



**REQUEST FOR QUALIFICATIONS FOR
BOND COUNSEL FOR
NEW JERSEY WATER SUPPLY AUTHORITY
APPOINTMENT FOR A TWO-YEAR PERIOD (2014 AND 2015)**

Date Issued: May 16, 2013

Question & Answer Cut-off Date: May 30, 2013

Proposals Due: June 13, 2013

JEFFREY S. CHIESA

ATTORNEY GENERAL OF NEW JERSEY

CHRISTOPHER S. PORRINO

DIRECTOR, DIVISION OF LAW

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF LAW

Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 112 Trenton, N.J. 08625-0112

**REQUEST FOR QUALIFICATIONS (“RFQ”)
FOR BOND COUNSEL
NEW JERSEY WATER SUPPLY AUTHORITY
APPOINTMENT FOR A TWO-YEAR PERIOD (2014 AND 2015)**

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 New Jersey Water Supply NJWSA (“NJWSA”). Proposals are being sought by the Attorney General on behalf of the NJWSA for the appointment of Bond Counsel to NJWSA for the issuance of bonds, notes or other obligations (collectively, the “Bonds”) during 2014 and 2015. One transaction may involve the issuance of Bonds to finance the dredging of the Delaware and Raritan Canal in 2014 (the “Delaware/Raritan Bonds). The NJWSA may also wish to issue Bonds to finance the acquisition of certain watershed parcels (the “2015 Property Bonds”) in calendar year 2015 and an advance refunding of the NJWSA’s Manasquan Reservoir Water Supply System Revenue Bonds, Series 2005 (the Manasquan Reservoir Refunding Bonds”) in either 2014 or 2015. Finally, Bond Counsel may be asked during 2014 and 2015 to provide advice to the NJWSA on other matters relating to Bonds issued during the period of designation in connection with various types of financing structures (as described below), including variable rate, fixed rate, tax-exempt or taxable bonds or notes (collectively, the “Bonds”). You are invited to submit a proposal for appointment to serve as Bond Counsel for these transactions and to provide general advice on bond-related matters to NJWSA.
- 1.2 The Attorney General will designate one or more attorneys from the Division of Law in the Department of Law and Public Safety who will be the sole point(s) of contact for all matters pertaining to this engagement and who will oversee and coordinate the activities of Bond Counsel.
- 1.3 The firms selected must comply with all local, State and federal laws, rules and regulations applicable to the engagement and to the services to be performed thereunder.
- 1.4 Compensation for the firm selected as Bond Counsel for this engagement shall be negotiated based upon the provisions set forth in Sections 4.0 and 5.0 below.

2.0 MINIMUM QUALIFICATIONS

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

- (1) Experience as bond counsel for a governmental entity issuing bonds to the New Jersey Environmental Infrastructure Trust and to the State of New Jersey acting

by and through the Department of Environmental Protection for drinking water related projects.

- (2) Expertise in Federal Tax Law Matters as applicable to the types of obligations described herein.
- (3) Expertise in Federal Securities Law applicable to the types of obligations described herein.
- (4) Expertise as Bond Counsel for a public entity issuing refunding bonds.

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

3.0 BACKGROUND AND ANTICIPATED STRUCTURE OF THE BONDS

3.1 Background

The NJWSA is a body corporate and politic established by the New Jersey Water Supply Act of 1981, L. 1981, c.293 (the "Act"). The NJWSA was established for the purpose of operating State water supply facilities inclusive of property necessary for the collection and accumulation of supply. The NJWSA operates the Spruce Run Reservoir, Round Valley Reservoir, Delaware and Raritan Canal and the Manasquan Water Supply System, Treatment Plant and Transmission System. The treatment plant and transmission system is owned by the Southeast Monmouth Municipal Utilities Authority, which sets the rates, and is operated and maintained by the NJWSA under the terms of an operating agreement.

