compensation for the firm selected as Bond Counsel for this engagement shall be negotiated based upon the provisions set forth in Sections 4.0 and 5.0 below.

2.0 MINIMUM QUALIFICATIONS

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

- (1) Experience as bond counsel or underwriters’ counsel for student loan bond financings.
- (2) Expertise in Federal Tax Law Matters as applicable to the types of obligations described herein.

- (3) Expertise in Federal Securities Law applicable to the types of obligations described herein.

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

3.0 DETAILS OF PROPOSED TRANSACTIONS

3.1 General Description

HESAA intends to issue the Bonds pursuant to one of four existing Indentures of Trust between HESAA and Wells Fargo Bank, NA which shall be supplemented by a Supplemental Indenture for each issuance of Bonds. The four existing Master Indentures that are available to HESAA for additional issuance include:

- The 2009 Master Indenture, which was utilized to issue \$450,000,000 in Student Loan Revenue Bonds.
- The 2010-1 Master Indenture, which was utilized to issue \$713,000,000 in Student Loan Revenue Bonds, of which \$677,120,000 were Student Loan Revenue Refunding Bonds and \$35,880,000 were Student Loan Revenue Bonds. This Master Indenture was also used to issue the 2017-1 Bonds which consisted of \$141,000,000 in Senior Student Loan Revenue Bonds, \$86,900,000 in Senior Student Loan Refunding Bonds and \$22,000,000 in Subordinate Student Loan Revenue Bonds.
- The 2010-2 Master Indenture, which was utilized to issue \$606,500,000 in Student Loan Revenue Bonds, of which approximately \$489,000,000 were Student Loan Revenue Bonds and \$117,500,000 were Student Loan Revenue Refunding Bonds.
- The 2012-1 Master Indenture, which was utilized to issue \$1,049,300,000 in Student Loan Revenue Bonds which consisted of \$960,300,000 in Senior Student Loan Revenue Bonds, \$64,000,000 in Subordinate Student Revenue Bonds and \$25,000,000 in Direct Purchase Student Loan Revenue Bonds..

The Series 2018 Bonds, the Series 2019 Bonds and the Series 2020 Bonds are expected to be issued under one or more of the above Master Indentures, or a new Master Indenture.

All of the above bonds were issued in connection with HESAA's New Jersey College Loans to Assist State Students ("NJCLASS") Program.

HESAA has also previously issued 42 series of its Student Loan Revenue Bonds in the aggregate principal amount of \$2,204,996,064 under indentures prior to the 2009 Indenture.

The bonds issued under the 2009 Master Indenture, the 2010-1 Master Indenture, the 2010-2 Master Indenture, the 2012-1 Master Indenture are respectively equally and ratably secured by a pledge, subject to the terms of the Indentures, of student loans (the "Student Loans") made from the proceeds thereof under HESAA's NJCLASS Program, the monies and securities in the various funds established under these Indentures and all

Revenues and Recoveries of Principal, as defined in these Indentures (all net of collection and other costs or amounts permitted to be retained by HESAA or to be deposited into any loan reserve fund).

The Bonds shall consist of the Series 2018 Bonds, the Series 2019 Bonds, and the Series 2020 Bonds and will be issued in accordance with the Higher Education Student Assistance Authority Law, constituting N.J.S.A. 18A:71A-1 et seq., Chapter 46 of the Public Laws of 1999 of the State of New Jersey, as amended and supplemented, or successor legislation (the “Act”). The Series 2018 Bonds will be issued on or about May 2018, the Series 2019 Bonds will be issued on about May 2019 and the Series 2020 Bonds will be issued on or about May 2020. The Bonds will be limited obligations of HESAA payable solely from the Student Loans trust estate and by a Debt Service Reserve Account, which shall constitute a portion of the New Jersey Higher Education Student Assistance Capital Reserve Fund. The Act provides that with respect to the Debt Service Reserve Account, the Chairperson of the Board of HESAA shall annually, on or before December 1, deliver to the Governor his or her certificate stating sums, if any, required to restore said fund to its required amount and the sum or sums so certified shall be appropriated and paid to the Authority during the then current fiscal year. However, such provision does not constitute a legally enforceable obligation on the part of the State or create a debt or liability on behalf of the State enforceable against the State.

3.2 Method of Sale and Type of Obligations

It is anticipated that each issue of Bonds will consist of fixed rate term bonds and LIBOR-indexed floating rate notes to fund the NJCLASS program. Each issue of Bonds will be sold at negotiated sale or through a direct purchase.

