

REQUEST FOR QUALIFICATIONS
FOR

Special Counsel:
Department of Law
& Public Safety,
Division of Law

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

Date Issued:
August 26, 2009

Question and Answer Cut-off Date:
September 8, 2009

Proposals Due:
September 17, 2009

Anne Milgram
Attorney General

Taysen VanItallie
Director, Division of Law

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

**REQUEST FOR QUALIFICATIONS ("RFQ")
FOR
Special Counsel for Certain Practice Area Designations**

1.0 PURPOSE AND INTENT

The Attorney General of New Jersey, through the Department of Law and Public Safety, Division of Law ("the Attorney General"), serves as the legal representative and counsel for the departments, boards, offices, commissions and other instrumentalities of State government, its officers and employees. The Attorney General intends to retain outside counsel interested in serving as special counsel, under the direction and control of the Division of Law, in the area of property acquisition on behalf of the New Jersey Transit Corporation ("NJ Transit"). The selected firms will be expected to commence work in October 2009.

The term of the special counsel designations made pursuant to this RFQ will be two years.

1.1 PROPOSAL SUBMISSION

A sealed original and three sealed copies of the proposal must be marked "Special Counsel RFQ" and delivered or post marked no later than 3:00 p.m. on September 17, 2009 to the following:

GEORGE LJUTICH
DEPUTY ATTORNEY GENERAL
DIVISION OF LAW
RICHARD J. HUGHES JUSTICE COMPLEX
25 WEST MARKET STREET
P.O. BOX 114
TRENTON, NEW JERSEY 08625-0114

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

1.2 QUESTION AND ANSWER

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

RFQUESTIONS@DOL.LPS.STATE.NJ.US

Questions will be accepted until 5:00pm on September 8, 2009. Please note that the "Subject" line of your email must specify NJ Transit.

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

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

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

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 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.

2.0 RFQ SCOPE OF SERVICES

NJ Transit proposes to complete property acquisitions for ten projects necessitating the acquisition of approximately 100 parcels of land with approximately 35 relocations of businesses and residential "displaced persons" over the next 18 months. The ten projects include: 1) the Portal Bridge Project encompassing the construction of two bridges to replace the Portal Bridge over the Hackensack River. This project will require the acquisition of 53 parcels of land from various owners including private corporations, the Norfolk Southern Railroad, governmental agencies and private owners. There are environmental issues due to the presence of contamination and wetlands on a number of the parcels as well as tidelands, riparian rights and Green Acres issues associated with these acquisitions; 2) the Northern Branch Rail Project, requiring the acquisition of 24 parcels of land in Bergen County resulting in the need to relocate 28 "displaced persons" the large majority

of which are businesses; and 3) the Morrisville Yard Phase III Project requiring the acquisition of a 15 acre tract in Falls Township, Pennsylvania that will require both subdivision and land development approval from the municipality.

NJ Transit's authority to acquire property stems from its powers under the Public Transportation Act of 1979 (N.J.S.A. 27:25-1) and pursuant to Title 20. Some of these projects will be federally funded and all property acquisitions will have to comply with United States Department of Transportation property acquisition requirements including, but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. The Uniform Transportation Replacement Housing and Relocation Act, N.J.S.A. 27:7-72, and applicable regulations also apply to these acquisitions.

In order to facilitate the property acquisition work and to assure that no one firm is over-burdened with this large number of acquisitions, the Attorney General intends to select two or three firms as follows: a) one firm with New Jersey Eminent Domain/real estate experience responsible for the Portal Bridge Project; b) one firm with New Jersey Eminent Domain/real estate experience for the Northern Branch Rail Project and other smaller projects; and c) one firm or practitioner with Pennsylvania land use/real estate experience for the Morrisville Yard Phase III project.

The title work for a substantial number of the parcels has been completed but not reviewed. Between the issuance of this RFQ and the commencement of work by the selected firms, it is likely that additional title work will have been completed. The selected firms will be provided with the title files; previously performed title work shall not be duplicated unless specifically directed by NJ Transit. All title work is to be relied upon by counsel. Title files not reviewed may have to be reviewed by the selected firms at the direction of NJ Transit. NJ Transit is in the process of hiring appraisers, railroad right-of-way appraisers, review appraisers, and relocation firms who will provide needed support to NJ Transit and the selected firms.