The NJWSA collects revenue from the sale of approximately 182 million gallons per day to its customers in the Raritan Basin and from the sale of approximately 21 million gallons per day to its customers in the Manasquan Basin. The NJWSA's rate structure is divided into various components to fund operations and maintenance, source water protection, debt service and capital. In FY2014, under N.J.A.C. 7:11-2.4(b) and 2.6(b), the NJWSA will raise sufficient funds to cover debt service on dredging bonds and land acquisition bonds. N.J.A.C. 7:11-4.4(b) and (c) authorizes the Debt Service Cost Component for the Manasquan Reservoir Water Supply System to fund debt service on the Series 2005 Bonds, including any refunding bonds.

In 2014, the NJWSA anticipates issuing the Delaware/Raritan Bonds under its General Bond Resolution ("General Bond Resolution") dated November 17, 1988, to the New Jersey Environmental Infrastructure Trust (the "Trust") and the State of New Jersey to finance a dredging program for an approximate 10 mile reach of the Delaware and Raritan Canal between Route 27 in Kingston to Amwell Road. Project costs, dependent upon the dredging methodology chosen, may range from \$30,000,000 to \$35,000,000. The NJWSA submitted planning documents to the Trust in October 2012, an application

in March 2013 and expects bonds to be issued in May of 2014. Construction is expected to begin in the summer of 2014. A Local Finance Board Application would be necessary between September 2013 and March 2014. If the Trust does not approve the project financing, the NJWSA will seek to issue revenue bonds under its General Bond Resolution. In either case, the NJWSA anticipates a debt component of the rate will be dedicated to retiring the debt issued for the dredging program.

In 2015, the NJWSA may issue the 2015 Property Bonds under its General Bond Resolution to the Trust and the State of New Jersey to finance a portion of the direct acquisition costs of critical watershed parcels. The NJWSA has prior Bonds outstanding under the General Bond Resolution, and these Bonds may be issued on a subordinated basis to such outstanding Bonds. The Trustee under the General Bond Resolution is J.P. Morgan Chase. In 2003, 2004 and 2005, the NJWSA issued Bonds under its Third, Fourth, and Fifth Supplemental Resolutions to Delaware and Raritan Canal – Spruce Run/Round Valley Reservoirs System Bond Resolution (the “Issues”) totaling \$864,019, \$1,380,000, and \$3,990,974 respectively to the Trust and State of New Jersey to finance a portion of the direct acquisition costs of these parcels. In 2006, 2007, 2008, 2010 and 2012, the NJWSA issued Bonds on a subordinated basis to the Issues totaling \$2,844,363, \$2,360,563, \$1,812,000, \$590,493 (Series 2010 A & B), \$2,054,338 (Series 2010 C & D) and \$1,966,455 respectively.

The NJWSA’s total debt service repayment obligation in Fiscal Year 2013 is \$1,051,631, and the NJWSA has committed a like amount of funds from its Source Water Protection (“SWP”) Fund to serve as the source for debt service payments. More specifically, the SWP Rate component, which revenue is deposited into the SWP Fund, commenced July 1, 2003. The NJWSA committed \$5.00 per million gallons for each million gallons sold from the Raritan Basin System for the direct acquisition of critical watershed properties. The NJWSA increased the SWP Rate component on July 1, 2005 by an additional \$3.00 per million gallons for a total of \$8.00 per million gallons for direct acquisition of critical watershed properties. On July 1, 2013, there will be a \$9.00 per million gallon increase for direct acquisition of critical watershed parcels which, when added to the existing \$8.00 per million gallons, will generate \$1,131,000 annually, and can be supplemented by surplus in the SWP Fund and the total SWP Rate component. The total SWP Rate component will generate approximately \$1,596,000 annually. If critical watershed parcels are acquired through the issuance of debt, the total principal amount of NJWSA Bonds in 2015 will not exceed \$3,000,000 in each year. The NJWSA shall again commit to the continuation of the rate component within its Raritan Basin System and any other funds in the SWP Fund to serve as the source for debt service payments on the NJWSA Bonds. It is anticipated that the annual repayment obligation will not exceed \$200,000 based on current interest rates and a twenty (20) year amortization schedule from the SWP Fund for the 2015 Issue or a total of \$1,250,000 from the SWP Funds for all Environmental Infrastructure Program Bond Issues (2003-2015). The NJWSA will make a determination as to the issuance of the 2015 Property Bond during the third quarter of calendar year 2013 in sufficient time to submit planning documents in October of 2013.

