

REQUEST FOR QUALIFICATIONS

FOR
Special Counsel:
Department of the
Treasury
Division of Rate Counsel

Issued by the
State of New Jersey
Division of Rate Counsel

Date Issued:
November 14, 2014

Question and Answer Cut-off Date:
December 19, 2014

Proposals Due:
January 2, 2015

Stefanie A. Brand
Director, Division of Rate Counsel

State of New Jersey
Department of the Treasury
Division of Rate Counsel
140 East Front Street, 4th Floor
PO Box 003
Trenton, NJ 08625

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

1.0 PURPOSE AND INTENT

The Division of Rate Counsel (Rate Counsel) represents and protects the interests of consumers of electricity, natural gas, water/sewer, telecommunications, cable TV and insurance. Under its direction and control, Rate Counsel intends to retain outside counsel interested in serving as special counsel in the area of federal energy regulation.

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

1.1 PROPOSAL SUBMISSION

A sealed original and three sealed copies of the proposal must be marked "Special Counsel RFQ" and delivered or post marked no later than 11:59 p.m. on January 2, 2015 to the following:

KMIBERLY K. HOLMES
CHIEF OF STAFF
DEPARTMENT OF THE TREASURY
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4th FLOOR
PO BOX 003
TRENTON, NJ 08625

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

1.2 QUESTION AND ANSWER

The Division of Rate Counsel will accept questions pertaining to this RFQ from all potential bidders electronically. Questions shall be directed to Felicia Thomas-Friel, Esq., at the following email address:

fthomas@rpa.state.nj.us

Questions will be accepted until **DECEMBER 19, 2014**.

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 DIVISION OF RATE COUNSEL'S WEB SITE.

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

RFQ.

Rate Counsel reserves the right to reject any and all proposals received in response to this RFQ, and to waive minor noncompliance in a proposal. We further reserve the right to make such investigations as deemed 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 Rate Counsel, at any time, deems the number of qualified firms receiving designations as the result of this RFQ to be insufficient to meet potential needs, the Division of Rate Counsel reserves the right to re-solicit proposals.

2.0 RFQ SCOPE OF SERVICES

Rate Counsel seeks to have access to counsel with substantial experience in the practice areas of wholesale ratemaking, competitive wholesale markets, transmission planning, transmission cost allocation, and regulatory policy in the electricity and natural gas industries (collectively, the Practice Area). Particular expertise is necessary in areas pertaining to the Federal Energy Regulatory Commission (FERC), PJM Interconnection, L.L.C. (PJM), the United States Department of Energy (USDOE), as well as experience in federal judicial appeals. Counsel must also be free of any conflict of interest.

On all aspects of the retention, counsel must work in consultation with appropriate Rate Counsel Staff and/or consultants. Retention may include the following:

- a) Identification, monitoring, reporting, and analysis of significant developments at the FERC, PJM and the USDOE that have significant potential to affect the cost of electricity or natural gas to New Jersey customers, and/or the reliability of the supply of electricity or natural gas to New Jersey customers;
- b) In notice and comment proceedings with respect to such significant developments, preparing written comments and/or delivering oral testimony or presentations;
- c) Litigating or otherwise appearing in proceedings before the FERC, USDOE and in the judicial system with respect to matters that have significant potential to affect the cost of electricity or natural gas to New Jersey customers, and/or the reliability of the supply of electricity or natural gas to New Jersey customers. Such litigation or appearances may involve drafting pleadings, motions, briefs, and all other papers to be filed at the agency or in court; conducting and responding to discovery; attending pre-hearing, hearing and post-hearing appearances; conducting settlement negotiations and handling appeals. Counsel may be asked to handle any or all issues arising in the litigation or proceeding. Counsel may also be asked to work in cooperation with counsel for other parties in such litigation or proceeding, including sharing of any of the responsibilities described above.

