

**REQUEST FOR QUALIFICATIONS
FOR
Special Counsel: 529 Plans and General Tax Advice
Higher Education Student Assistance Authority**

**Issued by:
New Jersey Higher Education Student Assistance Authority**

Date Issued:

August 28, 2019

Question Cut-off Date:

September 11, 2019

Proposals Due:

October 2, 2019

**David Socolow
Executive Director**

**Higher Education Student Assistance Authority
4 Quakerbridge Plaza
P.O. Box 545
Trenton, New Jersey 08625**

Contact:

**Marnie B. Grodman, Esquire
Director, Legal & Governmental Affairs**

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1.0 PURPOSE AND INTENT

The Higher Education Student Assistance Authority (HESAA) is the New Jersey state agency charged with the mission of providing students and families with financial and informational resources for student to pursue their education beyond high school. In addition to administering state-funded grant and scholarship programs, HESAA administers the state's supplemental student loan program, New Jersey College Loans to Assist State Students (NJCLASS), and New Jersey's college savings program, New Jersey Better Educational Savings Trust (NJBEST). HESAA engages an investment manager to provide certain distribution, investment management, and administrative services for NJBEST. HESAA issues this Request for Qualifications ('RFQ') intending to select Special Counsel for the Scope of Services as described in Section 3.0.

- 1.1 HESAA will designate an employee who will be the sole point 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 the firm selected as Special Counsel shall be consistent with the provisions set forth in Section 8.0 below.
- 1.4 The 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 HESAA. The firm may nonetheless, consistent with the requirements of the Outside Counsel Guidelines, 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: 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 federal tax law.

3.0 SCOPE OF SERVICES

Special counsel will be expected to provide opinions and advice to HESAA on all documents prepared by the investment manager related to the 529 Plans. These documents include but are not limited to: investor handbook supplements, disclosure updates, contract amendments and supplements, and dealer program distribution agreements.

In addition, from time to time tax questions arise in the ordinary course of business. Special counsel will be expected to provide clear and concise responses when these issues arise. Topics include but are not limited to the tax consequences related to student loans, student loan forgiveness, scholarships and employee benefits.

4.0 TERM

HESAA will select one firm to serve as Special Counsel for a term of 2 years with three optional one-year extensions. The term will commence on December 1, 2019.

5.0 OUTSIDE COUNSEL GUIDELINES

Selected firms shall be required to comply with the Outside Counsel Guidelines (“Guidelines”) attached hereto. The Guidelines may be updated from time to time. Such updates will be sent to the firms. If your firm is selected, by submitting a proposal, you agree that your firm shall abide by the Guidelines as written, as well as any updates that may be made during the term. In the event there is a conflict between this RFQ and the Guidelines, the RFQ, shall govern.

5.1 CONFLICT OF INTEREST

Section III of the Guidelines requires that counsel be free of any conflict of interest. Please note that HESAA, as a public entity, is precluded by the Rules of Professional Conduct from waiving conflicts of interest. See RPC 1.7(a)(2) and RPC 1.7(b)(2). If your firm is designated as Special Counsel, you have a continuing obligation during the term of the designation to disclose to HESAA 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 COSTS

Special Counsel shall have resources sufficient to advance all costs, including the costs of any necessary experts. Billing for costs shall be done in accordance with the Guidelines.

6.0 REQUEST FOR QUALIFICATIONS PROCESS

6.1 SUBMISSION

Proposals must be submitted in PDF format, no later than 4:00 p.m. on the proposal due date appearing on the cover of this Request for Qualifications, to the following email address:

rsorrentino@hesaa.org.

The subject line must be marked "Special Counsel RFQ – Tax Counsel." In addition one original executed copy, including the cover sheet provided in Exhibit B, and all forms and certifications required in Exhibit A, must be marked "Special Counsel RFQ – Tax Counsel" and delivered no later than 4:00 p.m. on the proposal due date appearing on the cover of this Request for Qualifications to:

Marnie B. Grodman, Esquire
Director, Legal & Governmental Affairs
New Jersey Higher Education Student Assistance Authority
4 Quakerbridge Plaza
P.O. Box 545
Trenton, NJ 08625

Proposals **overnighted to the Authority must use the local address zip code of 08619.**

PLEASE NOTE THAT PDF SUBMISSIONS CANNOT EXCEED 15 MB DUE TO NETWORK LIMITATIONS.