The Manasquan System was financed with loans from the State of New Jersey pursuant to a State Loan Agreement. A debt service assessment for contracts, effective as of July 1, 1990, was established to cover debt service payments on the initial loan of \$63,600,000 at a set interest rate of 7.15 percent and payment of the interim completion loan of \$7,416,000 at an interest rate of 7.16 percent. During FY1992 the State of New Jersey reduced the interest rate on the completion loan to 6.24 percent. During FY1997, the NJWSA negotiated an agreement with the State of New Jersey, which reduced the interest rate on the \$63,600,000 original State Loan Notes from 7.15 percent to 5.93 percent effective for the payments due on or after August 1998.

In accordance with the terms of the State Loan Agreement, the State Loan Notes are classified as either Current Debt Service Portion Notes (“Current Notes”) or Deferred Debt Service Portion Notes (“Deferred Notes”). Principal of the Deferred Notes will be discharged solely by exchange for Current Notes or by the expiration of a period of forty years from the date of their issuance which was June 3, 1987. The Deferred Notes must be exchanged for Current Notes on a pro rata basis to the extent that the NJWSA enters into additional long-term contracts to sell water from the Manasquan System on an annual basis. Such Current Notes are payable over a thirty-year period commencing from such date as is defined in the State Loan. At June 30, 2012 the Current Portion of the State Loan Notes and Completion Notes was \$79,427 and \$8,417 respectively resulting from an additional long-term contract for the sale of .028 million gallons of water per day. It is anticipated that the current notes would be rolled into the refunding.

Interest on the Deferred Notes accreted as principal through July 31, 1993 and is not payable until they have been exchanged for Current Notes. The interest that accreted as principal through July 31, 1990, accrued interest; however, the interest that accreted for the period from August 1, 1990 through July 31, 1993 did not accrue interest. The accretion of interest to the principal amount for the Current Notes and the Deferred Notes is \$25,563,184 at June 30, 2012.

In August of 2005, the NJWSA issued \$47,535,000 to refund the current portion of the State Loan Notes and the Completion Notes at an average coupon of 4.83 percent. The terms of the bonds are 15 and 25 years respectively. The bond proceeds also fully funded the Debt Service Reserve Account and debt service coverage must remain at 120 percent through the life of the bonds. At June 30, 2012, the principal balance was \$34,085,000. The property and revenue of the Manasquan System are pledged as collateral for the 2005 Bonds. The Debt Service component of the rate has been adjusted in the past to reflect the revised debt service schedules.

The 2005 Bonds are eligible for an Advance Refunding. Note that 61% of Manasquan System water sales are to one large customer whose long-term uninterruptible water supply contract expires in 2031. 39% of water sales, which provide the basis of the pledged collateral for the Bonds, are under contracts scheduled to expire on June 30, 2015. The NJWSA will begin the process of renegotiating those contracts during the summer of 2013. It is expected that the total sales base may drop, but not dramatically.

The NJWSA collects revenue from the sale to provide financial assistance to private entities (both for-profit and not-for-profit) for economic development projects. In accordance with the Act, the NJWSA issues bonds and lends the proceeds thereof to private entities for capital projects, debt refinancing and working capital. Each issue of Bonds is typically for the benefit of a specific borrower and repayment of each such issue is a special and limited obligation of the NJWSA payable only from repayments of the loans and funds established in connection with the Bond issue. The NJWSA may issue a guarantee and/or subordinated debt with the Bonds.

