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TO: Interested Parties
FROM: Judy Zeprun Kalman, Deputy General Counsel, Office of the Attorney General
RE: Review and Approval Process for Legal Services Contracts
DATE: May 18, 2012
[Superseding: Memorandum dated November 6, 2007]

Departments subject to M.G.L. c. 30, § 65 must obtain approval by the AGO to contract for legal services. This memorandum describes the review and approval process for “legal services provided under contract with the governor or with an officer, department, agency, board or commission serving under the governor or within one of the executive offices headed by a secretary appointed by the governor,” M.G.L. c. 30, § 65 (d), and supersedes the Memorandum to Interested Parties issued on November 6, 2007 titled, “Review and Approval Process for Legal Services Contracts.”

Under M.G.L. c. 30, § 65 (a)(3), the Office of the Attorney General (AGO), after having been consulted during the procurement process, has two primary responsibilities: (1) to review legal services contracts to determine that any attorney hired by a department, agency, board, or commission of the commonwealth (“department”) subject to M.G.L. c. 30, § 65 (d), is a member in good standing of the Massachusetts or other state bar, and has no apparent conflict of interests; and (2) if the attorney is providing litigation services, to ensure that the attorney will appear in court on behalf of the commonwealth only after the attorney’s appointment as a special assistant attorney general.

When departments subject to M.G.L. c. 30, § 65 are contracting for legal services (H09 and N03)ⁱ the following instructions apply:

I. INSTRUCTIONS APPLICABLE TO ALL LEGAL SERVICES CONTRACTS.

1. Provide a Scope of Services.

The AGO requests that the department provide a detailed **Scope of Services** outlining the specific legal services (H09 and N03 object codes) that will be performed by the attorney or firm. The scope of services should also identify whether or not the attorney/firm plans to represent the department/Commonwealth in court (either in Massachusetts or in another jurisdiction). If litigation services are to be provided, each attorney representing the Commonwealth must be approved as a SAAG by the AGO prior to beginning any services. A separate form is required and a separate appointment letter will be sent to the SAAG.

2. Provide a certification by the Governor's Chief Legal Counsel as to the need for outside legal services. M.G.L. c. 30, § 65(a)(1).
3. Provide documentation showing compliance with procurement procedures which comply with the regulations of the state purchasing agent. M.G.L. c. 30, § 65(a)(2).
Compliance may be shown in one of two ways: (A) submission of a copy of the relevant portion of the Request for Proposal or other document which shows that the request for the legal services that the lawyer is to provide was made publicly available for competitive bidding in a manner provided by regulations of the state purchasing agent and approved by the comptroller; or (B) submission of a copy of a certification by the Governor's Chief Legal Counsel, made in advance of the purchase of legal services by the agency, that describes a situation or condition that requires the immediate provision of legal services, and certifies that M.G.L. c. 30, § 65(a)(2) does not apply.
4. Provide evidence of good standing, namely, a copy or a downloaded printout of the Board of Bar Overseers record of good standing for each attorney who will be assigned to perform services, or who are identified as "key personnel" under the Contract. Good standing certificates may be accessed through this link: <http://db.state.ma.us/obcbbo/bboreg/lookup.asp>. Similar documentation of licensure and good standing must be provided for any out of state attorney. Departments should annually verify that any attorney(s) assigned to the contract remains in good standing for the duration of the contract.
5. Address whether there are any conflicts of interest, M.G.L. c. 30, § 65(a)(3).
 - (A) The department should include a **statement disclosing each matter** the attorney who is performing legal services under the contract or, in the case of a firm, each and every attorney in the firm has pending, in which the Commonwealth or any agency, department, board, commission, or employee thereof, is an adverse party. If there is no such matter, provide a statement that the attorney or, in the case of a firm, each and every attorney in the firm, has no matter pending in which the Commonwealth or any agency, department, board, commission, or employee thereof is an adverse party. See M.G.L. c. 30, § 65(a)(3). (Please attach any relevant correspondence); and
 - (B) The department should include a **statement from the** department requesting outside legal services under the contract stating that the department has reviewed and analyzed the legal services contract and the information provided in paragraphs 4 and 5, and recommends that the AGO General Counsel determine that any attorney named in the legal services contract is a member in good standing of the Massachusetts Bar or an out of state bar and has no conflicts of interest within the meaning of the Rules of Professional Conduct, Rule 1.7 -1.12. If there are such conflicts of interest exist, please indicate the reason that notwithstanding the conflict of interest, the AGO should consent to the representation.

Please note that the attorney or firm providing legal services has a continuing obligation to notify the Department of any apparent conflicts of interest that arise while the contract is in force.