6.2 REQUEST FOR QUALIFICATIONS QUESTION AND ANSWER PERIOD

HESAA will accept questions pertaining to this Request for Qualifications from all potential bidders electronically. Questions shall be directed to Roseann Sorrentino at the following email address:

rsorrentino@hesaa.org

Please note that the subject line of your email must specifically be marked "Questions about Special Counsel RFQ – Tax Counsel." Questions will be accepted until 4:00 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 on HESAA's website at: <https://www.hesaa.org/Pages/Procurements.aspx>.

6.3 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.

6.4 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 HESAA's website at: <https://www.hesaa.org/Pages/Procurements.aspx>. No addendum will be mailed to any bidder, even if the bidder received the Request for Qualifications by mail.

6.5 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.

6.6 HESAA NOT RESPONSIBLE FOR COSTS

HESAA 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 THE RFQ PROPOSAL

Proposals submitted in response to this Request for Qualifications must respond to each of the following requests in the order indicated. Please provide 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 and address of your firm, as well as the name and contact information for this proposal.

7.2 FIRM PROFILE AND EXPERIENCE

- A. Indicate the date your firm was established.
- B. Describe the legal services provided by your firm.
- C. Describe your firm's specialty and/or area(s) of expertise, especially as it relates to Section 529 College Saving Plans, mutual funds, annuity plans or other equity investment vehicles and related tax law and contract law.
- 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 does not meet the definition of a small firm.
- F. Describe the participation of women and minorities in your firm. Please note the number of partners and associates who are women, minorities or both, 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 the 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 the State agency or departments before or against which the firm has regularly appeared on behalf of other clients. Please note that HESAA, 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 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 HESAA, and keeping HESAA informed of problems and progress.
- M. Provide a representative listing of the firm's major private and public sector clients.
- N. Provide the name, address, telephone number, e-mail address, and facsimile number for the contact person at your firm.

7.3 QUALIFICATIONS AND EXPERIENCE

- A. Describe your firm's experience in handling matters related to the Internal Revenue Code in general, and Section 529 plans specifically.
- B. Identify and give the office location of each attorney who you propose to work on HESAA's matters. For each member of the firm that would be involved in handling HESAA's matters 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 involved in tax work and/or 529 plans;
 - d. General work experience;
 - e. Any professional distinctions (e.g. certifications, teaching experience); and
 - f. Areas of specialization.
- C. Describe the role each of members listed in B. will play in handling HESAA's matters.

7.4 OTHER QUALIFICATION INFORMATION

- A. Identify all adverse determinations against your firm or any of its partners, associates or employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints of any kind under any local, State or Federal 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 counsel to HESAA.
- D. Identify your 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 your firm agrees to comply with Outside Counsel Guidelines.
- 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. 9:44A-20.26, et seq., and Executive Order 118 (2008), and Executive Order 117 (2005) as further explained in Exhibit A.

8.0 FEES

The firm should submit a blended hourly rate applicable to (i) all attorneys, and (ii) all other persons, including law clerks and paralegals, including the percentage discount the proposed hourly fee represents from your customary hourly fee for similar work. Special counsel hourly fees do not include reimbursables, such as computer time, postage, telephone charges, travel, duplicating, etc. Reasonable expenses will be reimbursed to your firm in accordance with the Outside Counsel Guidelines attached hereto. If the fee proposals submitted by all qualified responders are in excess of those deemed reasonable by HESAA, a lower fee may be negotiated.

9.0 ADDITIONAL TERMS

9.1 ADDITIONAL REQUIREMENTS FOR ALL LAW RETENTION AGREEMENTS – EXHIBIT A

The Additional Requirements set forth in Exhibit A are material terms of any retention resulting from this RFQ. All proposals must include all of the forms and/or certifications required by Exhibit A.

9.2 NO ENDORSEMENT

Designation as special counsel does not constitute an endorsement by the State of New Jersey or HESAA. A firm designated as special counsel may not promote or advertise its designation without permission from HESAA.

9.3 EFFECT OF SUBMITTING A PROPOSAL

A response to this RFQ will not bind or otherwise obligate HESAA to engage the responding firm as special counsel.

9.4 EFFECT OF SELECTION AS SPECIAL COUNSEL

Selection of a firm as special counsel will not bind or otherwise obligate HESAA to consult the firm for legal services. Selection as special counsel will not guarantee any other form of employment or engagement.