3.2 Anticipated Structure

The Delaware/Raritan Bonds and the 2015 Property Bonds shall be sold by a negotiated sale to the Trust and the State. The Delaware/Raritan Bonds and the 2015 Property Bonds issued to the State do not bear interest. The interest rate on the Delaware/Raritan Bonds and the 2015 Property Bonds issued to the Trust are determined by the interest rate on bonds issued by the Trust to the public at competitive sale. It is anticipated that the Delaware/Raritan Bonds will be issued in May 2014 for the dredging project and that the 2015 Property Bonds, if issued, will be issued in May 2015. A schedule for refunding the Series 2005 Manasquan System Bonds has not yet been determined.

The NJWSA may also issue Notes pursuant to the Trust's Interim Loan Program in October 2014 for the land acquisition program. Pursuant to the Trust's Interim Loan Program (N.J.A.C. 7:22-4.7), the proceeds will be used by the NJWSA to purchase critical watershed parcels prior to issuance of the Bonds. The interim loan will be non-interest bearing and retired by the Trust upon the issuance of the Bonds in the first or second quarter of each calendar year.

The Refunding Bonds would be sold on a competitive basis. It is anticipated that the Refunding Bonds would be issued in 2015 and can be sold no earlier than June 30, 2015.

3.3 Transcripts of Prior Proceedings

Copies of the entire transcripts of the record of proceedings with respect to prior NJWSA financings are available for inspection at the offices of NJWSA. For an appointment to review such transcripts please contact:

Beth Gates, Director of Finance and Administration
New Jersey Water Supply Authority
1851 Highway 31
P.O. Box 5196
Clinton, New Jersey 08809
(908) 638-6121

4.0 SELECTION OF BOND COUNSEL

- 4.1 Bond Counsel will be selected by the Attorney General, after consultation with the NJWSA, in accordance with Executive Order No. 26 and the Attorney General's Guidelines for the Selection of Bond Counsel and as further described in Section 8.0 herein.
- 4.2 If a firm is selected to serve as Bond Counsel for a particular transaction and such transaction does not close, the firm will not be permitted to submit a bill for the work done.

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5.0 SCOPE OF SERVICES

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

- 5.1 Assistance with the development of the size and structure of the transaction, including advice in regard to tax and other legal issues, including, without limitations, the applicable statutes, regulations and the State Constitution and/or drafting of legislation necessary to implement the transaction.
- 5.2 Preparation of all documents necessary to implement the transactions including but not limited to resolutions, purchase contracts, notices of sale, supplemental resolutions, loan agreements, escrow agreements, notes, bonds, documents necessary to comply with continuing disclosure requirements, any investment agreements or other contracts for the investment of the proceeds of the Bonds, credit enhancement commitments and related documentation, swap agreements, subscribing for SLGS, closing documents, including but not limited to, arbitrage certificates and any other documents necessary to implement the transactions. Many of the documents used in connection with the Bonds will be initially prepared by the Trust's Bond Counsel. In competitively bid transactions, Bond Counsel will be expected to draft the notice of sale and the disclosure documents. In negotiated transactions, Bond Counsel could be asked to draft the purchase agreement and the disclosure documents.
- 5.3 Review of any documents prepared or submitted by other entities involved in the transaction.
- 5.4 Attendance at various meetings necessary to the transaction including meetings with the board of the NJWSA, the Trust and due diligence meetings; consultation and negotiation with all parties to the transaction including, but not limited to, the trustee, bond purchasers, the rating agencies, underwriters, bond insurers, if any, credit enhancers, if any, and swap providers, if any; negotiation of agreements related to the transaction on behalf of the NJWSA and participation in any other meetings or telephone conference

calls relating to the transaction and coordination with the Attorney General's Office and the trustee.