The selected firms shall be required to utilize the database procured by NJ Transit known as PAECetrak™ for the submission of all appraisals, reports, title and all other information as well as the preparation of necessary pleadings.

3.0 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.

3.1 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. 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. Describe any special training or experience members of your firm possess that may assist in providing the requested legal services.
- G. Identify any agencies or departments of the State of New Jersey represented by the firm during the last five (5) years. For each agency or department, provide the name of the agency or department, a description of the matter or matters that the firm worked on for the agency or department, 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. 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 NJ Transit's work product to potential or actual adversaries of NJ Transit.

- J. Identify any governmental entities, agencies, or political subdivisions, other than the State of New Jersey, that the firm represents or has represented during the past five years. 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 NJ Transit informed of problems and progress.
- L. Provide a representative listing of the firm's major private and public sector clients.
- M. Provide the name, address, telephone number, e-mail address, and facsimile number for the contact person in your firm.

3.2 LITIGATION QUALIFICATIONS AND EXPERIENCE IN THE PRACTICE AREA.

- A. Identify and give the office location of each attorney who practices in the Practice Area. Please indicate what percentage of your firm's practice is in the Practice Area.
- B. List all attorneys in your firm that have at least five years experience in litigation pertaining to the Practice Area.
- C. Describe your firm's experience in litigation pertaining to the Practice Area, by listing cases litigated involving this practice area since 2000 (identifying by case name and legal citation, if any) including the result of such litigation. Specifically, list cases involving the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq., as well as the Uniform Transportation Replacement Housing and Relocation Act, N.J.S.A. 27:7-72 and applicable regulations. Be specific about the types of cases; whether the takings were entire or partial; familiarity with appraisals and presenting expert testimony in fields of appraising, planning, and engineering (cost to cure testimony and supporting testimony to underlying assumptions of

appraisals); as well as specific experience with regard to condemnation hearings and jury trial. Likewise, list all cases involving the procedure and practice of property relocation in the context of eminent domain proceeding. Since federal funds will be utilized to acquire some if not all of the properties in questions, in providing the firm's experience, indicate which matters involved the uniform federal condemnation requirements. Experience with United States Department of Transportation requirements will be viewed favorably but is not required.

D. State the qualifications and experience of the particular attorneys proposed to staff the work. For each attorney that would be involved in handling the work as special counsel on behalf of NJ Transit, provide a detailed resume including information as to:

- a. Education, including advanced degrees;
- b. Years and jurisdictions of admission to practice;
- c. Number of years engaged in litigation practice in the Practice Area;
- d. General 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. Since many of the property acquisitions will not require condemnation litigation but will be accomplished through negotiation with the property owner, list as specified in C above all negotiated property acquisitions in the context of eminent domain handled by the firm since 2000.

F. Describe the role that each particular attorney listed in D above would play in providing the services listed in 2.0, and the approximate percentage of the work that each would perform. Percentages for junior lawyers may be listed separately or in the aggregate.

3.3 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 counsel to NJ Transit.
- 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 Standards for Submittal and Review of Special Counsel Invoices.
- G. Confirm that upon selection as special counsel your firm will provide all vendor certifications required by Public Law 2005, Chapters 51 and 271.

3.4 ADDITIONAL INFORMATION

- A. The forms listed below address statutory requirements for any contract resulting from this RFQ and must be completed and submitted with the bid proposal. They can be downloaded from the Department of Treasury website: <http://www.state.nj.us/treasury/forms.html#pb>

Ownership Disclosure

MacBride Principles and Northern Ireland Act of 1989

- B. New Jersey Business Registration

A copy of a valid New Jersey Business Registration must be submitted with your response to this RFQ. 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/index.html>

- C. Requirements of Chapter 51 and Executive Order 117 (Also referred to as "Pay to Play Restrictions," N.J.S.A. 19:44A-20.13 - 25, or Executive Order 134)

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts 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. In addition, on September 24, 2008, Governor Corzine issued Executive Order 117, effective on November 15, 2008 ("EO 117") setting forth additional limitations on the ability of executive branch agencies to contract with vendors who has made or solicited certain contributions. Pursuant to the requirements of Chapter 51 and EO 117, the terms and conditions set forth in this section are material terms of any contract resulting from this RFQ:

