

**STATE OF NORTH CAROLINA
REQUEST FOR PROPOSALS**

TITLE: LITIGATION SERVICES
USING AGENCY: NORTH CAROLINA DEPARTMENT OF JUSTICE
ISSUE DATE: March 21, 2013
ISSUING AGENCY: NORTH CAROLINA DEPARTMENT OF JUSTICE

Sealed Proposals subject to the conditions made a part hereof will be received until 3:00 p.m. Friday, April 27, 2013, for furnishing services described herein.

SEND ALL PROPOSALS DIRECTLY TO THE ISSUING AGENCY ADDRESS AS SHOWN BELOW:

<u>DELIVERED BY US POSTAL SERVICE</u>	<u>DELIVERED BY ANY OTHER MEANS</u>
KIM D'ARRUDA NORTH CAROLINA DEPARTMENT OF JUSTICE 9001 MAIL SERVICE CENTER RALEIGH, NC 27699-9001	KIM D'ARRUDA NORTH CAROLINA DEPARTMENT OF JUSTICE 114 WEST EDENTON STREET, ROOM 135 RALEIGH, NC 27602-0629

IMPORTANT NOTE: Indicate firm name "Cost Proposal", and RFP number on the front of each sealed proposal envelope or package, along with the date for receipt of proposals specified above.

Direct all inquiries concerning this RFP to: KIM D'ARRUDA
114 W. EDENTON STREET, 27602
9001 MAIL SERVICE CENTER
RALEIGH, NC 27699-9001
EMAIL: kdarruda@ncdoj.gov
FAX: 919-716-6050

NOTE: Written questions concerning the specifications in this Request for Proposals will be received until 2:00 PM on April 11, 2013. A summary of all questions and answers will be posted on the Internet as an addendum.

I. INTRODUCTION

The North Carolina Attorney General's Office seeks to compile a list of approved law firms to serve as Special Counsel for any litigation involving the sales or marketing of pharmaceuticals or other health care products or services. It is the intent of the North Carolina Attorney General's Office to solicit responses to this Request for Proposals (RFP) from individual law firms, or joint proposals from more than one law firm acting together, in accordance with the statement of work, proposal preparation, and specifications contained in this document. The list of approved firms will be eligible to provide services without requiring further approval for a period of three years commencing with the date that the list is finalized. During that three year period, the Attorney General's Office can select at its sole discretion and retain counsel from the established list to provide litigation services on individual matters. The Attorney General's Office believes that having an approved list of law firms who have agreed to rates not to exceed a maximum rate will expedite the retention of counsel to provide representation in litigation involving the sales or marketing of pharmaceuticals or health care products or services.

This RFP is not an offer for a Contract, nor does the Attorney General's Office's acceptance of any Proposal guarantee a Contract with the North Carolina Department of Justice ("Department"). The Department reserves the right to reject any or all Proposals deemed not to be in the best interest of the State of North Carolina.

II. SCOPE

A. Scope of Work

The Scope of Work may be expanded at the time of engagement of Special Counsel for a particular matter. However, in general, Special Counsel shall conduct any and all legal work assigned by the Attorney General's Office. The appointment of Special Counsel from an offeror included on the approved list of service providers is personal in nature and does not extend to any law firm that the Special Counsel is associated with, a partner of, or for which Special Counsel services as "of counsel". Work hereunder shall be performed in a professional manner consistent with the accepted standards for practice in the legal profession.

The Attorney General's Office shall have final authority over all aspects of litigation. The Attorney General at his sole discretion has the right to appoint a designated assistant ("designated assistant") to oversee the litigation, which appointment the Attorney General may modify at will. The litigation may be commenced, conducted, settled, approved, and ended only with the express approval and signature of the Attorney General or his designated assistant.

Special Counsel shall provide legal services to the Attorney General's Office subject to the approval of the Attorney General or his designated assistant for the purposes of seeking injunctive relief, monetary relief, and other relief against all entities in litigation.

The Attorney General may provide attorneys and other staff members to assist Special Counsel with this litigation. The identity and responsibilities of such personnel so assigned shall be determined solely by the Attorney General.

