



REQUEST FOR QUALIFICATIONS FOR

SPECIAL COUNSEL FOR  
NJ TRANSIT FELA CLAIMS

Date Issued: January 4, 2017

Question & Answer Cut-off Date: February 3, 2017

Proposals Due: March 3, 2017

CHRISTOPHER S. PORRINO

ATTORNEY GENERAL OF NEW JERSEY

MICHELLE L. MILLER

ACTING 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, PO Box 112 Trenton, NJ 08625-0112

## **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, including New Jersey Transit Corporation. The Attorney General issues this Request for Qualifications (“RFQ”) intending to select Special Counsel for the Scope of Services as described in Section 3.0.

- 1.1 The Attorney General will designate one or more attorneys from the Division of Law and/or Office of the Attorney General 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 Special Counsel.
- 1.2 The firm selected to serve as Special 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.
- 1.3 Compensation for the firm selected as Special Counsel shall be consistent with the provisions set forth in Section 8.0 below.
- 1.4 The firm selected to serve as Special Counsel must designate for each matter assigned pursuant to this Request for Proposal one lawyer in that firm who will be the principal point of contact for that matter and who will be primarily responsible for handling the matter on behalf of the State. The firm may nonetheless, consistent with the requirements of the Outside Counsel Guidelines described in

Section 5.0, utilize more than one lawyer from the firm to provide legal services in any one matter.

**2.0 MINIMUM REQUIREMENTS**

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

Each lawyer whom the firm proposes will be primarily responsible for matters assigned under this Request for Qualifications must have five or more years of experience in handling claims filed under the Federal Employers Liability Act (“FELA”).

**3.0 SCOPE OF SERVICES**

The firm(s) selected as Special Counsel will be required to handle all aspects of providing representation to New Jersey Transit Corporation in FELA matters, when required due to conflicts or as otherwise deemed necessary by the Attorney General.

**4.0 TERM**

The term of the Special Counsel designation made pursuant to this RFQ will be from the notification that the firm has been designated and approved as Special Counsel for FELA until a new list of firms is designated and approved for the same practice area, and for a sufficient period to complete all matters for which the firm has been retained.

**5.0 OUTSIDE COUNSEL GUIDELINES**

Counsel designated as Special 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. 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 of the designation.

#### 5.1 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 RPC 1.7(a)(2) and RPC 1.7(b)(2). If your firm is designated as Special Counsel, you have a continuing obligation during the term of the designation 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.

#### 5.2 ELECTRONIC BILLING

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

#### 5.3 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.

### 6.0 RFQ PROCESS

#### 6.1 SUBMISSION

Proposals must be submitted in PDF format to the following email address: [OutsidecounselRFQ@dol.lps.state.nj.us](mailto:OutsidecounselRFQ@dol.lps.state.nj.us). The subject line must be marked "Special Counsel RFQ for **FELA**." In addition, one (1) original executed copy, including the cover sheet provided in Exhibit B, and all forms and certification required in Exhibit A, must be marked "Special Counsel RFQ for **FELA**" and delivered no later than 3:00 p.m. on the proposal due date appearing on the cover of this RFQ to :

Michael C. Walters  
Assistant Attorney General  
DIVISION OF LAW  
R. J. HUGHES JUSTICE COMPLEX  
First Floor-West Wing  
P.O. Box 112  
25 Market Street  
Trenton, New Jersey 08625-0112

**PLEASE NOTE THAT PDF SUBMISSIONS CAN NOT EXCEED 25 MB DUE TO NETWORK LIMITATIONS.**

6.2 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 Michael Walters, AAG, at the following email address:

[rfquestions@dol.lps.state.nj.us](mailto: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 FELA." 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's website.

6.3 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'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.

6.4 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's website.

6.5 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.

6.6 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.

## **7.0 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.

### **7.1 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 facilitate the handling of matters for the State.

### **7.2 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 twenty (20) or less full- or part-time attorneys. Any firm

with more than twenty (20) 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 RPC 1.7(a)(2) and RPC 1.7(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 is directed to review the Guidelines, Section III. 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.