3.3 Participation of Other Entities

The 2015, 2016 and 2017 transactions included the following other entities: First Southwest Company, financial advisor to HESAA, Bank of America Merrill Lynch, as senior managing underwriter to HESAA and Wells Fargo Bank as Trustee, as well as their respective counsels. The 2018 transaction, the 2019 transaction and the 2020 transactions will require the appointment of a senior managing underwriter, and the 2019 and the 2020 transactions will require the appointment of a financial advisor both of which will be selected through a Request for Proposal (RFP) process.

3.4 Applicable Laws and Regulations

Bond Counsel must be familiar with and perform its duties in accordance with the Act and applicable regulations as they pertain to the issuance of bonds, including, but not limited to, N.J.S.A. 18A:71A-1 et seq. (Authority Structure and General Provisions); N.J.S.A. 18A:71C-21 et seq. (NJCLASS Loan Program); N.J.A.C. 9A:10-1 (Federal Family Education Loan Program: Policies and Procedures); N.J.A.C. 9A:10-6 (NJCLASS Program: Policies and Procedures); 20 U.S.C. § 1071 et seq., and 34 C.F.R. § 682.100 et seq.

3.5 Transcripts of Prior Proceedings

Copies of the entire transcript of the record of proceedings for issued under the 2009 Master Indenture, the 2010-1 Master Indenture, the 2010-2 Master Indenture and the 2012-1 Master Indenture are available for inspection at the offices of HESAA. For an appointment to review the transcript please contact:

Gene Hutchins, Chief Financial Officer
New Jersey Higher Education Student Assistance Authority
4 Quakerbridge Plaza
P.O. Box 545
Trenton, New Jersey 08625-0540
(609) 588-4584

4.0 SELECTION OF BOND COUNSEL

4.1 Bond Counsel will be selected by the Attorney General, after consultation with HESAA, in accordance with Executive Order No. 26 (Whitman 1994) and the Attorney General's Guidelines for the Selection of Bond Counsel and as further described in Section 8.0 herein.

4.2 If a firm is selected to serve as Bond Counsel for a transaction and such transaction does not close, the firm will not be permitted to submit a bill for the work done.

5.0 SCOPE OF SERVICES

In connection with the Bonds, Bond Counsel will be expected to provide legal advice and representation concerning all aspects of the proposed transactions, including, but not limited to, the following:

5.1 Assistance with the development of the size and structure of the transaction, including advice in regard to tax and other legal issues, including, without limitations, the applicable statutes, regulations and the State Constitution.

5.2 Preparation of all documents necessary to implement the transactions including but not limited to the Supplemental Indentures, purchase contracts, the Bonds, documents required to comply with continuing disclosure requirements, any agreements required in connection with the investment of bond proceeds, and any other documents necessary to implement the transactions, and any and all closing certificates relating to the issuance of the Bonds.

- 5.3 Assistance with the preparation and review of any offering materials that may be required and advice in connection with electronic delivery and/or posting of the Preliminary and Official Statements for the Bonds.
- 5.4 Review of any documents prepared or submitted by other entities involved in the transactions.
- 5.5 Attendance at various meetings necessary to the transaction including meetings with HESAA and due diligence meetings; consultation and negotiation with the rating agencies, underwriters, bond insurers, if any, credit enhancers, if any, and swap providers, if any; negotiation of agreements related to the transaction on behalf of HESAA and participation in any other meetings or telephone conference calls relating to the transactions.
- 5.6 Preparation of all closing documents and certificates, attendance at the pre-closing and closing of the Bonds.
- 5.7 Rendering approving opinions relating to the validity of the Bonds, the tax exempt status of interest on the Bonds; adequacy of disclosure (Rule 10b-5) and compliance with Rule 15c2-12 (including the preparation of any agreements relating to secondary market disclosure); compliance with the requirements relating to delivery of the Preliminary and Official Statements for the Bonds, including by electronic delivery of the Preliminary Official Statement for the Bonds and such other opinions as may be required from Bond Counsel for the transactions.
- 5.8 In addition, Bond Counsel will be expected to be available for post-sale Internal Revenue Code compliance questions, continuing disclosure requirements and any other post-closing issues that may arise with respect to the Bonds.

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 Complete the cover sheet attached as Exhibit B with the name, address of your firm, contact information for this proposal and the number attorneys in your firm.
- 6.2 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 engaged as Bond 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 HESAA, 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. Describe the firm's approach to maintaining responsive communication with the Attorney General and keeping the State informed of problems and progress.
- L. Provide a representative listing of the firm's major private sector clients.
- M. Provide the name, address, telephone number, e-mail address, and facsimile number for the contact person in your firm.

