



REQUEST FOR QUALIFICATIONS FOR
SPECIAL COUNSEL FOR
NATURAL RESOURCE
DAMAGES LITIGATION

Date Issued: May 17, 2021

Question & Answer Cut-off Date: June 18, 2021

Proposals Due: July 16, 2021

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

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STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF LAW
Richard J. Hughes Justice Complex, 25 Market Street, PO Box 112, Trenton, NJ 08625-0112

1.0 PURPOSE AND INTENT

The Attorney General of New Jersey, through the Department of Law and Public Safety, Division of Law, 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 issues this Request for Qualifications intending to select Special Counsel for the Scope of Services as described in Section 3.0 below.

1.1 The Attorney General will designate one or more attorneys from the Division of Law and/or Office of the Attorney General 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 Special Counsel.

1.2 The firm selected to serve as Special Counsel must comply with all local, State, and federal laws, rules, and regulations applicable to the engagement and to the services to be performed thereunder.

1.3 Compensation for a firm selected as Special Counsel shall be consistent with the provisions set forth in Section 8.0 below.

1.4 A firm selected to serve as Special Counsel must designate for each matter assigned pursuant to this Request for Qualifications one lawyer in that firm who will be the principal point of contact for that matter and who will be primarily responsible for handling the matter on behalf of the State. The firm may nonetheless, consistent with the requirements of the *Outside Counsel Guidelines*, available for review at <http://www.nj.gov/oag/law/pdf/rfqs/oag-dol-Outside->

[Counsel-Guidelines.pdf](#), and described in Section 5.0 below, utilize more than one lawyer from the firm to provide legal services in any one matter.

2.0 MINIMUM REQUIREMENTS

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

Substantial experience in litigation pertaining to natural resource damages and related claims, including the remediation of contaminated sites, and natural resource restoration, under federal law and New Jersey law.

IN ADDITION, AT A MINIMUM:

Each lawyer whom the firm proposes will be primarily responsible for matters assigned under this Request for Qualifications must have five or more years of experience in natural resource damages litigation.

3.0 SCOPE OF SERVICES

3.1 The firm(s) selected as Special Counsel will be required to handle all aspects of providing representation to the New Jersey Department of Environmental Protection and to the Commissioner of the New Jersey Department of Environmental Protection in natural resource damages litigation seeking the restoration of natural resources and also seeking the recovery of damages for injuries to natural resources.

3.2 If legal action is approved by the Attorney General, the firm(s) may be retained to prepare, commence, and manage litigation on behalf of the New Jersey Department of Environmental Protection and the

Commissioner of New Jersey Department of Environmental Protection, under the supervision and control of the Attorney General. Preparation may include significant pre-filing evaluative and investigative work. Litigation will include: drafting pleadings, motions, briefs and all other papers to be filed in court; conducting and responding to discovery; securing expert(s) to prepare reports and provide testimony as needed; attending all pre-trial, trial and post-trial court appearances; conducting settlement negotiations and handling appeals. Counsel will also be expected to handle all issues arising in the litigation, including all issues that must be raised in compliance with the entire controversy doctrine.

4.0 TERM

The term of the Special Counsel designation made pursuant to this Request for Qualifications will be from the notification that the firm has been designated and approved as Special Counsel for Natural Resource Damages Litigation until a new list of firms is designated and approved for the same practice area, and for a sufficient period to complete all matters for which the firm has been retained.

5.0 OUTSIDE COUNSEL GUIDELINES

Counsel designated as Special Counsel and retained on any specific matter shall comply with the *Outside Counsel Guidelines*. The *Outside Counsel Guidelines* may be updated from time to time. If your firm is designated as Special Counsel, by submitting a proposal, you agree that whenever your firm is retained, it shall abide by the *Outside Counsel Guidelines* as written,

as well as with any updates that may be made during the term of the designation.

5.1 CONFLICT OF INTEREST

Section III of the *Outside Counsel Guidelines* requires that counsel be free of any conflict of interest. Please note that the State, as a public entity, is precluded by the Rules of Professional Conduct from waiving conflicts of interest. See RPC 1.8(l) and RPC 1.9(d). If your firm is designated as Special Counsel, you have a continuing obligation during the term of the designation to disclose to the Attorney General 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.