Special Counsel shall coordinate the provision of the legal services with the Attorney General or his designated assistant, other personnel of the Office of the Attorney General, and such others as the Attorney General may appoint as Special Counsel. All pleadings, motions, briefs, other material which may be filed with the court, formal documents, and agreements, shall first be provided to the Attorney General's Office in draft form in a reasonable and timely manner for review. These documents shall be

approved by and must bear the signature of the Attorney General or his designated assistant. Regular status meetings may be held as requested by the Attorney General's Office. Special Counsel shall advise the Attorney General or his designated assistant whenever an action to be taken by Special Counsel is reasonably expected to cause the expenditure of resources of the State, including, but not limited to, the time of State employees, e.g., in meetings, review of documents, or preparation for depositions or trial.

Special Counsel shall communicate with state entities only through the Office of the Attorney General unless otherwise authorized by the Attorney General's Office.

Special Counsel shall provide sufficient resources, including attorney time, to prosecute litigation in accordance with the North Carolina Rules of Professional Responsibility.

B. Delegation of Work

Once selected for a particular matter from the approved list of service providers, Special Counsel may, only with the express written consent of the Attorney General's Office, delegate work to another attorney outside of the firm with which the Special Counsel is affiliated. Such attorney(s) must have qualifications and experience similar to Special Counsel, and shall work under the supervision and control of Special Counsel. Although delegation may be permitted as provided herein, delegation shall not relieve Special Counsel of any responsibility or liability for the work performed hereunder. No provision of this section shall be construed to allow Special Counsel to subcontract with, hire, or retain any law firm other than the law firm with which Special Counsel is affiliated without written consent of the North Carolina Attorney General's Office.

C. Independent Contractor

Once selected for a particular matter from the approved list of service providers, Special Counsel will render services as an independent contractor. Neither Special Counsel nor any employee of Special Counsel shall be regarded as employed by, or as an employee of the Attorney General or the State of North Carolina.

D. Attorney-Client Relationship

An attorney-client relationship shall exist between the Attorney General's Office and Special Counsel at the time an offeror included on the approved list of service providers is retained for a particular matter. Special Counsel shall follow the direction, guidance, rules, and policy of the Attorney General's Office in their performance of work hereunder. In all pleadings, notices and/or correspondences created pursuant to the work being performed hereunder, Special Counsel shall indicate that such documents are prepared by Special Counsel in its position as special counsel for the Attorney General's Office.

III. CASE MANAGEMENT

This section refers to the case management requirements after selection of a Special Counsel from the offerors included on the approved list of service providers.

A. Status Reports

Unless otherwise required by the Attorney General's Office, Special Counsel shall submit quarterly status reports to the Attorney General's Office. Status reports must include a description of the matter, the current status, any significant events that have occurred since the previous status report, and a prospective analysis of any significant future events. If a status report is requested by the Attorney General's Office

at a time other than when a regular quarterly status report is due, Special Counsel shall submit the status report to the Attorney General's Office within twenty days after the request is received. Failure to timely provide such status reports may result in forfeiture of a portion of Special Counsel's compensation at the sole discretion of the Attorney General's Office. Special Counsel shall not be compensated for the time spent preparing and sending status reports without prior written approval.

Upon retaining Special Counsel for litigation of a particular matter, the Attorney General's Office will provide information regarding where status reports are to be submitted and when status reports will be due.

B. Significant Case Update

Special Counsel shall also submit a Significant Case Update when the below criteria require, or upon request of the Attorney General's Office. When required, the Significant Case Update shall be submitted monthly during the first week of the month until further notice by the Attorney General's Office. Any case, hearing or matter is "significant" if it involves:

1. Recovery sought against the State or agency – or which the State is seeking – in an amount equal to or above \$500,000;
2. An important and/or novel legal or constitutional issue;
3. Injunctive relief that would be detrimental to the State;
4. An action to be taken that is reasonably expected to cause the expenditure of resources of the State, including, but not limited to, the time of State employees (other than the designated assistant) in excess of eight hours in a month; or
5. An issue that is likely to generate high media or public interest.

If a matter meets the above criteria, Special Counsel shall inform the Attorney General's Office that a Significant Case Update is needed and will be prepared by Special Counsel.