- 5.5 Attendance at the sale of the Bonds, preparation of all closing documents and certificates, attendance at the pre-closing and closing of the Bonds.
- 5.6 Rendering approving opinions relating to the validity of the Bonds or other agreements entered into by the NJWSA, the tax exempt status of interest on the Bonds; adequacy of disclosure (Rule 10b-5) and compliance with Rule 15c2-12 (including the preparation of any agreements relating to secondary market disclosure); compliance with the requirements relating to delivery of the Preliminary and Official Statements for the Bonds, including by electronic delivery of the Preliminary Official Statement for the Bonds and such other opinions as may be required from Bond Counsel for the transaction.
- 5.7 In addition, Bond Counsel will be asked from time to time to undertake assignments with respect to previously closed Bond issues. Bond Counsel for such transactions will be expected to draft and review all necessary documents to consummate the transaction and deliver appropriate opinions to the NJWSA in connection with the transaction and is expected to be available for post-sale Internal Revenue Code compliance questions, continuing disclosure requirements and any other post-closing issues that may arise with respect to the Bonds.

6.0 **REQUIRED COMPONENTS OF THE RFQ PROPOSAL**

Proposals must respond to each of the following requests in the order indicated. Please provide the information requested below for all counsel who may perform any of the requested services.

- 6.1 Complete the cover sheet attached as Exhibit B with the name, address of your firm, contact information for this proposal and the number 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 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 that the firm has regularly appeared on behalf of other clients and identify any potential conflicts of interest arising from representation of the NJWSA. Please note that the NJWSA, 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 communications with the Attorney General and keeping the State and the NJWSA informed of problems and progress.
- L. Provide a representative listing of the firm's major private sector clients.
- M. Provide the name, address, telephone number, e-mail address, and facsimile number for the contact person in your firm.

6.3 Qualifications and Experience in Area of Law

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

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

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

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

6.4 Other Qualification Information

- A. Identify all adverse determinations against your firm or any of its partners, associates or employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints of any kind under any local, state or Federal law, regulation, court rule, or Rule of Professional Conduct.
- B. Identify and describe in detail any indictments, convictions or civil offenses arising directly or indirectly from the conduct of business by your firm or any of its partners, associates, employees, or agents.
- C. Identify any material arrangements, relationships, associations, employment or other contacts that may cause a conflict of interest or the appearance of a conflict of interest if your firm acts as counsel to the NJWSA.
- D. Identify your firm's malpractice insurer and describe the insurance limits.
- E. Outside Counsel Guidelines. Counsel designated as Bond Counsel and retained on any specific matter shall be required to comply with the Outside Counsel Guidelines ("Guidelines") available for review at: http://www.nj.gov/oag/law/pdf/rfqs/oag-dol-Outside-Counsel-Guidelines-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 Bond Counsel, by submitting a proposal, you agree that whenever your firm is retained, it shall abide by the Guidelines as written, as well as with any updates that may be made during the term.
 - (a) Conflict of Interest. Section III of the Guidelines requires that counsel be free of any conflict of interest. Please note that the Trust, as a public entity, is precluded by the Rules of Professional Conduct from waiving conflicts of interest. See RPC 1.7(a)(2) and RPC 1.7(b)(2). If your firm is designated as Bond Counsel, you have a continuing obligation during the term to disclose to the Attorney General of New Jersey any actual or potential conflicts. Additionally, retained counsel shall not disclose any confidential information learned or received in any way as part of a retention, either during the retention or at any time after the retention has concluded.
 - (b) Electronic Billing. Bond Counsel retained for a specific matter(s) shall be required to electronically bill the Division for their services in accordance with the Guidelines.
 - (c) Costs. Bond Counsel shall have resources sufficient to advance all costs, including the costs of any necessary experts. Billing for costs shall be done in accordance with the Guidelines.