6.3 Qualifications and Experience in Area of Law

Firms should provide the information set forth below for the issuance of the Bonds. Failure to meet the Minimum Qualifications will result in rejection of your proposal.

- A. Demonstrate specifically how the firm meets the Minimum Qualifications set forth above.
- B. Identify and give the office location of each attorney who practices in the areas of the law which are necessary in order to carry out the transactions described in this RFQ. Please indicate what percentage of your firm's practice are in these areas.
- C. List all attorneys in your firm that have at least five (5) years experience pertaining to these areas.
- D. The qualifications and experience of your firm to perform the required services in connection with this engagement: list and describe in detail up to three (3) examples in which your firm served as bond counsel or underwriter's counsel and which are representative of the qualifications of your firm to undertake the proposed assignment.
- E. State the qualifications and experience of the particular attorneys proposed to staff the assignment, including that of your tax counsel. These attorneys should have worked on at least one of the matters mentioned in response to paragraph 6.3(D). Identify and describe in detail up to three (3) examples that demonstrate the qualifications of these individuals relevant to the anticipated assignment; indicate in each case the role the individual had in the matter and whether or not the individual participated in the matter on behalf of your firm; indicate in what jurisdictions such individuals are admitted to practice law.

In addition, for each member of your firm that would be involved in handling the matter as Bond Counsel on behalf of HESAA, provide a detailed resume including information as to:

- (i) Education, including advanced degrees;
 - (ii) Years and jurisdictions of admission to practice;
 - (iii) Number of years engaged in practice pertaining to tax-exempt bonds;
 - (iv) General work experience;
 - (v) Any professional distinctions (e.g., certifications, teaching experience); and
 - (vi) Office location of the attorney.
- F. As to the members of your firm who would be involved in handling the representation as Bond Counsel, describe the role each would play in the representation and the approximate percentage of the work that each would perform. Percentages for junior lawyers may be listed separately or in the aggregate.

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 acts as counsel to the HESAA.
- D. Identify your firm's malpractice insurer and describe the insurance limits.
- E. Outside Counsel Guidelines. Counsel designated as Bond Counsel and retained on any specific matter shall be required to comply with the Outside Counsel Guidelines ("Guidelines") available for review at: <http://www.nj.gov/oag/law/pdf/rfqs/oag-dol-Outside-Counsel-Guidelines.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 Bond 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.
 - (a) Conflict of Interest. Section III of the Guidelines requires that counsel be free of any conflict of interest. Please note that the Trust, 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). If your firm is designated as Bond Counsel, you have a continuing obligation during the term to disclose to the Attorney General of New Jersey 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.
 - (b) Electronic Billing. Bond 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.
 - (c) 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.

- F. Confirm that upon selection as special counsel your firm will provide the updated Ownership Disclosure, Affirmative Action Supplement with Affirmative Action Employee Information Report and the certifications required by Public Law 2005, Chapters 51 and 271, Executive Order 117 (Corzine 2005) and Public Law 2012, Chapter 25 as further explained in Exhibit A. These forms are initially required by the RFQ and then required by law again at any retention.

6.5 Additional Requirements for all Office of the Attorney General, Division of Law Retention Agreements

The Additional Requirements set forth in Exhibit A are material terms of any retention resulting from this RFQ.

6.6 Fees

- A. The firms should submit its proposed fee for attorneys, paralegals or other persons, such as law clerks, to be charged on an hourly basis, including the percentage discount the proposed hourly fee represents from your customary hourly fee for similar work. Bond Counsel 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 Outside Counsel Guidelines. The Outside Counsel Guidelines available for review at: <http://www.nj.gov/oag/law/pdf/rfq/oag-dol-Outside-Counsel-Guidelines.pdf>. If the fee proposals submitted by all qualified responders are in excess of those deemed reasonable by the Attorney General, a lower fee may be negotiated.
- B. Indicate your proposed upper limit (“cap”) on the amount of the fees for legal services for (i) the Series 2018 Bonds; (ii) the Series 2019; and (iii) the Series 2020 Bonds, which are issued out of: (a) the existing Master Indentures; and (b) a new to-be-drafted Master Indenture. Please provide these proposed caps utilizing the chart set forth in Exhibit C.

Please understand that any deviation from the fee cap established for the scope of services described in Section 5.0 of this RFQ will be considered only as the result of unforeseeable substantial changes in the structure or circumstances of the transaction as agreed upon and approved by the Attorney General or his/her designee.

