



**REQUEST FOR QUALIFICATIONS FOR
SPECIAL COUNSEL FOR
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
APPOINTMENT TO A TECHNOLOGY/LIFE SCIENCES COUNSEL POOL
FOR A TWO-YEAR PERIOD**

Date Issued: May 14, 2013

Question & Answer Cut-off Date: May 28, 2013

Proposals Due: June 11, 2013

JEFFREY S. CHIESA

ATTORNEY GENERAL OF NEW JERSEY

CHRISTOPHER S. PORRINO

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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 SPECIAL COUNSEL
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
APPOINTMENT TO A TECHNOLOGY/LIFE SCIENCES COUNSEL POOL
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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 Economic Development Authority (“Authority”). Proposals are being sought by the Attorney General on behalf of the Authority for the appointment of Special Technology/Life Sciences Counsel (“Counsel”) to the Authority as part of a pool of Counsel (the “Pool”) during the period of designation in connection with various types of technology and life sciences financing structures (as described below). You are invited to submit a proposal for appointment to the proposed Pool of Counsel.

- 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 Counsel.
- 1.3 The firms selected for the Pool 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 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 representing a limited partner in a venture capital investment deal.
- (2) Experience in various financing transactions related to emerging technology and life sciences companies, in particular including secured debt transactions involving intellectual property and warrants.
- (3) Expertise in Federal securities law applicable to the types of obligations described herein.

- (4) Expertise in loan workouts and restructuring involving intellectual property collateral, including issues related to intellectual property in bankruptcy matters.
- (5) Expertise in all phases of enforcement and collection of judgments and/or loan obligations secured by intellectual property, including intellectual property belonging to an estate in bankruptcy.

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

The Authority was formed pursuant to N.J.S.A. 34:1B-1 et seq. (the "Act") to provide financial assistance to private entities (both for-profit and not-for-profit) for economic development projects. In accordance with the Act, the Authority offers various initiatives to support the continuing growth of life sciences and technology businesses in New Jersey. The Authority seeks assistance with the following three types of transactions.

I. Limited Partnership Investment

This type of transaction involves the investment by the Authority in a venture capital fund and/or an accelerator limited partnership, both of which invest in New Jersey technology and life science companies. The amount of the Authority investment in these deals ranges from between \$150,000 to \$5 million. It is anticipated that the Authority will seek assistance from special counsel for approximately two such transactions each year.

II. Subordinated Convertible Debt

Under a second initiative, the Authority extends subordinated debt in an amount of up to \$1.5 million to a technology or life science company located in the State, which debt is convertible at the Authority's option into company equity. As an added financial incentive, such transactions also require the borrower to issue stock warrants to the Authority so as to enable the Authority to share in the success of a company that performs well. Another key feature of this initiative is the negative pledge by the borrower on its intellectual property and the springing lien on the intellectual property, which lien becomes effective upon an event of default under the Authority financing documents. The Authority has a set of standard form documents that it uses in connection with closing these subordinated debt transactions. Sometimes, a borrower chooses to heavily negotiate the form documents. In such case, the Authority may seek the assistance of special counsel from the Pool. It is anticipated that there may be approximately two such transactions each year.

III. Post-Closing (including workouts/foreclosures)

Members of the Pool may be asked from time to time to undertake assignments with respect to previously closed technology or life science financings, some of which may have defaulted under the financing documents. Counsel for such transactions will be expected to help the Authority with negotiations and/or structuring a workout, where indicated, draft all necessary documents to consummate the transaction and deliver appropriate opinions to the Authority in connection with the transaction. Counsel may also be called upon to institute and pursue or assist with actions to institute and pursue judgments and/or foreclosure proceedings related to a defaulting borrower's or guarantor's intellectual property. Counsel may be asked to participate or to assist with participation in bankruptcy matters involving intellectual property. Further, Counsel may be asked to assist with efforts to sell, license, or otherwise dispose of a defaulting borrower's and/or guarantor's intellectual property. It is expected that there will initially be approximately five to ten such transaction each year, with a lesser amount of transactions requiring Counsel assistance thereafter.

3.2 Applicable Laws and Regulations

Counsel must be familiar with and perform its duties in accordance with the Act and applicable regulations as they pertain to the Authority's technology and life science finance programs.

4.0 ESTABLISHMENT OF THE POOL

- 4.1 Based upon a review of the responses to this RFQ, the Attorney General, after consultation with the Authority, will determine whether to establish the Pool and which firms will be part of the Pool, if so established. It is anticipated that a minimum of three firms will be selected to serve as part of the Pool. Once the Pool is established, the period of the designation for the Pool will be two (2) years or until such time as a new pool is established. In the event the Pool is established, firms will be selected on a rotating basis for specific transactions, subject to a conflict review, and fee caps will be determined in accordance with the Outside Counsel Guidelines as further described in Section 6.6 herein.
- 4.2 The Attorney General reserves the right, in his sole discretion, to terminate any firm from the Pool or to terminate the Pool, at any time, and to establish other pool(s) through a separate procurement process. Assignment to the Pool does not provide any assurance that a firm will receive appointment for a particular assignment.
- 4.3 This RFQ is being issued in anticipation of the establishment of the Pool, but the Attorney General reserves the right to disapprove the establishment of the Pool.