3.0 REQUIRED COMPONENTS OF THE RFQ PROPOSAL

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

3.1 FIRM PROFILE AND EXPERIENCE

- A. Indicate the date your firm was established.
- B. Describe the legal services provided by your firm.
- C. Describe your firm's specialty and/or area(s) of expertise.
- D. Identify the number of employees in your firm (licensed attorneys; legal support staff; other support staff).
- E. Describe the participation of women and minorities in your firm. Please note the number of women partners and associates and minority partners and associates and indicate the percentage of your firm that is owned by women and by minorities.
- F. Describe any special training or experience members of your firm possess that may assist in providing the requested legal services.
- G. Explain how your firm develops estimates of the total cost of representing a client in a litigation matter, including the cost of experts as needed, and estimates of the total cost of preparing written comments and delivering oral testimony on behalf of a client in a notice-and-comment proceeding. Include in the estimate your firm's procedures for evaluating and disclosing the level of uncertainty in such cost estimates.
- H. Identify any agencies or departments of the State of New Jersey represented by the firm during the last five (5) years. For each agency or department, provide the name of the agency or department, a description of the matter or matters that the firm worked on for the agency or department, the dates of the engagement and the name and contact information of the State employee responsible for overseeing the work of the firm on that matter.
- I. Identify any State agencies or departments before or against which the firm has regularly appeared on behalf of other clients. Please note that the Division of Rate Counsel, 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).
- J. If your firm is designated as special counsel, you have a continuing obligation to disclose to the Division of Rate Counsel any actual or

potential conflicts. Additionally, retained counsel must agree not to undertake any future representation that might result in the disclosure of the Division of Rate Counsel's work product to potential or actual adversaries of the Division of Rate Counsel.

- K. 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.
- L. Describe the firm's approach to maintaining responsive communication with the Division of Rate Counsel and keeping the Division of Rate Counsel informed of problems and progress.
- M. Provide a representative listing of the firm's major private and public sector clients, including all public utilities represented by the firm.
- N. Identify two or more federal judges before whom the firm's litigators regularly appear.
- O. Provide the name, address, telephone number, e-mail address, and facsimile number for the contact person in your firm.

3.2 LITIGATION QUALIFICATIONS AND EXPERIENCE IN THE PRACTICE AREA.

- A. Identify and give the office location of each attorney who practices in the Practice Area. Please indicate what percentage of your firm's practice is in the Practice Area.
- B. List all attorneys in your firm that have at least five years experience in litigation pertaining to the Practice Area.
- C. Describe your firm's experience in litigation pertaining to the Practice Area, by listing cases litigated involving this practice area since 2000 (identifying by case name and legal citation, if any), including the result of such litigation.
- D. State the qualifications and experience of the particular attorneys proposed to staff the work. For each attorney that would be involved in handling the work as special counsel on behalf of 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 Practice Area;
 - d. General work experience (including an indication of whether the individual has tried any cases and, if so, approximately how many);
 - e. Any professional distinctions in litigation (e.g., trial certification, teaching experience);
 - f. Area(s) of specialization; and
 - g. Office location of the attorney.
- E. Describe the role that each particular attorney listed in D above would play in providing the services listed in 2.0(a) and/or (b) and (c), 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 vendor 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

State the fixed monthly rate at which you would provide the services listed in 2.0(a) and/or the hourly rates at which the personnel listed below would provide the services listed in 2.0(b) and (c):

Partner:

Associate:

Clerks and law assistants (summer associates
or law school graduates awaiting bar results)

Paralegals

Experts

Before commencing provision services in a particular matter, Special Counsel will provide the State with a non-binding estimate of the total cost of providing the services in connection with that matter.

5.0 ADDITIONAL TERMS

- A. No endorsement: Designation as special counsel does not constitute an endorsement by the State of New Jersey, or the Division of Rate Counsel.
- 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. Nothing in this RFQ is intended to limit or constrain the discretion of the Division of Rate Counsel 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. Rate Counsel 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. 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 Division of Rate Counsel; and
- Past experience of the State with the firm and/or attorneys.

Proposals will be ranked based on technical merit and the highest scoring firm (s) offering the best value to the State will be recommended for selection.

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.

8.0 EVALUATIONS

At the conclusion of each case handled by a firm, but in no event less frequently than annually, the Director of Rate Counsel, Stefanie A. Brand or her designee shall evaluate the firm's performance.

Attachments: Requirements of N.J.S.A. 19:44A-20.13 et seq.
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.

STANDARDS FOR SUBMITTAL AND REVIEW
OF SPECIAL COUNSEL INVOICES
(Revised: March 2002)

The following requirements and conditions will apply to payments made to the law firm unless specifically agreed otherwise. While the State is willing to consider variations from the following requirements, such variations will be considered in comparing the law firm's proposal to any other proposals that are submitted. The hourly rates agreed to shall not be subject to renegotiation.