10.0 SELECTION PROCESS

10.1 PROPOSAL RESPONSIVENESS

All proposals will be reviewed for responsiveness. HESAA 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:

- Knowledge and experience of attorneys and firm;
- Resources of the firm;
- Approach to communication with HESAA;
- Past experience of HESAA with the firm and/or named attorneys, if applicable; and
- Fees

10.4 RANKING AND RECOMMENDATION OF PROPOSALS

The evaluation committee will rank proposals based on the criteria in section 9.3 above and will recommend a firm to the HESAA Board for appointment as special counsel.

10.5 DESIGNATION AND APPROVAL

Special counsel designation is subject to approval by the HESAA Board and the Governor's veto.

10.6 RESERVED RIGHTS

HESAA reserves the right to reject any and all proposals received in response to this RFQ when determined to be in HESAA's best interest, and to waive minor noncompliance in a proposal.

HESAA further reserves 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, HESAA reserves the right to re-solicit proposals.

11.0 SPECIAL COUNSEL DESIGNATIONS AND RETAINER AGREEMENTS

11.1 Special counsel designation

The firm selected pursuant to this RFQ for designation as special counsel, with the approval of the HESAA Board, will be the subject of a special counsel designation and retainer agreement with HESAA.

12.0 TERMINATION

HESAA reserves the right to terminate any agreement entered into as a result of this RFP upon reasonable notice to the firm, which must be in writing. Upon termination the firm must cooperate with HESAA and agree to return HESAA's complete file.

Attachments: Additional Requirements for All HESAA Retention Agreements
Outside Counsel Guidelines
Ownership Disclosure
Affirmative Action Principles
Source Disclosure
Chapters 51 and EO 117 Certification and Disclosure
Chapter 271 Certification and Disclosure
Disclosure of Investment Activities in Iran

Exhibit A to Special Counsel Retention Agreements

These additional terms and conditions are required by law, as indicated herein (Additional Terms) and shall be executed by the Special Counsel prior to HESAA executing any Retention Agreement. These Additional Terms shall be incorporated into any Special Counsel Retention Agreement (Retention Agreement) executed by HESAA and Special Counsel.

- I. Special Counsel shall complete the following forms or otherwise satisfy the following requirements prior to HESAA executing a Retention Agreement with Special Counsel:

A. Ownership Disclosure

The Ownership Disclosure addresses the requirements of N.J.S.A. 52:25-24.2, for any contract or retention agreement and must be completed and submitted with the proposal. The Retention Agreement cannot be finalized by HESAA unless and until the Ownership Disclosure is properly completed and accepted. The form can be downloaded from the Department of Treasury website under the heading Vendor Forms. It is located at;

<https://www.state.nj.us/treasury/purchase/forms/OwnershipDisclosure.pdf>

B. Affirmative Action Supplement with Affirmative Action Employee Information Report

The Affirmative Action Supplement with Affirmative Action employee Information report addresses requirements of N.J.S.A. 10:5-31 to -34 and N.J.S.A. 17:27-3.1 et seq., for any contract or retention agreement. Special Counsel agrees that and the Special Counsel must either:

1. complete and submit the Employee Information Report with the proposal. The Retention Agreement is not completed unless and until the form is properly completed and submitted to HESAA, as well as to the Contract Compliance and Audit Unit within the New Jersey Department of Treasury, Division of Purchase and Property along with a \$150.00 check. The form can be downloaded from the Department of Treasury website under the heading Vendor Forms:

https://www.state.nj.us/treasury/purchase/forms/AA_%20Supplement.pdf

The instructions for the form are available at:

<https://www.state.nj.us/treasury/purchase/forms/EmployeeInformationReportInstructions-aa302ins.pdf>

2. present a current Certificate of Employee Information Report issued by the Contract Compliance and Audit Unit within the New Jersey Department of Treasury, Division of Purchase and Property; or
3. present a copy of its existing federally approved or sanctioned affirmative action report.

C. New Jersey Business Registration

Pursuant to N.J.S.A. 52:32-44 (b), Special Counsel must submit with the signed proposal a copy of a valid New Jersey Business Registration. If the business is not already registered with the New Jersey Division of Revenue, registration can be completed on line at the Division of Revenue website:

<https://www.state.nj.us/treasury/revenue/busregcert.shtml>

D. 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 explained in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A.52:32-56(f). If Special Counsel is unable to so certify, Special Counsel shall provide a detailed and precise description of such activities. The form is available at:

<https://www.state.nj.us/treasury/purchase/forms/DisclosureofInvestmentActivitiesinIran.pdf>

E. New Jersey State W-9 and Vendor Questionnaire - NJStart Vendor Registration

No Special Counsel shall be paid unless Special Counsel has properly completed New Jersey State W-9 and Vendor Questionnaire on file with the State.