5.0 SCOPE OF SERVICES

5.1 Limited Partnership Investment

Counsel representing the Authority in a Limited Partnership Investment shall be responsible for the review and negotiation of any documents prepared or submitted by other entities involved in the transaction, including but not limited to subscription agreements, limited partnership agreements, shareholder's agreements, stock purchase agreements and voting rights agreements. Counsel must be qualified to provide advice, opinions or services in areas pertaining to, but not limited to the following:

- (a) Investment structure;
- (b) Financial investment documentation;
- (c) Intellectual property (patents, trademarks, copyrights, etc.);
- (d) License agreements;
- (e) Warrants;
- (f) Corporate structure;
- (g) Anti-dilution;
- (h) Shareholder rights;
- (i) Liquidation preferences;
- (j) Net exercise options;
- (k) Uniform Commercial Code; and
- (l) Limited partnerships (including tax implications).

5.2 Subordinated Convertible Debt

Counsel representing the Authority in a Subordinated Convertible Debt transaction shall be responsible for the review and negotiation of any comments made by Borrower's counsel to the Authority's form loan documents in connection with the subordinated loan program. Counsel must be qualified to provide advice, opinions or services in areas pertaining to, but not limited to the following:

- (a) Lien structure and perfection (including negative pledges and springing liens);
- (b) Convertible loans;
- (c) Intercreditor lien priority and negotiations;
- (d) Seed/early stage loans;
- (e) Intellectual property (patents, trademarks, copyrights, etc.);
- (f) License agreements;
- (g) Warrants;
- (h) Corporate structure;
- (i) Anti-dilution;
- (j) Shareholder rights;
- (k) Liquidation preferences;
- (l) Net exercise options; and
- (m) Uniform Commercial Code.

5.3 Post-Closing (including workouts/foreclosures)

Counsel representing the Authority in a post-closing financing transaction shall provide advice, review documents, and otherwise assist with negotiations. In connection with a defaulted financing, Counsel shall assist in structuring a workout in connection with a defaulting borrower or guarantor; institute and pursue or assist with actions to institute and pursue judgments and/or foreclosure proceedings related to a defaulting borrower's or guarantor's intellectual property; participate or assist with participation in bankruptcy matters involving intellectual property; assist with efforts to sell, license, or otherwise dispose of a defaulting borrower's and/or guarantor's intellectual property.

5.4 General Duties

Counsel involved in any of the three types of transactions described above will be expected to provide the full range of professional services necessary to document and close the transaction. All work performed under this RFQ shall be performed in coordination with the Division of Law. Counsel will be expected to perform numerous tasks which may include, but not be limited to:

- (a) Attendance at various meetings necessary to the transaction, including meetings with the board of the Authority and due diligence meetings; consultation and negotiation with all parties to the transaction; negotiation of agreements related to the transaction on behalf of the Authority and participation in any other meetings or telephone conference calls relating to the transaction and coordination with the Division of Law;
- (b) Attendance at the closing of the transaction; and
- (c) Rendering approving opinions (if required) relating to the validity of the financing documents or other agreements entered into by the Authority.

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 of 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 appointed to the Pool 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 and identify any potential conflicts of interest arising from representation of the Authority. Please note that the Authority, 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 and the Authority 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 provision of legal services to the Authority for technology and life science financings. 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 the Authority's technology and life science financing initiatives: list and describe in detail up to five (5) examples within the last three (3) years in which your firm served as counsel and which are representative of the qualifications of your firm to undertake the proposed assignment. Please include information about the role your firm had, the type of transaction and your firm's familiarity with the Authority.
- 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 Counsel on behalf of the Authority, 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 technology and life science financing;
- (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 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.
- G. Provide the name and contact information for three (3) former clients who are either lenders or limited partners that can serve as references.

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, including but not limited to any board of director position in a New Jersey technology or life science company, that may cause a conflict of interest or the appearance of a conflict of interest if your firm acts as counsel to the Authority.
- D. Identify your firm's malpractice insurer and describe the insurance limits.
- E. Outside Counsel Guidelines. Counsel designated as 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/rfgs/oag-dol-Outside-Counsel-Guidelines-v4_012111_MBW.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 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 Authority, 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 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. Counsel retained for a specific matter(s) shall be required to electronically bill the Division for their services in accordance with the Guidelines.
 - (c) Costs. 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.
- H. Confirm that upon selection as 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.
- I. Provide any additional information that may be relevant to the selection process, such as prior experience with the Authority or recent transactions of the same nature as the anticipated transactions, the need for other special counsel and anticipated extraordinary expenses.