In providing representation to the State, the law firm is expected to perform in a manner designed to provide quality representation at the least possible cost. Counsel shall be diligent and zealous in handling the file. Counsel shall keep the attorney within the Division of Law identified in the law firm's retention letter apprised periodically of the status of the case and shall discuss all significant issues with him or her. Counsel shall provide a detailed memo as to the status of the case on at least a quarterly basis. The memo shall include any significant developments in the case, discovery or motions made or contemplated, any settlement opportunities or recommendations and any significant upcoming events, Interoffice conferences for which more than one attorney's time is billed are to be avoided where consistent with quality representation, as is the attendance of more than one attorney at meetings, court appearances or depositions. Travel time of attorneys is to be billed at fifty percent of the regular billing rate and no reimbursement will be provided for time spent compiling and computing the invoices, Routine filing and file organization by paralegals or clerical staff should not be billed.

Invoices are to be submitted monthly and shall be paid in accordance with the engagement letter. The invoices shall contain a detailed statement of the time spent by

each individual on each activity, including a statement of the type of activity, the subject matter, and all persons involved. Wherever feasible, each activity should be separately recorded (i.e., entries for various activities should not be routinely "lumped" under one time entry). Each activity should be reported in time intervals specified to the nearest tenth of an hour.

Unless a specific agreement is reached to the contrary, the State will pay for only the following categories of disbursements:

1. Travel: Automobile travel will be reimbursed at the mileage rates recognized by the Internal Revenue Service; when traveling by means other than private automobile, the law firm shall use the least cost reasonable means of transportation e g., coach fare).

2. Copying and Telecopying: \$.15 a page. Volume copying should be performed by an outside service where feasible.

3. Meals: Meals will not be reimbursed. Law firms are also specifically advised that, they are not to pay for meals of State employees except where such meals are provided incident to the conducting of a meeting within the firms' offices.

4. Telephone: Long distance telephone charges are reimbursable where documentation is provided regarding the date, duration and parties to the call.

5. Messenger and express mail services: Such charges are reimbursable but must be kept to a minimum.

6. Computer research: Invoice must state the issue researched and costs must be kept to a minimum.

7. Expenses: Costs directly related to representation such as filing fees in federal court, depositions transcript costs and service costs are the only such costs reimbursable.

8. Third party contracts: Bills of third parties under contracts are reimbursable only where the third party contract is approved in advance by the attorney liaison within the Division of Law identified in the law firm's retention letter. Third party contracts include but are not limited to contracts for experts, investigators and interpreters.

The law firm shall maintain books and records, including retention of computer runs and billing reports that verify all disbursements that are billed to the State.

**MASTER
CONSULTANT AGREEMENT**

BETWEEN

**STATE OF NEW JERSEY
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL.
P. O. BOX 003
TRENTON, NEW JERSEY 08625**

AND

THE CONSULTANT

Name _____

Address _____

Telephone No.: _____

Fax No.: _____

Email: _____

Please be advised that the State of New Jersey has a public law that requires all consultants, contractors and subcontractors providing goods/services to State agencies to provide the contracting agency with proof of registration with the Department of the Treasury, Division of Revenue. The law prohibits contracting by any State agency unless the proposed consultant, contractor, or subcontractor first provides proof of valid business registration. A State agency is prohibited from entering into a contract with a consultant, contractor, or subcontractor unless the individual or company has first provided proof of registration.

To register

- **Online:** www.nj.gov/treasury/revenue/taxreg.htm
- **Call the Division of Revenue at 609-292-1730**
- **Write to the Division at: Client Registration bureau, PO Box 252, Trenton, NJ 08646-0252**

As such, contracting State agencies are responsible for obtaining and maintaining proof of business registration from proposed consultants, contractors or subcontractors prior to initiating or renewing any engagement involving the expenditure of public funds.

The following is the Agreement between the Division of Rate Counsel, (hereinafter "Rate Counsel") and _____ (hereinafter "Consultant") who are the parties to this agreement.