If Special Counsel has previously submitted a State of New Jersey W-9 and Vendor Questionnaire, it need not be submitted again. If at any time Special Counsel will need to revise its W-9 for any reason, including firm name, address, TIN, Special Counsel shall be required to register to use NJStart and make the revisions to the W-9 and Vendor Questionnaire in the NJStart system.

If Special Counsel does not have a New Jersey State W-9 and Vendor Questionnaire on file with the State, the Special Counsel shall be required to register to use NJStart and make the revisions to the W-9 and Vendor Questionnaire in the NJStart system.

General Information, including an explanatory video about NJStart is available at: <https://www.state.nj.us/treasury/purchase/vendor.shtml>

Use this link to register for or access the NJStart system:

<https://www.njstart.gov/bsol/>

F. Two-Year Chapter 51/Executive Order 117 Certification and Disclosure of Political Contributions

Upon submitting a proposal to be Special Counsel which the State will pay more than \$17,500 to the Business Entity proposed as the Special Counsel, the Business Entity shall submit the Certification and Disclosure 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. 19:44,4-3(n) and N.J.A.C. 19:25-1.7. Additional information about Chapter 51 and Executive Order 117, including a Summary and a Q&A, is available at:

<https://www.state.nj.us/treasury/purchase/forms.shtml>

The required form and instructions for completion and submission to HESAA are available on the New Jersey Division of Purchase and Property's website, under the heading "vendor Forms Required for Contract Award" at:

<https://www.state.nj.us/treasury/purchase/forms.shtml>

If the Special Counsel has a currently valid Two-Year Chapter 51/Executive Order 117 Vendor Certification it may be submitted instead of a new form.

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. Failure to do so is a breach of the Retention Agreement.

Special Counsel's failure to submit the form will preclude HESAA from engaging the firm. The State Treasurer or his designee shall review the Disclosures submitted by the Special Counsel pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended Special Counsel, prior to award, or during the term of the retention agreement. If the State Treasurer determines that any contribution or action by the Special Counsel violated Chapter 51 and EO 117 the State Treasurer shall disqualify the Special Counsel from award of such contract. If the State Treasurer or his designees 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 the Special Counsel from award of such contract.

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

Pursuant to P.L. 2005, c.271 (Chapter 271) every Business Entity contracting with the State is required to disclose its (and its principals) political contributions within the immediately preceding twelve (12) month period. No prospective 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. Special Counsel is required to submit Chapter 271 disclosures with the proposal. This requirement is in addition to the requirements of Chapter 51 and EO 117. The form is available review at:

<https://www.state.nj.us/treasury/purchase/forms/CertandDisc2706.pdf>

II. Special Counsel Certification

A. Source Disclosure Certification

Special Counsel's execution of these Additional Terms to the Retention Agreement will confirm that Special Counsel agrees, in accordance with Executive Order 129 (2004) and N.J.S.A. 52:34-13.2 (P.L.2005, c. 92), that all services performed for the Retention Agreement shall be performed within the United States. In the event that all services performed for the Retention Agreement shall NOT be performed within the United States, Special Counsel shall send HESAA a letter that states with specificity the reasons why the services cannot be so performed. Any such letter shall require review and approval pursuant to N.J.S.A. 52:34-14.2 prior to execution of this Retention Agreement or the delivery of the services which will not be performed within the US.

III. The Special Counsel acknowledges that the Retention Agreement is subject to the following terms and conditions:

- A. Breach of requirements of Chapter 51 and Executive Order 117 (2008) (Also referred to as Pay to Play Restrictions,” N.J.S.A. 19:44-20.12 to -20.25 or Executive Order 134 (2004))** 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 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 to -20.25) (Chapter 51), on March 22, 2005, effective retroactive to October 15, 2004, superseding the terms of Executive Order 134(2004). In addition, on September 24, 2008, Executive Order 117 was issued and made effective on November 15, 2008 (EO 117) which set forth additional limitations on the ability of executive branch agencies to contract with business entities that have made or solicited certain contributions.

Thus, pursuant to the requirements of Chapter 51 and EO 117, it shall be a material breach of the terms of the Retention Agreement for Special Counsel to do any of the following during the term of the Retention Agreement:

1. make or solicit a contribution in violation of Chapter 51 or EO 117;
2. knowingly conceal or misrepresent a contribution given or received;
3. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
4. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or of Lieutenant Governor, or to any State, county or municipal party committee, or any legislative leadership committee;
5. engage or employ a lobbyist or Special Counsel with the intent or understanding that such lobbyist or Special Counsel 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;
6. fund contributions made by third parties, including Special Counsels, attorneys, family members, and employees;
7. engage in any exchange of contributions to circumvent the intent of the Chapter 51 or EO 117; or
8. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Chapter 51 or EO 117.