5.2 ELECTRONIC BILLING

Special Counsel retained for a specific matter shall be required to electronically bill the Division of Law for their services in accordance with the *Outside Counsel Guidelines*.

5.3 COSTS

Special Counsel shall have resources sufficient to advance all costs, including the costs of the preparatory work described below and the costs of any necessary experts. Billing for costs shall be done in accordance with the *Outside Counsel Guidelines*.

6.0 REQUEST FOR QUALIFICATIONS PROCESS

6.1 SUBMISSION

Proposals must be submitted in PDF format to the following email address: OutsidecounselRFQ@law.njoag.gov. The subject line must be marked “Special Counsel Request for Qualifications for **NATURAL RESOURCE DAMAGES LITIGATION.**” In addition, one original executed copy, including the cover sheet provided in Exhibit B, all forms and certification required in Exhibit A, and a completed Diversity Questionnaire provided in Exhibit C, must be marked “Special Counsel Request for Qualifications for **NATURAL RESOURCE DAMAGES LITIGATION**” and delivered no later than 3:00 p.m. on the proposal due date appearing on the cover of this Request for Qualifications to:

Aaron Kleinbaum
Assistant Attorney General
DIVISION OF LAW
R. J. HUGHES JUSTICE COMPLEX
Seventh Floor-West Wing
P.O. Box 093
25 Market Street
Trenton, New Jersey 08625-0093

PLEASE NOTE THAT PDF SUBMISSIONS CAN NOT EXCEED 25 MB DUE TO NETWORK LIMITATIONS.

6.2 REQUEST FOR QUALIFICATIONS QUESTION AND ANSWER PERIOD

The Division of Law will accept questions pertaining to this Request for Qualifications from all potential bidders electronically. Questions shall be directed to Aaron Kleinbaum, AAG, at the following email address:

rfqquestions@law.njoag.gov

Please note that the subject line of your email must specifically be

marked “Question about Special Counsel Request for Qualifications for **NATURAL RESOURCE DAMAGES LITIGATION.**”

Questions will be accepted until 5:00 p.m. on the date for question and answer cut off appearing on the cover of this Request for Qualifications. Answers to all questions received will be published solely as an addendum posted on the Division of Law’s website

ADDENDA TO THE REQUEST FOR QUALIFICATIONS

In the event that it becomes necessary to clarify or revise this Request for Qualifications, such clarification or revision will be by addendum. Any addendum to this Request for Qualifications will become part of this Request for Qualifications and part of any designation of a firm as Special Counsel as a result of this Request for Qualifications. The due date for proposals may be changed by an addendum.

6.3 SOLE RESPONSIBILITY OF THE BIDDER TO MONITOR FOR ADDENDA.

It is the sole responsibility of the bidder to make itself knowledgeable of any addendum to this Request for Qualifications. Any addendum will be published solely on the Division of Law’s website:

<http://www.nj.gov/oag/law/rfqs.htm>

No addendum will be mailed to any bidder, even if the bidder received the Request for Qualifications by mail.

6.4 PUBLIC RECORDS

All documents and information submitted in response to this Request

for Qualifications generally shall be made available to the general public as required by applicable law.

6.5 STATE NOT RESPONSIBLE FOR COSTS

The State shall not be responsible for any expenses in the preparation and 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.

7.0 REQUIRED COMPONENTS OF PROPOSAL IN RESPONSE TO THIS REQUEST FOR QUALIFICATIONS

Proposals submitted in response to this Request for Qualifications must respond to each of the following requests in the order indicated. Please do not place each response on a separate piece of paper. Please provide the information requested below for all counsel who may perform any of the requested services.

7.1 COVER SHEET

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. The number of attorneys in your firm shall be used to determine if your firm is a large or small law firm for purposes of developing lists of large and small firms to be designated as Special Counsel in order to further the State's interests in promoting small businesses and facilitate the handling of matters for the State.

7.2 PROFILE OF EACH FIRM

A. Indicate the date the firm was established.

- B. Describe the firm's specialty and/or area(s) of expertise.
- C. Identify the number of employees in the firm in the following categories: licensed attorneys; legal support staff; other support staff.
- D. Indicate whether the firm is a small firm or a medium/large firm. For the purposes of this Request for Qualifications, a small firm has 20 or less full- or part-time attorneys. Any firm with more than 20 full- or part-time attorneys will be deemed a medium/large firm.
- E. Describe the participation of women and minorities in the firm. Please note the number of women partners and associates, and minority partners and associates, and indicate the percentage of the firm that is owned by women and by minorities.
- F. Provide a description of the firm's presence in New Jersey, if any. 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 the firm receives a designation pursuant to this Request for Qualifications.
- G. Identify any State agency or department represented by the firm during the last five 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.