1. SPECIFIC SERVICES TO BE DETAILED IN LETTERS OF AGREEMENT

When Consultant's services are required, Rate Counsel will notify Consultant and Consultant and Rate Counsel will agree on a specific scope of services and the cost thereof. The parties shall then execute a Letter of Agreement, which shall enumerate those specific services and cost. Upon acceptance by both parties, the Letter of Agreement shall become binding. The Consultant shall provide the specific services set forth in the Letter of Agreement between Rate Counsel and the Consultant, subject to the terms and conditions set forth in this Agreement and in the Letter(s) of Agreement,. In the case of any disagreement as to the terms, duties, and obligations of the parties, the Letter of Agreement shall be controlling as to those matters detailed therein, including but not limited to Specific Services, Consultant Fees and Reimbursements.

2. QUALIFICATIONS OF CONSULTANTS AND EXPERT WITNESSES

The names of all persons responsible for preparation of testimony or analysis provided in the subject case shall be promptly provided to Rate Counsel with supporting documentation concerning their qualifications.

3. WARRANTY

a). Basic Provision. The Consultant warrants that all work will be performed in a competent and professional manner consistent with the standards of the specialty professed by consultants.

b) Corrections. Consultant agrees to correct any portion of the work that is not performed in accordance with this contract or contains factual or mechanical errors.

c) Unqualified Employees. Consultant shall remove from the work, at Rate Counsel's request, any employee furnished by Consultant who, in Rate Counsel's opinion, is incapable, uncooperative or otherwise unacceptable in the execution of the work to be performed under this Agreement with or without cause.

4. CONSULTANT FEES AND REIMBURSEMENTS

a) The terms of compensation between Rate Counsel and the Consultant shall be governed by the provisions of this Agreement, including the Division of Rate Counsel Consultant Billing Procedures, which is attached hereto and made a part hereof. Consultant shall bill Rate Counsel at the rates set forth in the Proposal, unless otherwise agreed between the parties in a Letter of Agreement or otherwise. In the event of a conflict with regard to compensation between the Proposal and this Agreement, this Agreement shall prevail.

b) Corrections Not Reimbursed. The Consultant shall not charge Rate Counsel for corrections of factual or mechanical errors or where the corrections are the result of work product, not in conformance with this Agreement.

5. COSTS AND EXPENSES

a) The Rate Counsel agrees to pay to the consultant costs and expenses set forth in the Letter of Agreement except that the following expenses of the Consultant [(1)-(10)] will not be reimbursed:

1. Charges for alcoholic beverages.
2. Charges for personal items and services such as newspapers, laundry, movies, personal phone calls, valet service, and entertainment.
3. Hourly charges or reimbursements for routine clerical and administrative tasks including ordinary typing, word processing, copying and other routine clerical activities performed in the ordinary course of business.
4. Purchase of ordinary office supplies such as file folders, tabs, paper, paper clips and the like.
5. Surcharges on telecommunication services in excess of actual costs.
6. Purchase of professional subscriptions, publications, and software of general application.
7. Time charges for in-house computer usage.
8. Meals for Rate Counsel or other regulatory staff.

9. Primary telephone systems charges. (Only telephone calls specifically associated with the rate case involved will be reimbursed).
10. Consultant's general "overhead" or surcharges.

b) OUT-OF-POCKET EXPENSES THAT ARE NOT APPROVED EXPENSES AND ARE NOT ITEMIZED AND DOCUMENTED BY RECEIPTS WILL NOT BE REIMBURSED.

c) THE STATE OF NEW JERSEY DOES NOT REIMBURSE CONSULTANTS FOR DOOR TO DOOR TRAVEL BASED ON AN HOURLY RATE. HOURLY RATES ARE ONLY PAID TO CONSULTANTS FOR TIME SPENT PROVIDING ACTUAL SERVICES.

6. BILLING

a) The Consultant shall bill Rate Counsel in accordance with CONSULTANT BILLING PROCEDURES attached to this Agreement and made an essential part of this Agreement.

b) Examination and Approval. All bills for expenditures or payment shall be certified as accurate by the Consultant and sent to Rate Counsel for examination and approval.

7. RIGHT TO AUDIT

The Consultant shall maintain complete, legible, and accurate records of all hours worked and costs incurred (including reimbursable expenses) in the performance of this Agreement for the period required by the laws of the State of New Jersey after the completion of the contract. Rate Counsel shall have the right through its designated representatives, to examine and audit, at all reasonable times, all such records and such other records and accounts as may, under recognized accounting practices, contain information bearing upon the amount payable to Consultant pursuant to this contract. The accuracy of the Consultant's billing may be determined by such audits.