### 7.3 QUALIFICATIONS AND EXPERIENCE IN AREA OF LAW

- A. Identify and give the office location of each attorney who practices in the area of the law relevant to this RFQ.
- B. Please indicate the percentage of your firm's practice that is in this area.
- C. List all lawyers that have at least five years of experience in FELA litigation as described in Section 3.0, Scope of Services.
- D. State the qualifications and experience of the particular attorneys proposed to staff the work. Demonstrate specifically how these attorneys meet the

Minimum Requirements set forth in Section 2.0. For each attorney that would be involved in handling the work as Special Counsel pursuant to this RFQ, provide detailed background information including information as to the areas listed below. You may also attach a resume for each attorney:

- a. Education, including advanced degrees;
  - b. Years and jurisdictions of admission to practice;
  - c. Number of years engaged in practice in the area of law relevant to this RFQ;
  - d. General legal or other relevant work experience including an indication of whether the individual has tried any cases and, if so, approximately how many;
  - e. Any professional distinctions in litigation (e.g., trial certification, teaching experience);
  - f. Area(s) of specialization; and
  - g. Office location of the attorney.
- E. As to the members of the department who would be involved in handling the work as Special Counsel, describe 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.
- F. Describe 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.

#### 7.4 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 (codified at N.J.S.A. 9:44A-20.13, et seq.) and 271 (codified at N.J.S.A. 9:44-A20.26, et seq.), and Executive Order 117 (2008), 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.

## **8.0 FEES**

Fees for the term of this Special Counsel designation and any retention as a result of the designation shall be:

Partners and Associates: \$160 per hour

Paralegals: \$50 per hour

## **9.0 ADDITIONAL TERMS**

### **9.1 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, moreover, that a firm selected as Special Counsel shall have to submit updated certifications or forms if it is also is retained for a specific matter(s), when required by law.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

## **10.0 SELECTION PROCESS**

### **10.1 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.

### **10.2. PROPOSAL MINIMUM QUALIFICATIONS**

Proposals that fail to meet the Minimum Qualifications set forth in Section 2.0 will be immediately rejected and will not be evaluated or ranked.

### **10.3 EVALUATION OF PROPOSALS**

An evaluation committee, with a minimum of three 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 and firm;
2. Resources of the firm; and
3. Past experience of the State with the firm and/or attorneys

### **10.4 RANKING AND RECOMMENDATION OF PROPOSALS**

The evaluation committee will rank proposals based on the criteria in Section 10.3, and will recommend to the Attorney General for designation as Special Counsel the firms whose proposals the committee finds to be most advantageous to the State. The recommended firms may be divided into two lists, large firms (firms with more than 20 attorneys) and small firms (firms with 20 or less attorneys) in order to further the State's interests in promoting small businesses and facilitate the handling of matters for the State.

10.5 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.

10.6 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.

10.7 NOTIFICATION

The Division shall notify in writing any firm that is selected as Special Counsel and the firms designated as Special Counsel shall be posted on the Division's website at:

<http://www.nj.gov/oag/law/pdf/rfqs/oag-dol-Outside-Counsel-Guidelines.pdf>

10.8 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.

## **11.0 SPECIAL COUNSEL DESIGNATIONS AND RETAINER AGREEMENTS**

### **11.1 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.

### **11.2 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 the additional terms and conditions in the Retainer Letter.

## **12.0 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.

**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. 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](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>

- 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.

The specific language of N.J.A.C. 17:27-3.5 and 17:27-3.7, contains specific requirements concerning Affirmative Action and Employment Practices for Consultant Agreements and is hereby incorporated as if set forth at length herein.

**C. New Jersey Business Registration**

- 1) 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>

or

- 2) a copy of the valid New Jersey Business Registration must be on filed 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 the 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 NJStart system.

If the 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 NJStart system.

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

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

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

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

**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/eo134/c51\\_eo117\\_cd\\_02\\_10\\_09.pdf](http://www.state.nj.us/treasury/purchase/forms/eo134/c51_eo117_cd_02_10_09.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 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 these Additional Term and Conditions:**

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

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

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

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



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

Name and Issue Date of Special Counsel RFQ to which you are responding:

\_\_\_\_\_

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.

By submitting this proposal, 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.

By submitting this proposal, 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.

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

By submitting this proposal, 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.

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

\_\_\_\_\_  
Date