- H. Identify any State agency or department 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 1.8(l) and RPC 1.9(d).
- I. 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.
- J. Describe the firm's approach to maintaining responsive communication with the Division of Law and keeping the State informed of problems and progress.
- K. Provide a representative listing of the firm's major private and public sector clients.

7.3 QUALIFICATIONS AND EXPERIENCE IN AREA OF LAW

- A. Identify and give the office location of each attorney who practices in the area of the law relevant to this Request for Qualifications.
- B. Please indicate the percentage of the firm's practice that is in this area.
- C. List all lawyers who have at least five years of experience in

natural resource damages litigation as described in Section 3.0 above, Scope of Services.

D. State the qualifications and experience of the particular attorneys proposed to staff the work. Demonstrate specifically how each of these attorneys meets the Minimum Requirements set forth in Section 2.0 above. For each attorney that would be involved in handling the work as Special Counsel pursuant to this Request for Qualifications, provide detailed background information including information as to the areas listed below. Attach a resume for each attorney including:

- a. Education, including advanced degrees;
- b. Years and jurisdictions of admission to practice;
- c. Number of years engaged in practice in the area of law relevant to this Request for Qualifications;
- d. General legal or other relevant 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. As to the members of the firm who would be involved in handling the work as Special Counsel, describe the role each

would play and the approximate percentage of the work that each would perform. Percentages for junior lawyers may be listed separately or in the aggregate.

- F. Describe the firm's approach, manpower, and technical resources to handle document intensive matters, including handling electronically- stored information. Indicate whether the firm uses a vendor for any aspect of these approaches, and, if so, when, for what, and to what extent.

7.4 Other Qualification Information

- A. Identify all adverse determinations against the 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 the 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 the firm is retained as Special Counsel.
- D. Identify the firm's malpractice insurer and describe the

insurance limits.

- E. Confirm that the firm covers litigation costs, any bonds required by a court, and any potential liability under Fed.R.Civ.P. 11.
- F. Confirm that the firm agrees to abide by the *Outside Counsel Guidelines* billing procedures.
- G. Confirm that upon retention, the firm will provide updated Ownership Disclosure, Affirmative Action Supplement with Affirmative Action Employee Information Report, and the certifications required by N.J.S.A. 9:44A-20.13, et seq. and N.J.S.A. 9:44-A20.26, et seq., and Executive Order 117 (2008), and Executive Order 117 (2005) as further explained in Exhibit A. These forms are initially required by this Request for Qualifications and then required by law again at any retention.

8.0 FEES

- 8.1 It is anticipated that fees for the term of this Special Counsel designation and any retention as a result of the designation based upon this this Request for Qualifications will be based on a contingency fee percentage of the dollars recovered in the assigned natural resource damages litigation, and is subject to appropriation.
- 8.2 For natural resource damages matters addressed in this Request for Qualifications, the State will accept bid proposals as to the percentage rate of fee recovered that will constitute payment for

services rendered.

- 83 If the Attorney General decides to retain a firm, retainer fee agreements will be negotiated by the Attorney General consistent with applicable law, but in no event will the percent rate of fee recovered by the firm be greater than the percentage provided in the firm's response to this Request for Proposal. In no event will the fee for specific retainer be determined by the firm making a fee application to the court.

9.0 ADDITIONAL TERMS

- 9.1 ADDITIONAL REQUIREMENTS FOR ALL OFFICE OF ATTORNEY GENERAL, DIVISION OF LAW RETENTION AGREEMENTS – EXHIBIT A

The Additional Requirements set forth in Exhibit A are material terms of any Retention Agreement resulting from this Request for Qualifications. Your proposal must include all of the forms and/or certifications required by Exhibit A. Note, moreover, that a firm selected as Special Counsel shall submit updated certifications and forms if it is also retained for a specific matter, when required by law.

