

## **Additional Requirements for All HESAA Retention Agreements**

### **A. Ownership Disclosure**

The Ownership Disclosure addresses the requirements of N.J.S.A. 52:25-24.2. An ownership disclosure must be completed and submitted with each signed retainer agreement. The Retention Agreement cannot be countersigned unless and until the Ownership Disclosure is properly completed and accepted. To facilitate proposal evaluation and contract award process, the firm should submit the disclosure with the proposal. The form is available at:

<https://nj.gov/treasury/purchase/forms.shtml>.

### **B. Affirmative Action Supplement with Affirmative Action Employee Information Report**

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

<https://nj.gov/treasury/purchase/forms.shtml>.

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

### **C. New Jersey State W-9 and Vendor Questionnaire**

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

### **D. New Jersey Business Registration**

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

<https://nj.gov/treasury/revenue/gettingregistered.shtml>.

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

### **E. Requirements of chapter 51 and Executive Order 117 (also referred to as "Pay to Play Restrictions". N.J.S.A. 19:44A-20.13 to 20.25, or Executive Order 134)**

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts, including Retention Agreements, from political contributions that pose the risk or appearance of the risk of improper influence,

purchase of access, or the appearance thereof, the Legislature enacted P.L. 2005, c. 51 (codified at N.J.S.A. 19:44A-20.13 – 20.25) (Chapter 51), on March 22, 2005, effective retroactive to October 15, 2004, superseding the terms of Executive Order 134. In addition, on September 24, 2008, Executive Order 117 (Corzine) was issued and made effective on November 15, 2008 (EO 117) which sets forth additional limitations on the ability of executive branch agencies to contract with vendors who have made or solicited certain contributions. Pursuant to the requirements of Chapter 51 and EO 117, the terms and conditions set forth in this section are material terms of any Retention Agreement entered into with Special Counsel:

**I. Definitions**

For the purpose of this section, the following shall be defined as follows:

- a) Contribution means a contribution reportable by a recipient under The New Jersey Campaign Contributions and Expenditures Reporting Act., P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.) and implementing regulations set forth at N.J.A.C. 19:25-7, -10.1 et seq. Contributions in excess of \$300 during a reporting period are deemed “reportable” under these laws and regulations.
- b) Business Entity means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. The definition of a business entity includes:
  - i. all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate and for a for profit entity, the following:
    - (1) in the case of a corporation: the corporation, any officer of the corporation and any person or business entity that owns or controls 10% or more of the stock of the corporation;
    - (2) in the case of a general partnership; the partnership and any partner;
    - (3) in the case of a limited partnership; the limited partnership and any partner.
    - (4) In the case of a professional corporation; the professional corporation and any shareholder or officer;
    - (5) In the case of a limited liability company; the limited liability company and any member;
    - (6) In the case of a limited liability partnership; the limited liability partnership and any partner;
    - (7) In the case of a sole proprietorship; the proprietor; and
    - (8) In the case of any other form of entity organized under the laws of this State or any other state or foreign jurisdiction; the entity and any principal, officer or partner thereof.

- ii. any subsidiaries directly or indirectly controlled by the business entity;
- iii. any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund or political party committee; and
- iv. if a business entity is a natural person, that person's spouse or civil union partner, or child residing in the same household provided, however, that unless a contribution made by such spouse, civil union partner, or child is to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides such contribution is in violation of section 9 of Chapter 51.

## II. Certification and disclosure requirements

- a) The State shall not entertain a proposal from Special Counsel or enter into a contract to procure from any Special Counsel services or any material, supplies or equipment, or to acquire, sell or lease any land or building, which includes the entry of Retention Agreements with Special Counsel, where the value of the transaction exceeds \$17,500, if that Special Counsel's Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant governor, or to any State, county political party, or to a legislative leadership or municipal political party committee during certain specified time periods.
- b) Upon submitting a proposal to be Special Counsel, and again, prior to entering into any Retention Agreement, the Special Counsel shall either:
  - i. complete and submit to the Designated Attorney the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, certifying that no contributions prohibited by Chapter 51 have been solicited or made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C. §527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The form is available on the New Jersey Division of Purchase and Property website at:  
<https://nj.gov/treasury/purchase/forms.shtml>.
  - or
  - ii. submit a copy of Special Counsel's still valid Two-Year Chapter 51/Executive Order 117 Vendor Certification.