C. Time Reports

Detailed times and cost records reflecting all work must be maintained by Special Counsel and presented monthly to the Attorney General. Each monthly statement must clearly identify the name and initials of the attorney or paralegal who performed work on a given assignment, the date when services were rendered, a detailed description of the specified services rendered, and the number of hours or portions thereof worked on each specific item to the nearest tenth of an hour. Examples of specific items for which specific times must be listed include: telephone conferences, legal research, preparation of particular pleadings, preparation of correspondence, preparation for a particular depositions or argument, and time in court at hearings or trials. When initials are used, the invoice must identify all persons whose initials appear on the invoice and indicate whether each is an attorney or paralegal.

D. Notices and Correspondence

All notice, demands, requests, consents, approvals, and other instruments required to be given pursuant to the terms hereunder shall be in writing and shall be deemed to have been properly given when: (1) hand delivered; (2) sent by U.S. Registered or Certified Mail, return receipt requested, postage prepaid; (3) if certificated or registered mail is either refused or unclaimed, then by regular U.S. Mail; (4) by overnight delivery service with receipt; (5) by email; or (6) by fax, followed by one of the other methods of delivery described herein. Fax delivery shall be deemed to be one the date of receipt of the fax, and a fax with confirmation shall be adequate proof of receipt of the fax.

Both Special Counsel and the Attorney General's Office may designate a representative to receive such instruments and correspondence as described herein. These designations may be changed at any time and without consent of the other party by giving written notice of the new designated representative.

E. Communication

Special Counsel shall consult in advance, by telephone, fax, email, or in writing, with the Attorney General's Office promptly on all matters that may be precedential, controversial, of particular interest, or otherwise noteworthy or important, and keep the Attorney General's Office fully informed at all times.

Special Counsel shall give timely written notice to the Attorney General's Office of any and all of the following events in this litigation:

1. Pleadings
2. Dispositive motions
3. Hearings
4. Rulings
5. Trials
6. Settlement negotiations
7. Appeals or Notice of Appeals
8. Briefs filed by any party or entity
9. Appellate arguments or decisions
10. Enforcement efforts

Upon the filing of any pleading, Special Counsel shall provide a time-stamped copy of such filing to the Attorney General's Office. Special Counsel shall also meet with the Attorney General's Office when and where requested by the Attorney General's Office in furtherance of this litigation.

F. Settlement

The Attorney General's Office must approve in advance all aspects of this litigation, including the initiation of litigation, and shall be included in any settlement discussions. Special Counsel shall request and receive the Attorney General's Office's express prior approval before entering into any settlement. Special Counsel shall also confer with the Attorney General's Office as early as practicable in any settlement negotiation process.

Specifically, Special Counsel shall confer with the Attorney General about the following matters when applicable:

1. Confidentiality provisions in settlement agreements
2. Indemnification provisions
3. Release language
4. Naming of the State as a party
5. Monetary and non-monetary relief

G. Appeals

The Attorney General's Office must receive early notice of any potential appellate litigation in any way affecting the State. Special Counsel shall give prompt oral and written notice to the Attorney General's Office when receiving: (1) any dispositive decision by any appellate court affecting the litigation in any way; or (2) a Notice of Appeal from a court's decision filed by any party to this litigation.

H. Public Records

Any material, data, files, discs, or documents created, produced, or gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of the work hereunder, shall be considered the exclusive property of the State of North Carolina. Special Counsel shall adhere to North Carolina's Public Records Act, N.C.G.S. § 132-1 et seq., and maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of, the Attorney General's Office before responding to any public records request. Special Counsel shall comply with the Attorney General's Office's policy on document retention and refrain from destroying documents unless otherwise permitted under this policy. Special Counsel shall request written confirmation from the Attorney General's Office prior to destroying any documents.

IV. COMPENSATION

This section refers to the compensation for Special Counsel after selection from the offerors included on the approved list of service providers for a particular case. To be considered for the list of approved law firms, Special Counsel must propose a fee schedule not to exceed the maximum fee schedule outlined below.

A. Maximum Fee Schedule

Under this Proposal, compensation will be paid on a contingent fee basis. The offeror selected from the approved list of service providers for particular litigation shall receive no compensation for any services rendered unless the State of North Carolina receives a settlement or damage award in connection with this litigation. If the State receives a litigation award, Special Counsel will be compensated for services on terms no more generous than as noted below from North Carolina's portion of any settlement or judgment. Offerors shall prepare a fee schedule under which it would contract on a contingent fee basis not to exceed the maximum fee schedule.