I. Definitions

For the purpose of this section, the following shall be defined as follows:

a) Contribution - means a contribution reportable as a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act." P.L. 1973, c83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws.

b) Business Entity - means any natural or legal person, business corporation, professional services corporation, Limited Liability Company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. The definition of a business entity includes:

(i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate and for a for profit entity, the following:

(1) in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of the corporation;

(2) in the case of a general partnership: the partnership and any partner;

(3) in the case of a limited partnership: the limited partnership and any partner;

(4) in the case of a professional corporation: the professional corporation and any shareholder or officer;

(5) in the case of a limited liability company: the limited liability company and any member;

(6) in the case of a limited liability partnership: the limited liability partnership and any partner;

(7) in the case of a sole proprietorship: the proprietor; and

(8) in the case of any other form of entity organized under the laws of this State or any other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;

(ii) any subsidiaries directly or indirectly controlled by the business entity;

(iii) any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

(iv) if a business entity is a natural person, that person's spouse or civil union partner, or child residing in the same household provided, however, that, unless a contribution made by such spouse, civil union partner, or child is to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of Chapter 51.

II. Breach of terms of Chapter 51 and EO 117 is a Breach of Contract

It shall be a breach of the terms of the contract resulting from this RFQ for the Business Entity to do any of the following:

(a) make or solicit a contribution in violation of the Chapter 51 and EO 117;

(b) knowingly conceal or misrepresent a contribution given or received;

(c) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;

(d) 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 to any State or county party committee;

(e) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant 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 and EO117;

(f) fund contributions made by third parties, including consultants, attorneys, family members, and employees;

(g) engage in any exchange of contributions to circumvent the intent of the Chapter 51; and EO 117; or

(h) 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 and EO 117.

III. Certification and disclosure requirements

a) The State shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, or to any State, county political party, or to a legislative leadership or municipal political party, committee during certain specified time periods.

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by Chapter 51 have been 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, available for review on the Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134> shall be provided to the intended awardee for completion and submission to the Purchase Bureau with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Division, in care of the Purchase Bureau Buyer, the Certification and Disclosure(s) within five (5) business days of the State's request. Failure to submit the required forms will preclude award of a contract under this RFQ, as well as future contract opportunities.

c) Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made.

d) The Chapter 51 and EO 117 form shall be provided to the intended awardee with the Notice of Intent to Award and must be returned prior to execution of the contract. The State Treasurer or his designee shall review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the contractor. If the State Treasurer determines that any contribution or action by the contractor constitutes a breach of contract that poses a conflict of interest in the awarding of the contract under this solicitation, the State Treasurer shall disqualify the Business Entity from award of such contract.

D. Additional Disclosure Requirement of P.L. 2005, c. 271

Pursuant to P.L. 2005, c271 ("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 on any transaction, the firm anticipated to be selected as special counsel for the transaction will be required to submit Chapter 271 disclosures. The form is available for your review at:
<http://www.state.nj.us/treasury/purchase/forms/CertandDisc2706.pdf>

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.

E. Notice of Set-off for State Taxes

Pursuant to P.L. 1995, c159, effective January 1, 1996, (codified at N.J.S.A. 54:49-19 et seq.), 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.

4.0 Fees

The firm should submit their hourly rate applicable to legal staff who will be involved in this matter, including partners, associates, clerks and law assistants (summer associates or law school graduates awaiting bar results), including the percentage discount the proposed hourly fees represent from your customary hourly fee for similar work. Special counsel hourly fees do not include reimbursable, such as computer time, postage, 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.

5.0 ADDITIONAL TERMS

- A. 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.
- B. 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.

6.0 SELECTION PROCESS

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 members, and will include a representative of NJ Transit. The following evaluation criteria categories, separate or combined in some manner, and not necessarily listed in order of significance, will be used to evaluate proposals received in response to this RFQ:

- Knowledge and experience of attorneys in the practice area;
- Experience of the firm in the practice area;
- Experience of the firm with US Department of Transportation acquisition and relocation requirements;
- Experience of the firm with railroad property issues;
- Resources of the firm;
- Approach to communication with the Department of Law; and
- Past experience of the State with the firm and/or attorneys.

Proposals will be ranked based on technical merit and the highest scoring firms offering the best value and expertise to NJ Transit will be recommended for selection. One firm will be selected for the sub-surface acquisitions, and one or two firms will be selected for the surface acquisitions.

