

**REQUEST FOR QUALIFICATIONS FOR SPECIAL COUNSEL SERVICES**

**FOR**

**MEDICAID MATTERS**

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

Date Issued:  
Monday, August 3, 2009

Question and Answer Cut-off Date:  
Monday, August 17, 2009

Proposals Due:  
5:00 P.M. September 1, 2009

Anne Milgram  
Attorney General

Taysen Van Itallie  
Director, Division of Law

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

**REQUEST FOR QUALIFICATIONS (RFQ)  
FOR  
MEDICAID MATTERS**

**1.0 PURPOSE AND INTENT**

- 1.1 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 Division of Medical Assistance and Health Services (DMAHS) in the New Jersey Department of Human Services.
- 1.2 Proposals are being sought by the Attorney General for the appointment of Special Counsel to DMAHS to assist with complex Medicaid and Medicare rate and reimbursement matters. You are invited to submit a proposal for appointment as Special Counsel for this assignment.
- 1.3 The Attorney General shall select one firm to serve as Special Counsel for a term of two (2) years.
- 1.4 The firm selected 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.
- 1.5 Compensation for the firm selected as Special Counsel shall be negotiated based upon the provisions set forth in Sections 5.0 below.
- 1.6 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 Special Counsel.

**2.0 MINIMUM QUALIFICATIONS**

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

EXPERTISE IN STATE AND FEDERAL STATUTORY AND REGULATORY LITIGATION MATTERS; AND

EXPERTISE IN COMPLEX LITIGATION MATTERS.

Failure by a firm to meet these minimum qualifications will result in the proposal's immediate rejection. A familiarity with Medicare and Medicaid reimbursement issues and hospital rate issues is a plus.

### **3.0 BACKGROUND**

DMAHS is the New Jersey agency responsible for administering the State's Medicaid program, and establishes annual rates for each hospital participating in the Medicaid program. Hospitals that are dissatisfied with their rates can request a hearing to contest those rates in the New Jersey Office of Administrative Law (OAL). Hearing issues involve various parts of the rate calculation process, including economic factors applied in the rate development, methodology, and application of DMAHS' rules. DMAHS currently has 234 appeals pending in the OAL, for which representation may be sought. Other matters, which are litigated in federal administrative courts, involve appeals by DMAHS contesting Medicare rates determined for New Jersey by the federal Centers for Medicare and Medicaid Services (CMS), as well as denials of reimbursement of Medicaid payments to New Jersey by CMS.

### **4.0 SCOPE OF SERVICES**

Special Counsel will be expected to provide representation to DMAHS in complex Medicaid and Medicare rate and reimbursement matters in federal and state administrative courts, United States District Court and Superior Court of New Jersey, when required due to conflicts or as otherwise deemed necessary by the Attorney General. Counsel handling such matters will conduct discovery, conduct administrative hearings or trials, brief the issues, and may handle appeals beyond the hearing level.

### **5.0 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.

#### **5.1 Firm Profile and Experience**

- A. Indicate the date your firm was established.
- B. Describe the legal services provided by your firm.
- C. Describe your firm's specialty and/or area(s) of expertise.
- D. Identify the number of employees in your firm (licensed attorneys; legal support staff; other support staff).
- E. Indicate whether you are a small firm. For the purposes of this RFQ, a small firm has less than ten full- or part-time attorneys.

- 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 Special Counsel pursuant to this RFQ.
- I. 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). In evaluating the possibility of conflicts of interest, counsel are directed to review the August 2, 1984 Opinion Letter of Attorney General Irwin I. Kimmelman (attached). If your firm is designated as Special Counsel, you have a continuing obligation to disclose to the Attorney General of New Jersey any actual or potential conflicts. Additionally, retained counsel must agree not to undertake any future representation that might result in the disclosure of the State's work product to potential or actual adversaries of the State.
- 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 DMAHS 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.

## **5.2 Qualifications and Experience**

- A. List all attorneys in your firm that have at least five years experience pertaining to Medicare and Medicaid reimbursement matters, hospital rate cases, state and federal statutory and regulatory litigation and/or complex litigation.

- B. Describe your firm's experience pertaining to Medicare and Medicaid reimbursement matters, hospital rate cases, state and federal statutory and regulatory litigation and/or complex litigation. Specify how your firm's experience meets the Minimum Qualifications set forth in Section 2.0.
- C. State the qualifications and experience of the particular attorneys proposed to staff the work. For each member of your firm that would be involved in handling the matter as Special Counsel on behalf of the State, 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 in the designated practice area;
  - (iv) General work experience;
  - (v) Any professional distinctions (e.g., certifications, teaching experience);
  - (vi) Office location of the attorney.
- E. As to the members of your firm who would be involved in handling the representation as Special 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.

### **5.3 Other Qualification Information**

- A. Identify all adverse determinations against your firm or any of its partners, associates or employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints of any kind under any local, State or Federal laws, regulations, court rules, or Rules of Professional Conduct.
- B. Identify and describe in detail any indictments, convictions or civil offenses arising directly or indirectly from the conduct of business by your firm or any of its partners, associates, employees, or agents.
- C. Identify any material arrangements, relationships, associations, employment or other contacts that may cause a conflict of interest or the appearance of a conflict of interest if your firm acts as Special Counsel for this engagement.
- D. Confirm your firm's malpractice 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 attached Standards for Submittal and Review of Special Counsel Invoices.
- G. Confirm that upon selection as Special Counsel your firm will provide all vender certifications required by Public Law 2005, Chapters 51 and 271.