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.

PLEASE NOTE: Public Law 2012, Chapter 25, enacted on July 30, 2012, requires that all firms certify as to their non-involvement in prohibited activities in Iran. This certification requirement is more fully described in Section J of Exhibit A.

6.6 Fees

- A. The firms should submit a blended hourly rate for each attorney or other person to be charged on an hourly basis, including the percentage discount the proposed blended hourly fee represents from your customary hourly fee for similar work. 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/rfqs/oag-dol-Outside-Counsel-Guidelines-v4_012111_MBW.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. **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 by the Attorney General.**

7.0 PROPOSAL SUBMISSION

- 7.1 Five (5) sealed copies of the proposal must be marked “ Special Technology/Life Science Counsel RFQ for EDA” and delivered no later than 3:00 p.m. on { , 2013} to the following:

Susan K. Fischer (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

Kathleen Coviello (2 copies)
Director, Technology & Life Sciences
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
36 West State Street
P.O. Box 990
Trenton, New Jersey 08625-0990

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

- 7.2 The Attorney General will accept questions pertaining to this RFQ from all potential bidders electronically. Questions shall be directed to Leslie M. Gore, Deputy Director, 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: “Special Technology/Life Science Counsel RFQ for EDA.”

Questions will be accepted until **3:00 pm on May 28, 2013.**

- 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 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 Neither the State nor the Authority will 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 the Authority. 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 and Federal laws relevant to making technology and life science loans and limited partner investments in venture capital funds;
- Knowledge and experience of the firm with similar transactions and with complex financings;
- Knowledge and experience of the firm with loan workouts and restructuring involving intellectual property collateral;
- Knowledge of enforcement and collection of judgments and/or loan obligations secured by intellectual property, including intellectual property belonging to an estate in bankruptcy;
- Resources of the firm;
- Approach to communication with the Division of Law;
- Past experience of the State and the Authority with the firm and/or named attorneys; and
- Fees.

8.2 Proposals will be ranked based on the above criteria. Counsel will be selected by the Attorney General in consultation with the Authority. 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 the State and the Authority.

9.0 ADDITIONAL TERMS

9.1 No endorsement: Designation as 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 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 Inclusion in Pool: Selection of a firm for the Pool will not bind or otherwise obligate the State or the Authority to retain the listed firm for legal services. Selection of a firm for the Pool will not guarantee any other form of employment or engagement.

10.0 SPECIAL COUNSEL DESIGNATIONS AND RETAINER AGREEMENTS

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 the Authority 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 the Authority unless it also executes a retention letter for a specific matter or class of matters. A firm selected for inclusion in the Pool 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 to 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 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 Counsel.

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

Exhibit A
Additional Requirements for all
Office of Attorney General, Division of Law Retention Agreements

A. Ownership Disclosure

The Ownership Disclosure addresses the requirements of N.J.S.A. 52:25-24.2. An ownership disclosure must be completed and submitted with each signed retainer agreement. The Retention Agreement cannot be countersigned unless and until the Ownership Disclosure is properly completed and accepted. The form is available at:

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

B. Affirmative Action Supplement with Affirmative Action Employee Information Report

Affirmative Action Supplement with Affirmative Action Employee Information Report address the requirements of the Law Against Discrimination, N.J.S.A. 10:5-31 to -34 and the regulations N.J.A.C. 17:27.3.1 et seq. The form must be completed and submitted either with the proposal or with the signed Retention Agreement. The retainer is not completed unless and until either the form is properly completed and accepted or Special Counsel presents a copy of a Division of Public Contracts EEO Compliance Certificate of Employee Information Report pursuant to N.J.A.C. 17:27.4.6. The form is available at:

http://www.state.nj.us/treasury/purchase/forms/AA_%20Supplement.pdf

Information about obtaining the Certificate, renewing the Certificate or obtaining a duplicate Certificate is available from the Division of Public Contracts EEO Compliance:

http://www.state.nj.us/treasury/contract_compliance/index.shtml

The specific language of N.J.A.C. 17:27-3.5 and 17:27-3.8, contains specific requirements for Special Counsel Retention Agreements and is hereby incorporated as if set forth at length herein.

C. New Jersey State W-9 and Vendor Questionnaire

No Special Counsel shall be paid by the State unless Special Counsel has properly completed New Jersey State W-9 and Vendor Questionnaire on file with the State. If Special Counsel does not have a New Jersey State W-9 and Vendor Questionnaire on file with the State, the properly completed W9 shall be returned with the Retention Agreement signed by Special Counsel. A copy may be obtained from the Designated Attorney at the Division of Law.