- c) Special Counsel is required, on a continuing basis, to report any contributions and solicitations Special Counsel makes during the term of the Retention Agreement and any extension(s) thereof, at the time any such contribution or solicitation is made.
- d) Special Counsel's failure to submit the required forms will preclude the Division of Law's execution of the Retention Agreement with Special Counsel.
- e) The State Treasurer's designee shall review the Certification and Disclosures submitted by the Special Counsel pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended Special Counsel, prior to award, or during the term of the Retention Agreement. If the State Treasurer determines that any contributions or action by the Special Counsel violated Chapter 51 or EO 117, the State Treasurer shall disqualify Special Counsel from receipt of a Retention Agreement for the time period required by the statute and executive order. If the State Treasurer or his designee determines that any contribution or action constitutes a breach of contract that poses a conflict of interest pursuant to Chapter 51 or EO 117, the State Treasurer shall disqualify Special Counsel from receipt of a Retention Agreement.

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

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

- a) Make or solicit a contribution in violation of Chapter 51 or EO 117;
- b) Knowingly conceal or misrepresent a contribution given or received;
- c) Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- d) Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee for any candidate for or holder of the public office of Governor or of Lieutenant Governor, or to any State, county or municipal party committee, or any legislative leadership committee;
- e) Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of Chapter 51 or EO 117;
- f) Fund contributions made by third parties, including consultants, attorneys, family members and employees;

- g) Engage in any exchange of contributions to circumvent the intent of chapter 51 or EO 117; or
- h) Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of Chapter 51 or EO 117.

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

Pursuant to P.L. 2005, c.271 (Chapter 271) every Special Counsel is required to disclose its (and its principals') political contributions within the twelve (12) month period immediately preceding proposal submission or execution of a Retention Agreement. No Special Counsel will be precluded from being retained by virtue of the information provided in the Chapter 271 disclosure, provided the form is fully and accurately completed in connection with the execution of any Retention Agreement. To facilitate proposal evaluation and contract award process, the firm should submit the disclosure with the proposal. The form is available at: <https://nj.gov/treasury/purchase/forms.shtml>.

Please also be advised of the responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3) if Special Counsel receives in excess of \$50,000 from contracts from one or more public entities during a calendar year. It is special Counsel's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at (888) 313-3532 or <http://www.elec.state.nj.us>.

**G. Notice of Set-off for State Taxes**

Pursuant to P.L. 1995, c159, effective January 1, 1996, (codified at N.J.S.A. 54:49-19 et seq.), and notwithstanding the provision of another law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of state government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer partner or shareholder subtraction set-off under this Act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-19. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

**H. Notice of New Jersey Conflict of Interest Law**

The New Jersey Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq. and Executive Order 189 (Kean), prohibit certain actions by persons or entities which provide goods or services to any State Agency. Specifically:

- I. No Special Counsel shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13S-13(b) and (e) in the Department of the Treasury or any other agency with which such Special Counsel transacts or offers or proposes to transact business, or to any other agency with which such Special Counsel transacts or offers or proposes to transact business or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13(i) of any such officer or employee, or any partnership, firm or corporation which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A 52:13D-13(g).
- II. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by a State officer or employee or special State officer or employee from any Special Counsel shall be reported in writing forthwith by Special Counsel to the Attorney General and the State Ethics Commission.
- III. No Special Counsel may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Special Counsel to, any State officer or employee or special state officer or employee having any duties or responsibilities in connection with the purchase, acquiring or sale of any property of services by or to any State agency or any instrumentality thereof, or with any person firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13(g). Any relationships subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction up application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential actuality or appearance of a conflict of interest.
- IV. No Special Counsel shall influence or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- V. No Special Counsel shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Special counsel or any other person.
- VI. The provision cited above in paragraph H(1) – H(V) shall not be construed to prohibit a State officer or employee or special State Officer or employee from receiving gifts from or contracting with Special Counsel under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the State Ethics Commission may promulgate.

**I. Source Disclosure Certification**

Execution of the Retention Agreement confirms that Special Counsel agrees, in accordance with Executive Order 129 (McGreevey) and N.J.S.A. 52:34-134.2 (P.L. 2005, c. 92) that all services performed for the Retention Agreement shall be performed within the United States. In the event that all services performed for the Retention Agreement shall NOT be performed within the United States Special Counsel shall send the Designated Employee a letter that states with specificity the reasons why the services cannot be so performed. The letter shall require review and approval pursuant to N.J.S.A. 52:34-14.2 prior to execution of this Retention Agreement.

**J. Certification of Non-Involvement in Prohibited Activities in Iran**

Pursuant to N.J.S.A. 52:32-58, Special Counsel must certify that neither Special Counsel, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If special Counsel is unable to so certify, Special Counsel shall provide a detailed and a precise description of such activities. To facilitate proposal evaluation and contract award process, the firm should submit the certification with the proposal. The form is available at: <https://nj.gov/treasury/purchase/forms.shtml>.