8. TIME FOR BEGINNING PERFORMANCE

The Consultant shall commence work in the manner and at the time set forth in the Letter of Agreement. Failure to do so will be treated as a breach of this Agreement and subject to the terms of Section 14 (Breach).

9. TIME FOR FILING DOCUMENTS OR EVIDENCE

All documents or other evidence required to be filed with governmental agencies or opposing parties shall be available prior to the return date and time. The Consultant shall be fully responsible for any late fees or penalties imposed upon Rate Counsel as a result of the Consultant's tardiness.

10. COPIES OF DOCUMENTS OR EVIDENCE

The Consultant shall be responsible to provide all copies of documents required by the Rate Counsel or by other government agencies or opposing parties in the execution of this contract. In addition, the Consultant must also provide sufficient copies of any and all supplemental evidence required by government agencies and opposing parties.

11. DUTY OF CONSULTANT/ATTORNEY TO KEEP RATE COUNSEL INFORMED ON PROGRESS OR CHANGES IN PROCEEDINGS

Rate Counsel must at all times be kept fully informed by the Consultant of any and all developments or changes in the ongoing proceedings and in the Consultant's strategies in the delivery of the agreed upon Consultant services. Emergent changes are to be reported fully to Rate Counsel as soon as possible.

12. DISTRIBUTION RIGHTS TO WRITTEN MATERIALS

All reports, analyses, research, memoranda, and other work product, inter alia, prepared by Consultant in execution of the terms of this Agreement, other than trial testimony or other public records, become the property of Rate Counsel in which all rights to distribute, disseminate or replicate vest absolutely unless an addendum to this Agreement is executed by the parties, modifying this provision. Where a computer model of general applicability independently developed by the Consultant is used by the Consultant for a project contracted by Rate Counsel, the underlying computer model itself shall not be deemed work product.

13. GIFTS AND GRATUITIES

The exchange or offering of any gift item, personal service, entertainment, or unusual hospitality by either party to the other party is expressly prohibited. This prohibition is equally applicable to

party's officers, employees, agents or immediate family members. Any violation of this tenet constitutes cause for immediate cancellation of this Agreement.

14. BREACH

Should the Consultant in any way breach the terms of this Agreement, payment will be withheld pending proper completion of the contract. If the breach concerns a deadline, and the Consultant's breach has resulted in missing that deadline and has caused the issue in question to be summarily dismissed or decided adversely to Rate Counsel, such non-feasance shall be treated as an irrevocable breach and all payment shall be forfeited. In order to invoke the provisions of this paragraph, Rate Counsel shall have notified the Consultant in writing as to all relevant deadlines and shall have provided adequate time for deadlines to be met.

15. INABILITY TO PERFORM

The Consultant shall give notice to Rate Counsel of conditions that could prevent the proper execution of any of the requirements of this Agreement, within forty-eight (48) hours of becoming aware of such condition(s).

16. SUSPENSION

Rate Counsel may, by written notice, direct the Consultant to suspend all or any part of the work or the delivery date for such period of time as may be determined by Rate Counsel to be necessary or desirable.

17. TERMINATION WITHOUT CAUSE

Rate Counsel shall have the right to terminate this agreement on thirty (30) days prior written notice, without cause and for any reason.

18. TERMINATION FOR CAUSE

Rate Counsel, without prejudice to any right or remedy it may have, due to any failure of Consultant to perform Consultant's obligations under this Agreement, may at any time, terminate, with cause, the performance of work hereunder, in whole or in part, by seven (7) days written notice to Consultant specifying the details of the cause for termination, the extent to

which performance of the work is terminated and the date upon which termination becomes effective. In the event of any such termination, the Consultant shall be entitled to payment for services rendered prior to the effective date of termination; provided such services have been completed and accepted by the Rate Counsel. Under the circumstances described in Section 18, TERMINATION FOR CAUSE, if Rate Counsel elects not to terminate the performance of work, the terms of Section 14, BREACH, of this agreement, shall apply.