1. Special Counsel may be reimbursed all reasonable, normal, and verified "out of pocket" costs and expenses as specified below. These costs and expenses necessary for conducting this litigation, as defined below, shall initially be advanced by Special Counsel and shall be deducted from the litigation's gross or total recovery, if any, before any further distribution is made. If, however, the State and/or Special Counsel have a right of recovery of costs and expenses from a defendant with respect to the matter litigated, Special Counsel may only seek recovery of its costs and expenses from the defendant(s), and Special Counsel may not recover any such costs and expenses from the State. In such cases, costs and expenses of Special Counsel shall not be deducted from the litigation's gross or total recovery; and
2. At least 77% of the remaining or net settlement or judgment proceeds (but not including punitive or exemplary damages, if any) North Carolina receives shall be paid or applied to or for the State or the people of North Carolina or the victims in a manner to be determined by the Attorney General in his sole discretion; and
3. Special Counsel shall be paid the remaining 23% or less in fees of said remaining or net settlement or judgment proceeds (but not including punitive or exemplary damages, if any) North Carolina receives, as follows:

Amount of net proceeds of judgment or settlement (in millions) North Carolina receives	Contingent percentage
First \$0 to \$5	23%
Excess over \$5 up to \$10	19%
Excess over \$10 up to \$25	15%
Excess over \$25 up to \$50	11%
Excess over \$50 up to \$100	7%
Excess over \$100	4%

Provided, however, that the Attorney General’s Office shall retain 10% of Special Counsel’s fees awarded under this section as reimbursement for attorney’s fees, costs, and expenses.

- Special Counsel shall be paid 10% or less of any punitive or exemplary damage proceeds as follows, with the remaining 90% or more to be paid or applied to or for the State or the people of North Carolina or the victims in a manner to be determined by the Attorney General at his sole discretion:

Amount of punitive or exemplary proceeds (in millions) North Carolina receives	Contingent percentage
First \$0 to \$10	10%
Excess over \$10 up to \$100	5%
Excess over \$100	3%

Provided, however, that the Attorney General’s Office shall retain 10% of Special Counsel’s fees awarded under this section as reimbursement for attorney’s fees, costs, and expenses.

The characterization of proceeds as punitive or exemplary shall be made by the Attorney General.

If the State is required by law to repay the federal government any portion of the attorney’s fees and costs of Special Counsel, Special Counsel shall indemnify the State for the amount the State is required to repay the federal government, so that the required repayment to the federal government does not result in a reduction of the net amount of the State’s recovery in the matter.

- All settlement or judgment proceeds shall be paid by or on behalf of the defendant(s) to the Attorney General’s Office, which shall provide for distribution.
- If the proposed or actual defendants in a matter agree to a settlement or resolution prior to or upon commencement of the litigation or shortly thereafter, upon negotiation or consultation or upon initial responses, then Special Counsel’s compensation shall be one-

half of that specified above. As every case involving or potentially involving litigation is different, the Attorney General's Office is not able to definitively state when this could occur for any particular matter. As a result, this decision would be made on a case by case basis. However, generally, it is anticipated that this provision would be applicable until the plaintiff engages in litigation activities following the defendant's answer.

7. The agreed upon distribution and compensation calculation, not to exceed the maximum fee schedule, shall be included in a final order in any case.

B. Alternative Compensation

If attorney's fees are awarded by the court in an action litigated by the Special Counsel on behalf of the Attorney General, or are included in a settlement negotiated by Special Counsel on behalf of the Attorney General's Office, the attorney's fees awarded or negotiated shall be Special Counsel's compensation for the litigation. If, however, the fees awarded or negotiated do not equal what Special Counsel would have received under its contracted compensation schedule, which shall not exceed the maximum fee schedule above, then, in addition to a court award or negotiated amount, Special Counsel shall receive the difference between what would have been due under the contracted compensation schedule and what was awarded as attorneys' fees.

C. Non-Monetary Damages

The above compensation schedule applies to any settlement or judgment, whether the settlement or judgment is entirely monetary in nature or is combined with non-monetary relief. Should the litigation be resolved by settlement or judgment involving a combination of monetary and non-monetary relief (such as injunctive relief, non-monetary payment, the provision of goods and/or services or any other "in kind" terms, or any combination of those), the Attorney General in his sole discretion shall determine the monetary value to the State.

