

**REQUEST FOR QUALIFICATIONS
FOR
Special Counsel:
Department of Law
& Public Safety,
Division of Law**

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

**Date Issued:
April 10, 2007**

**Question and Answer Cut-off Date:
May 25, 2007**

**Proposals Due:
June 15, 2007**

**Stuart Rabner
Attorney General**

**Robert Gilson
Director, Division of Law**

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

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

1.0 PURPOSE AND INTENT

The Attorney General of New Jersey, through the Department of Law and Public Safety, Division of Law, (“the Attorney General”) serves as the legal representative and counsel for the departments, boards, offices, commissions and other instrumentalities of State government, its officers and employees. The Attorney General intends to create a list of outside counsel interested in serving as special counsel, under the direction and control of the Division of Law, in the following practice area designations:

- (a) general litigation;
- (b) employment and related litigation; and
- (c) representation of county prosecutors and their employees, as mandated by Wright v. State, 169 N.J. 422 (2001).

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

The Attorney General will issue separate RFQs for other practice areas such as complex litigation, municipal court, real estate, labor negotiations, alternative investments, collections, bond counsel, medical malpractice, intellectual property, out-of-State tort, FELA, fatal accident, State vehicle cases, workers compensation and special railroad counsel.

This RFQ does not affect retainer agreements or designations for matters already assigned to outside counsel. However, upon completion of the selection process described herein, any and all pre-existing designations of outside counsel in the practice areas that are the subject of this RFQ will expire. **Any outside counsel currently designated as special counsel who seeks to be eligible for future retentions must submit qualifications in accordance with the directions set forth below.**

1.1 PROPOSAL SUBMISSION

A sealed original and three sealed copies of the proposal must be marked “Special Counsel RFQ” and delivered or post marked no later than 11:59 p.m. on JUNE 15, 2007 to the following:

GLENN R. JONES
ASSISTANT ATTORNEY GENERAL

DIVISION OF LAW
P.O. BOX 112
TRENTON, N.J. 08625-0112

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

1.2 QUESTION AND ANSWER

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

RFQ.QUESTIONS@DOL.LPS.STATE.NJ.US

Questions will be accepted until **5:00pm on May 25, 2007**.

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

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

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

The Attorney General reserves the right to reject any and all proposals received in response to this RFQ, when determined to be in the State's best interest, and to waive minor noncompliance in a proposal. The Attorney General further reserves the right to make such investigations as he deems necessary as to the qualifications of any and all firms submitting proposals in response to this RFQ. In the event that all proposals are rejected or if the Attorney General, at any time, deems the number of qualified firms receiving designations as the result of this RFP to be insufficient to meet the potential needs of the Division of Law, the State reserves the right to re-solicit proposals.

2.0 RFQ SCOPE OF SERVICES

The Attorney General wishes to have access to counsel with substantial experience in the practice areas that are the subject of this RFQ. Counsel must also have resources sufficient to advance all costs, including the costs of any experts needed to assess damage and the costs of the preparatory work described below. Counsel must also be free of any conflict of interest, and must comply with the conflicts policy referred to in section 3.1.

The Attorney General seeks counsel with experience in the following areas:

- (1) **General Litigation:** Representation of State agencies and employees in commercial, tort, or other civil litigation, when required due to conflicts or as otherwise deemed necessary by the Attorney General.

- (2) Employment litigation: Defense of State agencies and employees in matters brought by State employees alleging discrimination, violations of the LAD, CEPA, Title VII, 42 U.S.C. § 1983, and other employment-related causes of action, when required due to conflicts or as otherwise deemed necessary by the Attorney General.
- (3) Wright cases: In Wright v. State, the New Jersey Supreme Court held that the State must represent county prosecutors and their employees in tort cases arising out of certain law enforcement activities.

Retention for a particular matter may include significant evaluative and investigative preparatory work. Litigation may include drafting pleadings, motions, briefs, and all other papers to be filed in court; conducting and responding to discovery; attending all pre-trial, trial and post-trial court appearances; conducting settlement negotiations and handling appeals. Counsel may be asked to handle all issues arising in the litigation, including all issues that must be raised in compliance with the entire controversy doctrine.

3.0 REQUIRED COMPONENTS OF THE RFQ PROPOSAL

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

3.1 Firm Profile and Experience

- A. Indicate the date your firm was established.
- B. Describe the legal services provided by your firm.
- C. Describe your firm's specialty and/or area(s) of expertise.
- D. Identify the number of employees in your firm (licensed attorneys; legal support staff; other support staff).
- E. 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 receives a designation 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. Please note that the State, as a public entity, is precluded by the Rules of Professional Conduct from waiving conflicts of interest. See RPC 1.7(a)(2) and RPC 1.7(b)(2).
- K. Identify any State agency that the firm would be unwilling to represent if, as a consequence of that representation, the firm would be precluded from representing other clients in matters adverse to or pending before that agency. In evaluating the possibility of conflicts of interest, counsel are directed to review the August 2, 1984 Opinion Letter of Attorney General Irwin I. Kimmelman (attached). If your firm is designated as special counsel, you have a continuing obligation to disclose to the Attorney General of New Jersey any actual or potential conflicts. Additionally, retained counsel must agree not to undertake any future representation that might result in the disclosure of the State's work product to potential or actual adversaries of the State.
- L. Identify any governmental entities, agencies, or political subdivisions, other than the State of New Jersey, that the firm represents or has represented. Include the time period during which the firm represented each such agency and the nature of the work performed.
- M. Describe the firm's approach to maintaining responsive communication with the Division of Law and keeping the State informed of problems and progress.
- N. Provide a representative listing of the firm's major private and public sector clients.
- O. Identify two or more state and/or federal judges before whom the firm's litigators regularly appear.
- P. Provide the name, address, telephone number, e-mail address, and facsimile number for the contact person in your firm.