D. New Jersey Business Registration

Pursuant to N.J.S.A. 52:32-44 (b), Special Counsel must have a valid New Jersey Business Registration prior to entering the Retention Agreement. If Special Counsel is not already registered or does not know if its firm is already registered, with the New Jersey Division of Revenue, registration can be completed or verified online at the Division of Revenue website:

<http://www.state.nj.us/treasury/revenue/busregcert.shtml>

As part of its Special Counsel proposal in response to an RFQ, or, if not done then, the first time Special Counsel is retained, Special Counsel must submit a copy of Special Counsel's Business Registration. Special Counsel is responsible for keeping its Business Registration current.

E. Requirements of Chapter 51 and Executive Order 117 (Also referred to as "Pay to Play Restrictions", N.J.S.A. 19:44A-20.13 to -20.25, 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, including Retention Agreements, from political contributions that pose the risk or appearance of 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 - 20.25) (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, Executive Order 117 (Corzine) was issued and made effective on November 15, 2008 (EO 117) which sets forth additional limitations on the ability of executive branch agencies to contract with vendors who have 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 Retention Agreement entered into with Special Counsel:

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, c.83 (N.J.S.A. 19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7, -10.1 et seq. Contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws and regulations.

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 such contribution is in violation of section 9 of Chapter 51.

II. Certification and disclosure requirements

(a) The State shall not entertain a proposal from Special Counsel or enter into a contract to procure from any Special Counsel services or any material, supplies or equipment, or to acquire, sell or lease any land or building, which includes the entry of Retention Agreements with Special Counsel, where the value of the transaction exceeds \$17,500, if that Special Counsel's 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) Upon submitting a proposal to be Special Counsel, and again, prior to entering into any Retention Agreement, the Special Counsel shall either:

(i) complete and submit to the Designated Attorney the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions 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 meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The form is available on the New Jersey Division of Purchase and Property website at:

http://www.state.nj.us/treasury/purchase/forms/eo134/c51_eo117_cd_02_10_09.pdf

The instructions, for the form are available on the Division of Purchase and Property website at:

http://www.state.nj.us/treasury/purchase/forms/eo134/c51_eo117_cd_instr%2002_2009.pdf

or

(ii) submit a copy of Special Counsel's still valid Two-Year Chapter 51/Executive Order 117 Vendor Certification.

(c) 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.

(d) Special Counsel's failure to submit the required forms will preclude the Division of Law's execution of the Retention Agreement with Special Counsel.

(e) The State Treasurer's designee shall review the Certification and 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 or EO 117, the State Treasurer shall disqualify Special Counsel from receipt of a Retention Agreement for the time period required by the statute and executive order. If the State Treasurer or his designee 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 Special Counsel from receipt of a Retention Agreement.

III. Breach of Terms of Chapter 51 or EO 117 is a Breach of Retention Agreement

It shall be a breach of the terms of the Retention Agreement for the Special Counsel (and all those attributed to Special Counsel's business entity) to do any of the following:

- (a) make or solicit a contribution in violation of Chapter 51 or 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 or 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;
- (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 or EO 117;
- (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 Chapter 51 or 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 Chapter 51 or EO 117.

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

Pursuant to P.L. 2005, c.271 (Chapter 271), every Special Counsel is required to disclose its (and its principals') political contributions within the immediately preceding twelve (12) month period to proposal submission or execution of a Retention Agreement. No 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 in connection with the execution of any Retention Agreement. The firm anticipated to be selected as Special Counsel for that matter will be required to submit Chapter 271 disclosures in connection with the execution of any Retention Agreement.. The form is available at:

<http://www.state.nj.us/treasury/purchase/forms/CertandDisc2706.pdf>

Please also be advised of the 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 Special Counsel receives in excess of \$50,000 from contracts from one or

more public entities during a calendar year. It is Special Counsel's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at (888) 313-3532 or <http://www.elec.state.nj.us>.

G. 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.

H. Notice of 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 (Kean), prohibit certain actions by persons or entities which provide goods or services to any State Agency. Specifically:

- I. 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-13(b) 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-13(i), 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-13(g).
- II. 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 State Ethics Commission.
- III. 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-13(g). Any relationships State Ethics Commission, 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.

- IV. 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.
- V. 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.
- VI The provisions cited above in paragraph H(I) - 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 State Ethics Commission may promulgate.

I. Source Disclosure Certification

Execution of the Retention Agreement confirms that Special Counsel agrees, in accordance with Executive Order 129 (McGreevey) 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 Designated Attorney a letter that states with specificity the reasons why the services cannot be so performed. The letter shall require review and approval pursuant to N.J.S.A. 52:34-14.2 prior to execution of this Retention Agreement.

J. 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 defined 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 available at:

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



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