- 9.2 ADDITIONAL SUBMISSION REQUIREMENTS FOR ALL: OFFICE OF ATTORNEY GENERAL – DIVERSITY QUESTIONNAIRE, EXHIBIT C

Your proposal must include a completed Diversity Questionnaire, provided in Exhibit C. Note, moreover, that a firm selected as Special Counsel shall submit updated certifications and forms if it is also retained for a specific matter, when required by law.

9.3 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. A firm designated as Special Counsel may not promote or advertise its designation without permission of the Attorney General.

9.4 EFFECT OF SUBMITTING A PROPOSAL

Submission of a proposal in response to this Request for Qualifications will not bind or otherwise obligate the State of New Jersey to include the responding firm on the list of Special Counsel.

9.5 EFFECT OF INCLUSION ON LIST

Inclusion of a firm on the list of designated Special 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 Special Counsel will not guarantee any other form of employment or engagement.

9.6 ATTORNEY GENERAL AUTHORITY NOT CONSTRAINED

Nothing in this Request for Qualifications 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, case law, or other applicable law.

10.0 SELECTION PROCESS

10.1 PROPOSAL RESPONSIVENESS

All proposals will be reviewed to determine responsiveness. The Attorney General may reject non-responsive proposals without evaluation, but may waive minor non-compliance.

10.2. PROPOSAL MINIMUM QUALIFICATIONS

Proposals that fail to meet the Minimum Qualifications set forth in Section 2.0 above will be immediately rejected and will not be evaluated or ranked.

10.3 EVALUATION OF PROPOSALS

An evaluation committee, with a minimum of three members, will evaluate responsive proposals using the following evaluation criteria categories, separate or combined in some manner, and not necessarily listed in order of significance:

1. Knowledge and experience of attorneys and firm;
2. Resources of each firm; and
3. Past experience of the State with each firm and/or attorneys.

10.4 RANKING AND RECOMMENDATION OF PROPOSALS

The evaluation committee will rank proposals based on the criteria in Section 10.3 above, and will recommend to the Attorney General for designation as Special Counsel the firms whose proposals the committee finds to be most advantageous to the State. The recommended firms may be divided into two lists, medium/large firms (firms with more than 20 attorneys) and small firms (firms with 20 or less attorneys), in order to further the State's interests in promoting small businesses and facilitate the handling of matters for

the State.

10.5 OPTIONAL INTERVIEWS OR ORAL PRESENTATIONS

The Attorney General reserves the right, in his sole discretion, to require interviews or oral presentations from the most qualified firms that submitted proposals prior to making a final determination.

10.6 DESIGNATION AND APPROVAL

The recommendation(s) is(are) submitted to the Attorney General for his determination, in his discretion, as to which firm(s), if any, shall be designated as Special Counsel and his designations must be approved by the Governor, in his discretion.

10.7 NOTIFICATION

The Division of Law shall notify in writing any firm that is selected of its selection as Special Counsel and the firms designated as Special Counsel shall be posted on the Division of Law's website at:

<http://www.nj.gov/oag/law/rfqs.htm>

10.8 RESERVED RIGHTS

The Attorney General reserves the right to reject any and all proposals received in response to this Request for Qualifications 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 Request for Qualifications. 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 Request for Qualifications to be insufficient to meet the potential needs of the Division of Law, the State reserves the right to re-solicit proposals.

11.0 SPECIAL COUNSEL DESIGNATIONS AND RETAINER AGREEMENTS

11.1 SPECIAL COUNSEL DESIGNATION

A firm selected pursuant to this Request for Qualifications 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. A firm may not represent the State unless it is given a Special Counsel designation. A Special Counsel designation, however, is not a retention for a specific matter and does not entitle a firm to be retained for a specific matter. The terms and conditions set forth in this Request for Qualifications and any addenda shall be the terms and conditions of the Special Counsel Designation.

11.2 RETENTION LETTER

A firm may not represent the State unless it also executes a retention letter for a specific matter or class of matters. A firm selected as Special Counsel and placed on a list may, from time to time, be contacted by the Division of Law for retention on a specific matter. At that time, if the firm agrees to the retention, the firm may be required to submit updated certifications, as required by Exhibit A, and will receive a retention letter to countersign. The terms and conditions set forth in this Request for Qualifications shall be

included in the additional terms and conditions in the Retainer Letter.

12.0 ATTACHMENTS

Attachments to this Request for Qualifications are:

Exhibit A – Additional Terms

Exhibit B – Cover Sheet

Exhibit C – Diversity Questionnaire