D. Payment of Fees, Costs and Expenses

Neither the State of North Carolina nor the Attorney General shall be required hereunder, or otherwise, to compensate or reimburse Special Counsel for his work in this matter, other than as set forth in its contracted compensation schedule. Furthermore, except for the fee schedule, expenses, and costs enumerated and outlined herein, Special Counsel shall not be entitled to and shall not accept compensation or reimbursement from any other source.

V. EXPENSES AND COSTS

This section refers to the expenses and costs associated with a particular case incurred by the Special Counsel selected from the offerors included on the approved list of service providers.

A. Advancement of Expenses and Costs

Special Counsel shall advance all costs, expenses, and disbursements, including expert witness fees and costs, deposition costs, and costs of document production. The advance of all litigation costs and expenses, as well as deferring fees while any and all litigation (including appeals and enforcement actions) is pending was taken into consideration in establishing the maximum fee schedule above.

B. Expenses and Cost Reimbursement

Special Counsel shall be reimbursed solely from the litigation's gross recovery as approved by the Attorney General's Office for certain reasonable expenses and costs enumerated below. Proper documentation for receipts or otherwise shall be submitted with all invoices and all documentation shall be retained by Special Counsel for at least three full years following termination of the case. All expenses must be itemized and no reimbursement may be applied for or requested for "miscellaneous" listings. The Attorney General in his sole discretion may decline to reimburse Special Counsel for improperly documented, unnecessary, or unreasonable costs or expenses.

1. **Experts** -- Special Counsel shall be reimbursed for retention of experts, including fees and other reasonable costs, only when expressly authorized by the Attorney General prior to retention.
2. **Lodging** – Receipts are required. In-state overnight lodging shall be reimbursed at actual cost up to a maximum of \$75.00 plus tax per day. Any expenses incurred due to out-of-state lodging greater than \$75.00 plus tax per day shall be approved in advance by the Attorney General. If circumstances render Special Counsel unable to obtain the prior approval of the Attorney General in this situation, as soon as thereafter practicable, Special Counsel shall notify the Attorney General of the location, the hotel, the daily rate, and the reasons for not obtaining prior approval. Failure to follow these procedures shall result in such lodging costs being borne by the Special Counsel.
3. **Meals** – Receipts are required. Maximum reimbursement for in-state meals is \$40.00 total per day, including tips. The inclusion of gratuities for reimbursement is limited to 15% of the cost of the meal portion only, excluding any alcoholic beverages. Maximum reimbursement for out-of-state meals is \$60.00 total per day, including tips. If no receipts are provided, then no costs will be reimbursed. Reimbursement shall be made only in conjunction with necessary overnight travel. No reimbursement will be made for entertainment expense or alcohol.
4. **Travel** – Receipts are required. Airfare shall be reimbursed at actual cost based on coach fares.
5. **Non-Meal Gratuities** – Receipts are not required. The purpose of a non-meal gratuity must be specified on the invoice submitted for reimbursement. Maximum reimbursement is limited to \$10.00 on travel days and \$5.00 on non-travel days.
6. **Mileage** – Automobile travel shall be reimbursed at the maximum rate of thirty cents (\$0.30) per mile. Travel by car shall not exceed coach fares on commercial airlines. Mileage is to be itemized on the invoice as "Mileage" (number of miles @ rate per mile) and shall include the point of origin and destination.
7. **Photocopying** – In-house photocopying (including color copies) shall be reimbursed at the Special Counsel's actual expense, not to exceed 15 cents (\$0.15) per copy and is to be itemized on the invoice as "Photocopies" (number of copies @ rate per copy). Reasonable amounts for outside photocopying shall be reimbursed at the actual cost if receipts are provided.
8. **Priority/Overnight Mail** – Charges for priority mail services shall be reimbursed only if a justifiable basis exists for using the service. In no event shall the Special Counsel be

reimbursed for the cost of sending invoices or status reports to the Attorney General by overnight or priority mail services.

9. Secretarial or Staff Overtime – There shall be no reimbursement for secretarial or staff overtime unless expressly authorized in writing by the Attorney General’s Office prior to invoicing.