- F. Confirm that upon selection as special counsel your firm will provide the updated Ownership Disclosure, Affirmative Action Supplement with Affirmative Action Employee Information Report and the certifications required by Public Law 2005, Chapters 51 and 271, Executive Order 117 (Corzine 2005) and Public Law 2012, Chapter 25 as further explained in Exhibit A. These forms are initially required by the RFQ and then required by law again at any retention.
- G. Provide any additional information that may be relevant to the selection process, such as prior experience with the NJWSA 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. Bond Counsel fees do not include reimbursables, such as computer time, postage, telephone charges, travel, duplicating, etc. Reasonable expenses will be reimbursed to your firm in accordance with the Outside Counsel Guidelines. The Outside Counsel Guidelines available for review at: http://www.nj.gov/oag/law/pdf/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 “Bond Counsel RFQ for NJWSA and delivered no later than 3:00 p.m. on Thursday, June 13, 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

Beth Gates
Director of Finance and Administration (2 copies)
New Jersey Water Supply Authority
1851 Highway 31
P.O. Box 5196
Clinton, New Jersey 08809

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:

RFQQUESTIONS@DOL.LPS.STATE.NJ.US

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

Questions will be accepted until **3:00 pm on Thursday, May 30, 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 Bond counsel as a result of this RFQ.

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

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

- 7.5 The Attorney General reserves the right to interview the most qualified firms responding to this RFQ prior to making a final selection.
- 7.6 The Attorney General reserves the right to reject any and all proposals received in response to this RFQ, when determined to be in the State's best interest, and to waive minor noncompliance in a proposal, modify or amend, with the consent of the submitting firms, any statement, and to effect any agreement deemed by the Attorney General to be in his best interest, or in the best interests of the Division of Law. The Attorney General further reserves the right to make such investigations as he deems necessary as to the qualifications of any and all firms submitting proposals in response to this RFQ. In the event that all proposals are rejected, the Attorney General reserves the right to re-solicit proposals.
- 7.7 All documents and information submitted in response to this RFQ generally shall be made available to the general public as required by applicable law.
- 7.8 Neither the State nor the NJWSA 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 NJWSA. The following evaluation criteria categories, separate or combined in some manner, and not necessarily listed in order of significance, will be used to evaluate proposals received in response to this RFQ.
 - Knowledge and experience of named attorneys as applicable with:
 - State laws relevant to bonds;
 - Federal securities, tax and other laws relevant to bonds;
 - Experience with complex financings;
 - Knowledge and experience of the firm with bond work and similar transactions;
 - Resources of the firm;
 - Approach to communication with the Division of Law;
 - Past experience of the State and the NJWSA with the firm and/or named attorneys; and

- Fees.

8.2 Proposals will be ranked based on the above criteria. Bond Counsel will be selected by the Attorney General in consultation with the NJWSA. 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 NJWSA.

9.0 ADDITIONAL TERMS

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

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

9.3 Attorney General's Authority Not Constrained: Nothing in this RFQ is intended to limit or constrain the discretion of the Attorney General in exercising any authority, duty, prerogative or power established or recognized by the State Constitution, statutes, Executive Orders, regulations, or case law.

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

10.0 SPECIAL COUNSEL DESIGNATIONS AND RETAINER AGREEMENTS

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

11.0 EVALUATIONS

Not less frequently than annually, the Attorney General or his designee shall evaluate the firm's performance. The evaluation will focus on responsiveness; quality of work; adequacy and appropriate utilization of resources; adherence to invoice submittal standards; and cost effectiveness. The Attorney General or his designee will advise each firm of any problem areas. If, as the result of one or more evaluations, the Attorney General determines, in his sole discretion, that a firm should be removed from the engagement as Bond Counsel, the firm may be removed after written notice is provided to the firm. Other than this written notice, nothing in this RFQ creates any rights, entitlements, privileges, or presumptions in favor of a law firm that would constrain the Attorney General's NJWSA to remove a firm from being Bond Counsel.

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

Exhibit 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