19. CHANGES TO THIS CONTRACT; ADDENDA; ADDITIONAL COMPENSATION

All changes to this Agreement including but not limited to payment, time for performance, etc. shall be in writing, and signed by a representative designated by the Director of the Division of Rate Counsel and a representative authorized by Consultant, prior to the effective date of the change. Furthermore, the duly executed documentation of each change shall be attached to this Agreement and referred to as Addendum "B", "C", etc. In the absence of such addenda, the parties agree that this Agreement shall manifest their final and complete intent in respect to Consultant remuneration and all other contract terms.

20. INDEMNIFICATION

a) Indemnification. The Consultant agrees to defend, indemnify, protect and save harmless the State of New Jersey, its agents, officials, employees and agents from all claims which result from the performance of this contract, made against the Consultant or the State, their agents, officials, or employees, on account of injuries, deaths, losses of any kind whatsoever, damages, suits, liabilities, judgments, costs and expenses which shall accrue against the State, its agents, officials, in consequence of the granting of this contract or which shall result there from, if it is determined that the cause thereof was the result of willful or negligent, acts or omissions of the Consultant or its agents, officials, or employees or arose from any abuse by Consultant of proprietary rights, confidentiality rights or copyright pertaining to any data furnished pursuant to the terms of this agreement, and the Consultant shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses

arising there from or incurred in connection therewith, and, if any judgment shall be rendered against the Consultant, its agents, officials, employees or servants, in any action, the Consultant shall at its own expense, satisfy and discharge the same.

21. COMPLETE AGREEMENT

This Agreement, along with the New Jersey Division of Purchase and Property Waivered Services Contract Standard Terms and Conditions (“NJ Terms & Conditions), Rate Counsel’s Request for qualifications dated December 20, 2013 (“RFQ”) and Consultant’s RFQ Response and any subsequent Letter of Agreement comprise the complete agreement between the Rate Counsel and the Consultant. In the event of a conflict between the foregoing documents, the order of precedence of the documents that comprise the agreement between the parties, from highest to lowest, is as follows:

1. Letter of Agreement
2. This Agreement
3. RFQ
4. NJ Terms & Conditions
5. Consultant’s Proposal

Any subsequent changes or modifications to this Agreement must be executed as provided in section 19 above. Any changes not executed as provided by section 19 are null and void.

This Agreement shall apply to each case separately as such cases are assigned by Rate Counsel to the Consultant and set forth in a Letter of Agreement. Notwithstanding the foregoing sentence, however, the parties contemplate and agree that each Letter of Agreement may modify the terms of this Agreement and, in such event, if there is any conflict between the Letter of Agreement and this Agreement, the Letter of Agreement shall prevail.

The parties, by attaching their signatures below, attest that they are qualified to bind their respective organizations, and that they have read, understood, and agreed to be bound by the foregoing agreement. At all times, the laws of the State of New Jersey are controlling.

DIVISION OF RATE COUNSEL,

By: _____
Signature

Name: _____
(Type)

Director & Rate Counsel
Title

Dated: _____

CONSULTANT

By: _____
Signature

Name: _____
(Type)

Title

Dated: _____

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY

By: _____

Dated: _____

DIVISION OF RATE COUNSEL

CONSULTANT BILLING PROCEDURES

1. FILLING OUT State of New Jersey Payment Voucher

Instructions for filling out the Form (to be supplied by the Division of Rate Counsel) are on the reverse side of the form. The completed form must include the name of the case; the regulating agency docket number; the Rate Counsel File number; and the contract number. These numbers are indicated on each Consultant Agreement. Enter these numbers on all invoices and attachments. Submit separate invoices for each separate contract.

2. INFORMATION REQUIRED

The State of New Jersey requires that invoices submitted for payment include a detailed breakdown of time charges and reimbursement of expenses.

A. Professional Fees

With regard to charges for professional services, the following supporting data must be submitted:

- 1) Identify personnel;
- 2) Dates -- list each day separately;
- 3) Number of hours worked each day;
- 4) Specific description of the activity;
- 5) Hourly rate(s).

B. Expense Reimbursement

Expenses shall be recorded daily as they occur. Provide itemized descriptions of expenses and original receipts. Examples of approved expenses are as follows:

- 1) Travel expenses -- dates, origin, destination, identification of travel medium, and amounts;
 - a. Air Travel. The most economical air travel must be used, including the use of discounted and special rates. Charges for classes of service other than economy (i.e., Business or First Class) are to be considered privileged and ineligible for reimbursement.
 - b. Rail Travel. The most economical scheduling of rail travel is to be utilized. The use of high speed rail services, such as Acela, will not be authorized.
 - c. Personal Vehicle. Mileage reimbursement will be made at the State of New Jersey current rate, 31¢ as of June 2007. Charges for parking and tolls are allowed with proper receipts.