10. Other Expenses – Actual costs shall be reimbursed for certain routine expenses including transcripts, deposition costs, witness fees, subpoena service, postage, printing, cab and bus fares, parking, and long-distance telephone calls when itemized and receipts are provided. Expenses for back office or overhead, such as office space, word processing, secretarial, and paralegal costs are not reimbursable. Online legal research, such as Westlaw or Lexis, shall be reimbursed only when authorized in advance by the Attorney General’s Office.

C. One Invoice

At the conclusion of the litigation, Special Counsel agrees to submit one original invoice to the Attorney General for expenses and costs.

VI. TERMINATION AND REMOVAL FROM THE APPROVED LIST OF PROVIDERS

A. Termination by the Attorney General

The Attorney General’s Office reserves the right to terminate the Special Counsel relationship at any time, in this sole discretion, and without cause or duty of explanation.

B. Termination by Special Counsel

Special Counsel may terminate its duties and obligations upon thirty (30) days written notice to the Attorney General’s Office. Termination on the part of the Special Counsel shall not be effective if the Attorney General’s Office finds in its sole discretion that such termination prejudices or has a material adverse effect on the State of North Carolina.

C. Actions Upon Termination

Upon termination, all material, data, files, discs, or documents created, produced, or gathered by Special Counsel, or in Special Counsel’s possession in furtherance of the litigation, or which fulfills an obligation of the appointment shall be immediately delivered to the Attorney General’s Office as directed, and without encumbrance or lien or any cost or charge to the Attorney General’s Office.

D. Compensation Upon Termination

In the event either the Attorney General or Special Counsel terminate the relationship as to any litigation, by its terms or if Special Counsel is terminated without cause, Special Counsel shall be reimbursed only from the litigation’s gross recovery and only for all properly documented expenses and costs, as defined above, rendered prior to termination; there shall be no payment of any attorneys’ fees unless the Attorney General agrees in writing to the payment of fees for work performed under such terms and conditions as may be set by him in his sole discretion. If Special Counsel is terminated for cause, he will not be reimbursed for any expenses and costs or paid any fees or other compensation for any services relating to the litigation.

E. Removal from the Approved List

Prior to an offeror being selected as Special Counsel for a particular matter, the offeror may request to be removed from the list of approved service providers. Thereafter, that offeror will no longer be eligible to act as Special Counsel until the expiration of the three year period of the approved list or until the Department of Justice seeks another Request for Proposals.

The Attorney General's Office reserves the right to remove an offeror from the approved list of providers prior to selection as Special Counsel at any time, in this sole discretion, and without cause or duty of explanation.

VII. OTHER TERMS AND CONDITIONS

A. Media Statements

Neither Special Counsel nor any partner, associate, employee, or any other person assisting with the legal work contemplated herein shall speak to any representative of a television station, radio station, newspaper, magazine, or any other media outlet concerning the work outlined or contemplated herein without first obtaining approval of the Attorney General's Office. Special Counsel is prohibited from speaking on behalf of the Attorney General or the State of North Carolina to any representative of the news media. All media inquiries shall be referred to the Attorney General's Office Public Information Officer.

B. Code of Professional Responsibility

If a complaint is filed against any attorney or firm after submitting a proposal hereunder, being included on the approved list, or after being retained in a particular matter alleging a violation of the Rules of Professional Responsibility or other applicable rules governing the state bar in which Special Counsel has been admitted, Special Counsel shall give prompt written notice of such complaint to the Attorney General's Office. The Attorney General retains the right, in his sole discretion, to immediately remove Special Counsel from the approved list of attorneys or to terminate Special Counsel from any litigation if he deems the complaint to adversely affect in any way Special Counsel's ability to perform his duties required herein, or to adversely affect the litigation, the Attorney General, or the State of North Carolina.

C. Insurance

Special Counsel shall carry adequate professional liability insurance and shall provide proof of the same to the Attorney General's Office promptly upon request.

D. Conflict of Interest

Neither Special Counsel nor his firm shall have any conflict of interest with the State of North Carolina, its agencies, or subdivisions. If a conflict, potential or otherwise, arises, as defined by the Rules of Professional Responsibility, during the term of this litigation, the Special Counsel shall give timely notice to the Attorney General's Office. Special Counsel must request and obtain a written authorization from the Attorney General prior to undertaking any representation against or adverse to the State of North Carolina, its offices, boards, departments, or institutions during the terms of this representation.