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7.0 PROPOSAL SUBMISSION

- 7.1 A. Six (6) sealed copies of the proposal must be marked “Bond Counsel RFQ for HESAA” and delivered **no later than 3:00 p.m. on Thursday, October 5, 2017** to the following:

Kavin K. Mistry (1 original plus 3 copies)
Assistant Attorney General
DIVISION OF LAW
ROBERT J. HUGHES JUSTICE COMPLEX
First Floor-West Wing
P.O. Box 112
25 Market Street
Trenton, New Jersey 08625-0112

Gabrielle Charette (2 copies)
Executive Director
NEW JERSEY HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY
4 Quakerbridge Plaza
P.O. Box 545
Trenton, NJ 08625-0545

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

- B. One proposal **must** also be submitted in PDF format to the following email address: OutsidecounselRFQ@dol.lps.state.nj.us. The subject line **must** be marked “Bond Counsel RFQ for HESAA.”

PLEASE NOTE THAT PDF SUBMISSIONS CANNOT EXCEED 25 MB DUE TO NETWORK LIMITATIONS.

- 7.2 The Attorney General will accept questions pertaining to this RFQ from all potential bidders electronically. Questions shall be directed to Kavin K. Mistry, Assistant Attorney General, Division of Law at the following e-mail address:

RFQUESTIONS@DOL.LPS.STATE.NJ.US

Please note that the “subject” line of your e-mail must specifically reference this RFQ as follows: “Bond Counsel RFQ for HESAA.”

Questions will be accepted until **3:00 pm on Tuesday, September 19, 2017.**

- 7.3 In the event the Attorney General determines that additional clarification to this RFQ or additional information is necessary, the Attorney General reserves the right to hold a conference call with eligible firms for the purpose of providing the same.
- 7.4 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 Bond counsel as a result of this RFQ.

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

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

- 7.5 The Attorney General reserves the right to interview the most qualified firms responding to this RFQ prior to making a final selection.
- 7.6 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, 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 his best interest, or in the best interests of the Division of Law. 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, the Attorney General reserves the right to re-solicit proposals.
- 7.7 All documents and information submitted in response to this RFQ generally shall be made available to the general public as required by applicable law.
- 7.8 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.
- 7.9 Failure by a firm to meet the Minimum Qualifications set forth in Section 2.0 will result in the proposal's immediate rejection.

8.0 SELECTION PROCESS

- 8.1 All proposals will be reviewed to determine responsiveness. The Attorney General may reject non-responsive proposals without evaluation, but may waive minor non-compliance. An Evaluation Committee will evaluate responsive proposals. The Evaluation Committee will have a minimum of three (3) members and may include a representative(s) from HESAA. 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 named attorneys as applicable with:
 - State laws relevant to bonds;
 - Federal securities, tax and other laws relevant to bonds;
 - Experience with complex financings;
- Knowledge and experience of the firm with bond work and similar transactions;
- Resources of the firm;
- Approach to communication with the Division of Law;
- Past experience of the State and HESAA with the firm and/or named attorneys; and
- Fees.

8.2 Proposals will be ranked based on the above criteria. Bond Counsel will be selected by the Attorney General in consultation with HESAA. 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 his best interest, or in the best interests of HESAA.

9.0 ADDITIONAL TERMS

9.1 No endorsement: Designation as Bond Counsel does not constitute an endorsement by the State of New Jersey, the Attorney General or the Department of Law and Public Safety.

9.2 Effect of RFQ response: A response to this RFQ will not bind or otherwise obligate the State of New Jersey to engage the responding firm as Bond Counsel.

9.3 Attorney General’s 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 State Constitution, statutes, Executive Orders, regulations, or case law.

9.4 Designation as Bond Counsel: Selection of a firm as Bond Counsel will not bind or otherwise obligate the State to retain the listed firm for legal services. Selection of a firm as Bond Counsel will not guarantee any other form of employment or engagement.

10.0 SPECIAL COUNSEL DESIGNATIONS AND RETAINER AGREEMENTS

A firm selected pursuant to this RFQ 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.

10.1 Special Counsel Designation. A firm selected pursuant to this RFQ 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 HESAA 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 HESAA unless it also executes a retention letter for a specific matter or class of matters. A firm selected as Bond 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 the terms and conditions in the Retention Letter.

11.0 **EVALUATIONS**

Not less frequently than annually, the Attorney General or his 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 his designee will advise each firm of any problem areas. If, as the result of one or more evaluations, the Attorney General determines, in his sole discretion, that a firm should be removed from the engagement as Bond Counsel, 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 a firm from being Bond Counsel.

Attachments: Exhibit A – Additional Requirements for all Office of Attorney General, Division of Law Retention Agreements
Exhibit B – Cover Sheet
Exhibit C – Fee Cap Proposal Chart

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 and Special Counsel.