B. 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 (1988), prohibit certain actions by persons or entities which provide goods or services to any State Agency. Specifically:

1. No Special Counsel shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in HESAA, the Department of the Treasury or any other agency with which such Special Counsel transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any

partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D- 13g.

2. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any Special Counsel shall be reported in writing forthwith by Special Counsel to the HESAA and the State Ethics Commission.
3. No Special Counsel may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Special Counsel to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 13D- 13g. 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 upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
4. 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.
5. 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 or her official position to secure unwarranted privileges or advantages for the Special Counsel or any other person.
6. The provisions cited above in paragraph B(1). through B(5) 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.

C. Obligation to Maintain Records

Special Counsel shall maintain all records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment under the Retention Agreement unless otherwise specified in the Retention Agreement. Such records shall be made available to the State, including the Comptroller, for audit and review upon request.

D. Affirmative Action and Equal Employment Requirements:

Pursuant to N.J.A.C. 17:27-3.5 Special Counsel agrees that:

1. Special Counsel or its or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, Special

Counsel will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Special Counsel agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;

2. Special Counsel or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of Special Counsel, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
3. Special Counsel or subcontractor will send to each labor union, with which it has a collective bargaining agreement, if any, a notice, to be provided by the agency contracting officer, advising the labor union of the Special Counsel's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment; and
4. Special Counsel or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time, and codified at N.J.A.C. 17:27-1.1 et seq.

Further, pursuant to N.J.A.C. 17:27-3.7, Special Counsel agrees that:

1. Special Counsel and its subcontractor, if any, agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
2. Special Counsel and its subcontractor, if any, agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
3. Special Counsel and its subcontractor, if any, agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions

of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

4. In conforming with the targeted employment goals, Special Counsel and its subcontractor, if any, agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

IV. Special Counsel is hereby notified of the following:

A. Chapter 271 Annual Disclosure Statement Filing Requirement

If Special Counsel receives contracts in excess of \$50,000 from a public entity during a calendar year, Special Counsel is responsible 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) It is Special Counsel's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financing penalties by ELEC. Additional information about this requirement, and the form to be filed is available from ELEC at (888)313-3532 or <https://www.elec.nj.gov/pay2play/form.html>

B. Set-off for State Taxes

Pursuant to N.J.S.A. 54:49-19 et seq. (P.L. 1995, c. 159), and notwithstanding the provision of any other law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act. The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-19. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

C. Diane B. Allen Equal Pay Act

The Diane B. Allen Equal Pay Act, L. 2018, c. 9, requires State contractors providing professional services to the State or a State entity to file information about its employee pay practices with the New Jersey Department of Labor and Workforce Development. Information about the Act and the reporting requirement is available at: <https://nj.gov/labor/equalpay/equalpay.html>

Special Counsel hereby agrees to these Additional Term and Conditions:

Special Counsel Signature: _____

Special Counsel Name: _____

Special Counsel Firm: _____

Date: _____

Exhibit B
Coversheet, Agreement, and Certification for
New Jersey Higher Education Student Assistance Authority
Proposal for Special Counsel Designation
529 Plans and General Tax Advice

Firm Name: _____

Firm Address: _____

Number of Attorneys in the Firm: _____

Attorney to Contact for this Proposal: _____

Telephone Number of Contact for this Proposal: _____

Email Address of Contact for this Proposal: _____

AGREEMENT AND CERTIFICATION

By submitting this proposal, I agree, on behalf of my firm, that my firm will abide by the Outside Counsel Guidelines including with this Request for Qualifications and with any updates thereto during the term of a Special Counsel Designation.

By submitting this proposal, I understand that in the event that my firm is selected and retained it is not a guarantee that my firm will be contacted for any legal advice during the term.

By submitting this proposal, I agree that in the event that my firm receives is retained, my firm shall bill at the rates set forth in the retention agreement, and that the rates shall not increase during the term of my firm's retention.

The information in this proposal is true and accurate has been reviewed by me and is true and accurate to the best of my knowledge.

By submitting this proposal, I warrant that I have the authority to bind my firm to the Proposal submitted and to any retention my firm may receive as a result.

Signature of Contact Attorney

Date