VIII. CONTRACT ADMINISTRATOR

The Contract Administrator is a North Carolina Department of Justice employee that will be responsible for monitoring the Contractor's performance, approving payments to the Contractor, and for evaluating the performance of the Contractor. Upon selection for a particular case, Special Counsel will be notified as to who the Contractor Administrator will be for that litigation.

IX. THE PROCUREMENT PROCESS

The following is a general description of the process by which a Special Counsel will be selected to provide services.

1. Request for Proposals (RFP) are issued to prospective contractors.
2. A preproposal conference and/or deadline for written questions is set. (See cover sheet of this RFP for details.)
3. Proposals in **one original and four copies** will be received from each offeror in a sealed envelope or package. Each original shall be signed and dated by an official authorized to bind the firm. **Unsigned proposals will not be considered.**
4. All proposals must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFP.
5. At that date and time the package containing the proposals from each responding attorney or law firm will be opened publicly and the name of the offeror will be announced. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of an offeror's proposal.
6. At their option, the evaluators may request oral presentations or discussion with any or all offerors for the purpose of clarification or to amplify the materials presented in any part of the proposal. However, offerors are cautioned that the evaluators are not required to request clarification; therefore, all proposals should be complete and reflect the most favorable terms available from the offeror.
7. Proposals will be evaluated according to completeness, content, and experience with similar projects, ability of the offeror and its staff, and cost. The NC Department of Justice will determine, in its sole discretion, which offerors meet the qualification standards desired of firms to be included on the approved list.
8. Offerors are cautioned that this is a request for offers, not a request to contract, and the State reserves the unqualified right to reject any and all offers when such rejection is deemed to be in the best interest of the State.

X. PROPOSAL REQUIREMENTS

The response to this RFP shall consist of the following sections:

- Background and Experience
- Financial Statement
- Project Staffing and Organization
- Technical Approach
- Cost Proposal

A proposal may be rejected if it is determined that the proposal has not provided the following information in the specified format as described in detail below, or a determination has been made by that the attorney is not qualified to perform said services.

1. Background and Experience

This section shall include background information on the organization and shall give details of experience with similar projects. A list of references (including contact persons and telephone numbers) for which similar work has been performed shall be included. Offerors shall describe and demonstrate credible experience in providing legal services involving litigation with pharmaceutical companies or the makers of health care products or services and the sales and marketing of pharmaceuticals or health care products or services. Descriptions of credible experience may include summary descriptions of previous or current firm litigation. Credible experience may also include direct experience by key staff members which demonstrate a working knowledge of complex litigation involving pharmaceuticals or health products or services and experience representing states.

2. Financial Statement

The offeror's most recent audited financial statement or similar evidence of financial stability shall be provided. In the case of a joint proposal, financial statements or similar evidence of financial stability should be submitted for all firms submitting the joint proposal. Confirmation of a line of credit from a reputable financial institution will suffice in place of an audited financial statement as "similar evidence of financial stability." Any documents of information, such as financial statements, that are deemed and marked confidential pursuant to N.C.G.S. § 132 et seq., in particular N.C.G.S. § 132-1.2 and N.C.G.S. § 132-1.10, are not subject to disclosure. See Paragraph 13 under General Information on Submitting Proposals for more specific information.

3. Project Organization

This section must include the proposed staffing, deployment and organization of personnel to be assigned to this project.

The offeror shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person.

4. Technical Approach

This section shall include, in narrative, outline, and/or graph form the offeror's approach to accomplishing the tasks outlined in the Scope of Work section of this RFP. A description of each task and deliverable and the schedule for accomplishing each shall be included.

5. Cost Proposal

The Cost Proposal shall contain a contingent fee compensation schedule not to exceed the schedule detailed in section V. Compensation above.

COST PROPOSAL/EXECUTION OF PROPOSAL

By submitting this proposal, the potential contractor certifies the following:

- This proposal is signed by an authorized representative of the firm.
- It can obtain insurance certificates as required within 10 calendar days after notice of award.
- The cost and availability of all equipment, materials, and supplies associated with performing the services described herein have been determined and included in the proposed cost.
- All labor costs, direct and indirect, have been determined and included in the proposed cost.
- The offeror can and will provide the specified performance bond or alternate performance guarantee (if applicable).
- The potential contractor has read and understands the conditions set forth in this RFP and agrees to them with no exceptions.