3.2 Litigation Qualifications and Experience (include a separate Section 3.2 in your proposal for each separate practice area in which you are seeking special counsel designation pursuant to this RFQ).

- A. Indicate the practice area designation in which you or your firm seeks special counsel designation. Identify and give the office location of each attorney who practices in that practice area. Please indicate what percentage of your firm's practice is in the practice area in which you seek designation.

- B. List all attorneys in your firm that have at least five years experience in litigation pertaining to the practice area in which you seek special counsel designation.
- C. Describe your firm's experience in litigation pertaining to the practice area in which you seek special counsel designation, by listing cases litigated involving this practice area since 2000 (identifying by case name and legal citation, if any), including the result of such litigation.
- D. State the qualifications and experience of the particular attorneys proposed to staff the work. For each member of the litigation department that would be involved in handling the litigation as special counsel on behalf of the State, provide a detailed resume including information as to:
 - a. Education, including advanced degrees;
 - b. Years and jurisdictions of admission to practice;
 - c. Number of years engaged in litigation practice in the designated practice area;
 - d. General work experience (including an indication of whether the individual has tried any jury cases and, if so, approximately how many);
 - e. Any professional distinctions in litigation (e.g., trial certification, teaching experience); and
 - f. Area(s) of specialization.
 - g. Office location of the attorney.
- E. As to the members of the litigation department who would be involved in handling the litigation as special counsel, describe the role each would play in the litigation and the approximate percentage of the work that each would perform. Percentages for junior lawyers may be listed separately or in the aggregate.

3.3 Other Qualification Information

- A. Identify all adverse determinations against your firm or any of its partners, associates or employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints of any kind under any local, State or Federal laws, regulations, court rules, or Rules of Professional Conduct.
- B. Identify and describe in detail any indictments, convictions or civil offenses arising directly or indirectly from the conduct of business by your firm or any of its partners, associates, employees, or agents.
- C. Identify any material arrangements, relationships, associations, employment or other contacts that may cause a conflict of interest or the appearance of a conflict of interest if

your firm acts as litigation counsel to the State of New Jersey or any of its departments, offices, or divisions.

- D. Identify your firm's malpractice insurer and describe the insurance limits.
- E. Confirm that your firm covers litigation costs, any bonds required by a court, and any potential liability under Fed.R.Civ.P. 11.
- F. Confirm that your firm agrees to abide by the Standards for Submittal and Review of Special Counsel Invoices.
- G. Confirm that upon selection as special counsel your firm will provide all vender certifications required by Public Law 2005, Chapters 51 and 271.

3.4 Additional Information

The forms listed below must be completed and submitted with the bid proposal. They can be downloaded from the Department of Treasury website:

<http://www.state.nj.us/treasury/forms.html#pb>

- Ownership Disclosure
- MacBride Principles and Northern Ireland Act of 1989
- Vendor Certification - Executive Order #129 Compliance

NOTE: A copy of a valid New Jersey Business Registration must be submitted. If not already registered with the New Jersey Division of Revenue, registration can be completed on line at the Division of Revenue website: <http://www.state.nj.us/treasury/revenue/index.html>

4.0 Fees

For all practice areas addressed in this RFP, the State will engage Special Counsel at the following rates:

Partner:	\$200 / hr
Associate:	\$150 / hr
Clerks and law assistants (summer associates or law school graduates awaiting bar results)	\$125 / hr
Paralegals	\$90 / hr

5.0 Additional Terms

- A. No endorsement: Designation as special counsel does not constitute an endorsement by the State of New Jersey, the Attorney General or the Department of Law and Public Safety.
- B. Effect of RFQ response: A response to this RFQ will not bind or otherwise obligate the State of New Jersey to include the responding firm on the list of special counsel.
- C. Effect of Inclusion on List: Inclusion of a firm on the list of designated counsel will not bind or otherwise obligate the State of New Jersey to retain the listed firm for legal services. Inclusion on the list of designated counsel will not guarantee any other form of employment or engagement.
- D. Attorney General authority not constrained: Nothing in this RFP is intended to limit or constrain the discretion of the Attorney General in exercising any authority, duty, prerogative or power established or recognized by the Constitution, statutes, Executive Orders, regulations, or case law.