6. Executive Departments must also attach a [Consultant Contractor Mandatory Submission Form](#) completed by the Contractor with all required attachments. See [M.G.L. c. 29, § 29A](#) and [M.G.L. c. 7A, § 6](#)). Non-Executive Departments must attach a statement of financial interest from the attorney(s) (see [M.G.L. c. 7A, § 6](#)) and a *résumé*, but may use the [Consultant Contractor Mandatory Submission Form](#) or other appropriate format.

PROCESS

Departments are encouraged to submit the required documentation as early in the contracting process as possible to ensure that the start of services is not delayed. The Review Form and attachments can be sent at any time during the contracting process, and departments do not have to wait until the Contract is signed to send the documentation to the AGO for review. We do ask, however, that you submit the form to the AGO/General Counsel's Office at least two weeks before the legal work is scheduled to begin and we remind you that the form must be completed and submitted (with required attachments) to the AGO prior to the start of performance or change in performance for: (1) any new legal services contract; and (2) and for any significant amendment to the scope of services under an existing contract.

Irrespective of contract execution dates or other contract approvals, legal services may not begin until the AGO review is completed, as indicated by the date of approval on the Review Form. The Commonwealth policy continues to be that the latest signature date of any component of the completed contract is the effective date for that contract.

Once the AGO approves the Review Form, the AGO will scan and e-mail the Review Form showing the AGO's approval to the department Contact Person at the e-mail address listed on the Form, unless otherwise requested by a department. (The original Review Form is kept by the AGO.) Once the AGO's approval is received by the department, the department should attach the AGO approval to the executed contract.

Please contact Judy Zeprun Kalman, Deputy General Counsel, Office of the Attorney General by telephone (617-963-2018) or e-mail (judy.zeprun@state.ma.us) if you have any questions regarding the process.

II. ADDITIONAL REQUIREMENT WHERE LITIGATION SERVICES ARE CONTEMPLATED (SAAG):

In addition to having in place an approved Contract for Legal Services, an attorney who is providing litigation services may appear in court on behalf of the commonwealth only after having been appointed as a special assistant attorney general (SAAG). See M.G.L. c. 30, § 65(a)(3), and M.G.L. c. 12, § 3. The SAAG Approval Form is completed by the proposed SAAG's internal contact within the AGO. For additional information, or for a copy of the SAAG Approval Form, please contact the General Counsel's Office.

ⁱ **H09 ATTORNEYS/LEGAL SERVICES** – Individuals and firms who represent the state in legal matters. For construction project related legal services, see N03. All Commonwealth departments are required to obtain prior written review by the Office of the Attorney General (AGO) for any legal services performed for the department under a contract. The AGO review of legal services contracts is limited to determining that any attorney/firm hired by a department is a member of the Massachusetts Bar (or out of state bar) in good standing, has no apparent conflicts of interests, and if providing litigation services, will appear in court on behalf of the Commonwealth only after his/her appointment as a Special Assistant Attorney General (SAAG) by the AGO. The [Attorney General Review Form for Attorneys Providing Legal Services](#) form must be completed and mailed (with required attachments) to the AGO for any new legal services contract, and for any significant amendment to the scope of services under an existing contract, PRIOR to the start of performance or change in performance. See: [Attorney General Policy for Prior Review of Attorneys](#). Attorneys hired by Executive departments are also required to obtain prior approval of the Governor's Chief Legal Counsel prior to posting or hire. See CC Object class for contract employee legal services.

N03 ATTORNEYS/LEGAL SERVICES – Persons who represent the state in legal matters on construction projects, or who provide any legal services related to a construction project, even if project is paid under a separate object code. For non-construction related legal services, see H09. All Commonwealth departments are required to obtain prior written review by the Office of the Attorney General (AGO) for any legal services performed for the department under a contract. The AGO review of legal services contracts is limited to determining that any attorney/firm hired by a department is a member of the Massachusetts Bar (or out of state bar) in good standing, has no apparent conflicts of interests, and if providing litigation services, will appear in court on behalf of the Commonwealth only after his/her appointment as a Special Assistant Attorney General (SAAG) by the AGO. The [Attorney General Review Form for Attorneys Providing Legal Services](#) form must be completed and mailed (with required attachments) to the AGO for any new legal services contract, and for any significant amendment to the scope of services under an existing contract, PRIOR to the start of performance or change in performance. See: [Attorney General Policy for Prior Review of Attorneys](#). Attorneys hired by Executive departments are also required to obtain prior approval of the Governor's Chief Legal Counsel prior to posting or hire.