NOTE: THE STATE OF NEW JERSEY DOES NOT REIMBURSE CONSULTANTS FOR DOOR TO DOOR TRAVEL BASED ON AN HOURLY RATE. HOURLY RATES ARE ONLY PAID TO CONSULTANTS FOR TIME SPENT PROVIDING ACTUAL SERVICES.

- 2) Meals -- dates, meal (breakfast, lunch or dinner), and amount;

For all official business travel, allowable per diem reimbursement for lodging and meals will be actual reasonable costs, not to exceed the federal per diem rates as established in the Federal Register for the current year. The federal per diem rate schedule provides a listing of all states and major cities, along with the amounts allowed to be expended per day for the major categories of lodging and meals/incidentals at each location. The State of New Jersey adheres to those standards in reimbursing for travel expenses.

Note: The State of New Jersey does not pay charges for alcoholic beverages. Any invoice including expenses for meals must include a Certification of Travel Expense(s), available from the Division of Rate Counsel and attached hereto.

- 3) Duplicating -- number of pages, rate per page, and amount.
Identify the substance, e.g. testimony, draft testimony, etc;

Legible copies or original receipts to support expenses are to be provided including but not limited to receipts from meals, parking, tolls, taxi, train, air, bus, lodging, telephone, express mailing, etc.

3. EXPENSES NOT APPROVED FOR REIMBURSEMENT

A. The following expenses are not allowable:

1. Charges for alcoholic beverages.
2. Charges for personal items and services such as newspapers, laundry, movies, personal phone calls, valet service, and entertainment.
3. Hourly charges or reimbursements for routine clerical and administrative tasks including ordinary typing, word processing, copying and other routine clerical activities performed in the ordinary course of business.
4. Purchase of ordinary office supplies such as file folders, tabs, paper, paper clips and the like.
5. Surcharges on telecommunication services in excess of actual costs.
6. Purchase of professional subscriptions, publications, and software of general application.
7. Time charges for in-house computer usage.
8. Meals for Rate Counsel or other regulatory staff.
9. Primary telephone systems charges. (Only telephone calls specifically associated with the rate case involved will be reimbursed).
10. Consultant's general "overhead" or surcharges.

B. OUT-OF-POCKET EXPENSES THAT ARE NOT APPROVED EXPENSES AND ARE NOT ITEMIZED AND DOCUMENTED BY RECEIPTS WILL NOT BE REIMBURSED.

C. THE STATE OF NEW JERSEY DOES NOT REIMBURSE CONSULTANTS FOR DOOR TO DOOR TRAVEL BASED ON AN HOURLY RATE. HOURLY RATES ARE ONLY PAID TO CONSULTANTS FOR TIME SPENT PROVIDING ACTUAL SERVICES.

4. HOW TO SUBMIT A STATE OF NEW JERSEY PAYMENT VOUCHER

Please submit the original State of New Jersey Payment Voucher with supporting documentation for services to Director Stefanie A. Brand, Division of Rate Counsel, 140 East Front Street, P.O. Box 003, Trenton, New Jersey 08625.

5. BEFORE SUBMITTING PAYMENT VOUCHER

Please also review the Guidelines for the Rate Counsel Consultants Submitting Vouchers for Payment and Reimbursement of Expenses attached to the Letter of Agreement accepting your

specific proposal which has become Addendum A to this Consultant Agreement.

6. SUFFICIENT CONTRACT BALANCE

Before submitting an invoice for payment, please make sure that there is a sufficient balance on the contract. If the balance of contract is insufficient it is the Consultant's responsibility to request in writing a supplement to the contract for approval by the Director of Rate Counsel.

7. ERRORS

It is the responsibility of the Consultant to ensure the accuracy of invoices submitted for payment. Errors will result in invoices being rejected.

8. QUESTIONS OR ADDITIONAL PAYMENT VOUCHERS

Should you have questions regarding any of the above, or have need of additional State Voucher forms, contact the Division of Rate Counsel at (609) 984-1460. .