I. 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 finalized by the Division of Law 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 at:

<http://www.state.nj.us/treasury/purchase/forms/OwnershipDisclosure.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. The Special Counsel agrees that and the Special Counsel must either:

1. complete and submit the Employee Information Report either with the proposal or with the signed Retention Agreement. The Retention Agreement is not completed unless and until the form is properly completed and submitted to the Division of Law, as well as to the Contract Compliance and Audit Unit within the New Jersey Department of Treasury, Division of Purchase and Property and long with a \$150.00 check. The form 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

The instructions for the form are available at:

<http://www.state.nj.us/treasury/purchase/forms/EmployeeInformationReportInstructions-aa302ins.pdf>;

or

2. present a currently Certificate of Employee Information Report issued by the Contract Compliance and Audit Unit within the New Jersey Department of Treasury, Division of Purchase and Property; or
3. present a copy of its existing federally approved or sanctioned affirmative action report.

C. New Jersey Business Registration

Pursuant to N.J.S.A. 52:32-44 (b), Special Counsel must either

1. submit with the signed Retention Agreement a copy of a valid New Jersey Business Registration. If the business is 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>;

or

2. advise that a copy of the valid New Jersey Business Registration is on file with the Division of Law.

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 – NJStart Vendor Registration

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 Special Counsel has previously submitted a State of New Jersey W-9 and Vendor Questionnaire, it need not be submitted again. If at any time Special Counsel will need to revise its W-9 for any reason, including firm name, address, TIN, Special Counsel shall be required to register to use NJStart and make the revisions to the W-9 and Vendor Questionnaire in the NJSmart system.

If Special Counsel does not have a New Jersey State W-9 and Vendor Questionnaire on file with the State, the Special Counsel shall be required to register to use NJStart and make the revisions to the W-9 and Vendor Questionnaire in the NJSmart system.

General Information, including an explanatory video about NJSmart is available at:

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

Use this link to register for or access the NJSmart system:

<https://www.njstart.gov/bs/>

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. Additional information about Chapter 51 and Executive Order 117 is available at:

<http://www.state.nj.us/treasury/purchase/forms/eo134/CH51-FAQ.pdf>

<http://www.state.nj.us/treasury/purchase/forms/eo134/PayToPlay.pdf>

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 on the New Jersey Division of Purchase and Property’s website, under the heading “Political Contributions Compliance” at:

<http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>

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 countersignature 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 contracting with the State 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. This requirement is in addition to the requirements of Chapter 51 and EO 117. 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 or the delivery of the services which will not be performed within the US.

III. The Special Counsel acknowledges that the Retention Agreement is subject to the following 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 to -20.25) (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.

Thus, pursuant to the requirements of Chapter 51 and EO 117, it shall be a material breach of the terms of the Retention Agreement for Special Counsel to do any of the following during the term of the Retention Agreement:

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 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.

D. Affirmative Action and Equal Employment Requirements:

Pursuant to N.J.A.C. 17:27-3.5 Special Counsel agrees that:

1. Special Council or its or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, Special Counsel will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Special Counsel agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;
2. Special Counsel or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of Special Counsel, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
3. Special Counsel or subcontractor will send to each labor union, with which it has a collective bargaining agreement, if any, a notice, to be provided by the agency contracting officer, advising the labor union of the Special Counsel's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment; and
4. Special Counsel or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A.10:5-31 et seq., as amended and supplemented from time to time, and codified at N.J.A.C. 17:27-1.1 et seq.

Further, pursuant to N.J.A.C. 17:27-3.7, Special Counsel agrees that:

1. Special Counsel and its subcontractor, if any, agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
2. Special Counsel and its subcontractor, if any, agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
3. Special Counsel and its subcontractor, if any, agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
4. In conforming with the targeted employment goals, Special Counsel and its subcontractor, if any, agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

IV. 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, 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 <https://wwwnet1.state.nj.us/lpd/elec/ptp/p2p.html>

The form to be filed annually is available at: <https://wwwnet1.state.nj.us/lpd/elec/ptp/Filing.aspx>

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 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:

NEW JERSEY HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY
BOND COUNSEL FOR A THREE-YEAR PERIOD (2018, 2019 AND 2020)

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

EXHIBIT C

FEE CAP PROPOSAL CHART

	Issuance Out of Existing Master Trust Indentures	Issuance Out of a New To-Be- Drafted Master Trust Indenture
Series 2018 Bonds	\$	\$
Series 2019 Bonds	\$	\$
Series 2020 Bonds	\$	\$