6.0 SELECTION PROCESS

All proposals will be reviewed to determine responsiveness. The Attorney General may reject non-responsive proposals without evaluation, but may waive minor non-compliance. An Evaluation Committee will evaluate responsive proposals. The Evaluation Committee will have a minimum of three members, and may include a representative of a State agency whose cases the selected firms may be handling. The following evaluation criteria categories, separate or combined in some manner, and not necessarily listed in order of significance, will be used to evaluate proposals received in response to this RFQ:

- Knowledge and experience of attorneys in the practice area;
- Experience of the firm in the practice area;
- Resources of the firm;
- Approach to communication with the Department of Law;
- Past experience of the State with the firm and/or attorneys; and
- Geographic diversity.

Proposals will be ranked based on technical merit and the highest scoring small and medium/large firms, up to the maximum number specified below, will be recommended for selection.

Practice Area	Large / Medium Firms	Small Firms
General Litigation	25	10
Employment	15	5

The Attorney General, in his discretion, may select fewer firms of any size in each practice area that is the subject of this RFP.

7.0 OUTSIDE COUNSEL DESIGNATIONS AND RETAINER AGREEMENTS

A firm selected pursuant to this RFQ for designation as special counsel, with the approval of the Attorney General and the Governor, will be the subject of a special counsel designation, pursuant to N.J.S.A. 52:17A-13, and placed on a list of either small firms or medium/large firms. In selecting a firm to be retained for a particular matter, the Attorney General will choose a firm from either the list of designated small firms or the list of designated medium/large firms, as appropriate, based on the following factors, combined or separate, and not necessarily listed in order of significance:

- Geographic location;
- Magnitude or complexity of the matter;
- The firm and/or attorney's past success in handling similar matters;
- Whether the experience and knowledge of the firm and attorney coincide with the type of legal work to be performed;
- The firm's capacity to staff and perform the required work; and
- Any current adversarial position or conflict of interest between the firm/attorney and the State.

If a particular matter requires expertise in practice areas outside those encompassed by existing lists, a separate RFQ will be advertised for that retention, if time permits. If the matter requires confidentiality or if time does not permit the issuance of an RFQ, the Attorney General can approve a waiver of advertising and the solicitation of proposals from a minimum of three law firms, unless the Attorney General concludes that only one firm is able to provide the required services. The Attorney General shall select a firm from among those that have submitted proposals.

8.0 EVALUATIONS

At the conclusion of each case handled by a firm, but in no event less frequently than annually, the Attorney General or designee shall evaluate the firm's performance. The evaluation will focus on responsiveness; quality of work; adequacy and appropriate utilization of resources; adherence to invoice submittal standards; and cost effectiveness. The Attorney General or designee will advise each firm of any problem areas. If, as result of one or more evaluations, the Attorney General determines, in his sole discretion, that a firm should be removed from the list of designated counsel, the firm may be removed from the list after written notice is provided to the firm. Other than this written notice, nothing in this RFP 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 the list of designated counsel.

Attachments: Requirements of N.J.S.A. 19:44A-20.13 et seq.
Kimmelman Opinion
Standards for Submittal and Review of
Special Counsel Invoices

ATTACHMENT 1

Requirements of N.J.S.A. 19:44A-20.13-25 (Formerly Executive Order 134)

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted N.J.S.A. 19:44A-20.13 – 25 on March 22, 2005 the “Legislation”), retroactive to October 15, 2004, superseding the terms of Executive Order 134. Pursuant to the requirements of the Legislation, the terms and conditions set forth in this section are material terms of any contract resulting from this RFQ:

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 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Through December 31, 2004, contributions in excess of \$400 during a reporting period were deemed "reportable" under these laws. As of January 1, 2005, that threshold was reduced to contributions in excess of \$300.

- 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; (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 child, residing in the same household.

Breach of terms of the legislation

It shall be a breach of the terms of the contract for the Business Entity to (i)make or solicit a contribution in violation of the Legislation, (ii)knowingly conceal or misrepresent a contribution given or received; (iii)make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv)make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor, or to any State or county party committee; (v)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 the Legislation; (vi)fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii)engage in any exchange of contributions to circumvent the intent of the Legislation; or (viii)directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

Certification and disclosure requirements

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

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by the Legislation have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C.527 of the Internal Revenue Code that also meets the definition of a “continuing political committee” within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required form and instructions, available for review on the Purchase Bureau website at

<http://www.state.nj.us/treasury/purchase/forms.htm#eo134>, shall be provided to the intended awardee for completion and submission to the Purchase Bureau with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Division, in care of the Purchase Bureau Buyer, the Certification and Disclosure(s) within five (5) business days of the State’s request. Failure to submit the required forms will preclude award of a contract under this RFQ, as well as future contract opportunities.

c) Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>, shall be provided to the intended awardee with the Notice of Intent to Award.

State Treasurer Review

The State Treasurer or his designee shall review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the contractor. If the State Treasurer determines that any contribution or action by the contractor constitutes a breach of contract that poses a conflict of interest in the awarding of the contract under this solicitation, the State Treasurer shall disqualify the Business Entity from award of such contract.

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

Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to P.L. 2005, c. 271, section 3 if the contractor receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the contractor'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 at www.elec.state.nj.us.