#### **5.4 Fees**

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

#### **5.5 Additional Information**

- A. A copy of a valid New Jersey Business Registration must be submitted by the selected firm. If not already registered with the New Jersey Division of Revenue, registration can be completed online at the Division of Revenue website: <http://www.state.nj.us/treasury/revenue/index.html>.
- B. Pursuant to Public Law 2005, Chapter 51 (Chapter 51) State departments, agencies and authorities are precluded from awarding contracts exceeding \$17,500 to vendors who make certain political contributions on and after October 15, 2004, to avoid any appearance that the selection of State contractors is based on the contractors' political contributions. Chapter 51 also requires the disclosure of all contributions to any political organization organized under 26 U.S.C. 527 that also meet the definition of a continuing political committee within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The firm shall submit the required certification form(s) and disclosure form(s) which are attached with its proposals. Failure to submit such forms and/or failure of such forms to evidence compliance with Chapter 51 shall be cause for rejection of the firm's proposal. Any firm selected as Special Counsel shall maintain compliance with Chapter 51, during the term of its engagement as Special Counsel.
- C. Pursuant to Public Law 2005, Chapter 271 (Chapter 271) your firm is required to disclose its (and its principals') political contributions within the immediately preceding twelve (12) month period. No prospective firm will be precluded from

serving as Special Counsel by virtue of the information provided in the Chapter 271 disclosure provided the form is fully and accurately completed. Prior to formal appointment, the firm anticipated to be selected as Special Counsel will be required to submit Chapter 271 disclosures.

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

- D. In accordance with Public Law 2005, Chapter 92, all services performed pursuant to this engagement shall be performed within the United States of America.
- E. Pursuant to Public Law 1995, chapter 159, effective January 1, 1998 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.

## **6.0 PROPOSAL SUBMISSION**

- 6.1 A sealed original and four (4) sealed copies of the proposal must be marked "Special Counsel RFQ for Medicaid Matters" and delivered no later than 5:00 p.m. on Tuesday, September 1, 2009 to the following:

SUSAN J. DOUGHERTY  
DEPUTY ATTORNEY GENERAL  
DIVISION OF LAW  
P.O. BOX 112  
TRENTON, N.J. 08625-0112

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

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

rfquestions@dol.lps.state.nj.us

Please note that the "subject" line of your e-mail must specifically reference this RFQ as follows: "RFQ for Medicaid Matters."

Questions will be accepted until **5:00 pm on Monday, August 17, 2009.**

- 6.3 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 obtaining the same.
- 6.4 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 Special 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.

- 6.5 The Attorney General reserves the right to interview the most qualified firms responding to this RFQ prior to making a final selection.
- 6.6 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. The Attorney General further reserves the right to make such investigations as she deems necessary as to the qualifications of any and all firms submitting proposals in response to this RFQ. In the event that all proposals are rejected or if the Attorney General, at any time, deems the number of qualified firms submitting proposals to this RFQ to be insufficient, the Attorney General reserves the right to re-solicit proposals.

- 6.7 All documents and information submitted in response to this RFQ generally shall be made available to the general public as required by applicable law.
- 6.8 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.

## **7.0 SELECTION PROCESS**

7.1 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 of DMAHS. 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:

- A. Knowledge and experience of named attorneys in Medicare and Medicaid reimbursement matters, hospital rate cases, state and federal statutory and regulatory litigation and/or complex litigation;
- B. Experience of the firm in Medicare and Medicaid reimbursement matters, hospital rate cases, state and federal statutory and regulatory litigation and/or complex litigation;
- C. Resources of the firm;
- D. Approach to communication with the Department of Law;
- E. Past experience of the State with the firm and/or named attorneys; and
- F. Fees.

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

## **8.0 ADDITIONAL TERMS**

8.1 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.

- 8.2 Effect of selection of a firm as Special Counsel will not bind or otherwise obligate the State of New Jersey to retain the firm for legal services. Selection of a firm as Special Counsel will not guarantee any other form of employment or engagement.
- 8.3 Attorney General authority not constrained: Nothing in this RFQ is intended to limit or constrain the discretion of the Attorney General in exercising any authority, duty, prerogative or power established or recognized by the Constitution, statutes, Executive Orders, regulations, or case law.

## **9.0 OUTSIDE COUNSEL DESIGNATIONS AND RETAINER AGREEMENTS**

A firm selected pursuant to this RFQ for designation as Special Counsel, with the approval of the Attorney General and the Governor, will be the subject of a special counsel designation, pursuant to N.J.S.A. 52:17A-13.

## **10.0 EVALUATIONS**

No less frequently than every six months, the Attorney General or designee shall evaluate the firm's performance. The evaluation will focus on responsiveness; quality of work; adequacy and appropriate utilization of resources; adherence to invoice submittal standards; and cost effectiveness. The Attorney General or designee will advise each firm of any problem areas. If, as result of one or more evaluations, the Attorney General determines, in her sole discretion, that a firm should be removed from designation as Special Counsel, 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 designation as Special Counsel.

**Attachments:** Kimmelman Opinion  
Standards for Submittal and Review of Special Counsel Invoices  
Chapter 51  
Chapter 271

F:\Chief\Retention of Outside Counsel\RFQ for Medicaid Matters.wpd