Therefore, in compliance with this Request for Proposals, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within sixty days from the date of the opening, to be included in an approved list of service providers and to furnish services on a contingent fee basis as indicated in the Proposal.

OFFEROR: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE NUMBER: _____ FAX: _____

FEDERAL EMPLOYER IDENTIFICATION NUMBER: _____

E-MAIL: _____

Principal Place of Business if different from above (See General Information on Submitting Proposals, Item 18.):

Will any of the work under this contract be performed outside the United States? Yes No
(If yes, describe in technical proposal.)

BY: _____ TITLE: _____ DATE: _____

(Signature)

(Typed or printed name)

THIS PAGE MUST BE SIGNED BY OFFEROR AND INCLUDED IN YOUR PROPOSAL.
Unsigned proposals will not be considered.

ACCEPTANCE OF PROPOSAL

NORTH CAROLINA DEPARTMENT OF JUSTICE

BY: _____ TITLE: _____ DATE: _____

GENERAL INFORMATION ON SUBMITTING PROPOSALS

1. **EXCEPTIONS:** All proposals are subject to the terms and conditions outlined herein. All responses shall be controlled by such terms and conditions and the submission of other terms and conditions, price lists, catalogs, and/or other documents as part of an offeror's response will be waived and have no effect either on this Request for Proposals or on any contract that may be awarded resulting from this solicitation.

Offeror specifically agrees to the conditions set forth in the above paragraph by signature to the proposal.

2. **CERTIFICATION:** By executing the proposal, the signer certifies that this proposal is submitted competitively and without collusion (G.S. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.
3. **ORAL EXPLANATIONS:** The State shall not be bound by oral explanations or instructions given at any time during the competitive process or after award.
4. **REFERENCE TO OTHER DATA:** Only information which is received in response to this RFP will be evaluated; reference to information previously submitted shall not be evaluated.
5. **ELABORATE PROPOSALS:** Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.

In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.

It is desirable that all responses meet the following requirements:

- All copies are printed **double sided**.
 - All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
 - Unless absolutely necessary, all proposals and copies should **minimize or eliminate use of non-recyclable or non re-usable materials** such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
 - Materials should be submitted in a format that allows for **easy removal and recycling** of paper materials.
6. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by offerors in preparing or submitting offers are the offerors' sole responsibility; the State of North Carolina will not reimburse any offeror for any costs incurred prior to award.
 7. **TIME FOR ACCEPTANCE:** Each proposal shall state that it is a firm offer that may be accepted within a period of sixty (60) days. Although the approved list should be compiled prior to that time, the sixty-day period is requested to allow for unforeseen delays.

8. **TITLES:** Titles and headings in this RFP and any subsequent contract are for convenience only and shall have no binding force or effect.
9. **CONFIDENTIALITY OF PROPOSALS:** In submitting its proposal the offeror agrees not to discuss or otherwise reveal the contents of the proposal to any source outside of the using or issuing agency, government or private, until after the approved list is compiled. Offerors not in compliance with this provision may be disqualified, at the option of the State, from being included in the approved list of service providers. Only discussions authorized by the issuing agency are exempt from this provision.
10. **RIGHT TO SUBMITTED MATERIAL:** All responses, inquiries, or correspondence relating to or in reference to the RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the offerors shall become the property of the State when received.
11. **OFFEROR'S REPRESENTATIVE:** Each offeror shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
12. **SUBCONTRACTING:** Offerors may propose to subcontract portions of the work provided that their proposals clearly indicate what work they plan to subcontract and to whom and that all information required about the prime contractor is also included for each proposed subcontractor.
13. **PROPRIETARY INFORMATION:** Trade secrets or similar proprietary data which the offeror does not wish disclosed to other than personnel involved in the evaluation or contract administration will be kept confidential to the extent permitted by N.C.G.S. § 132-1.3 if identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Any section of the proposal that is to remain confidential shall also be so marked in boldface on the title page of that section. Cost information may not be deemed confidential. In spite of what is labeled as confidential, the determination as to whether or not it is shall be determined by North Carolina law.
14. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to N.C.G.S. § 143-48 and Executive Order #150, the Department invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
15. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident offerors. The "Principal Place of Business" is defined as the principal place from which the trade or business of the offeror is directed or managed.