

**STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL**

**MEMORANDUM**

April 5, 2006

TO: All State Agencies & Departments

FROM: Pete Favretto  
Contract Approval Unit

RE: Outside Counsel Contracts

Pursuant to Section 63 of the Executive Law, the Attorney General is the chief legal officer of the State of New York. In accordance therewith, this memorandum restates the documentation requirements of the Office of the Attorney General ("OAG") for all contracts involving the use by State agencies of outside counsel. This supersedes the memorandum of November 8, 1999 on this subject.

All outside counsel contracts must be accompanied by a letter or memorandum containing the following information:

1. The nature of the services to be performed;
2. The reasons why agency counsel or the OAG cannot handle the matter;
3. The reasons for selecting the attorney or firm and the process used in making the selection. Be sure to provide evidence that State Finance Law Section 163 has been complied with. Include copies of the REP and all proposals;
4. The fee schedule (hourly rates for partners, associates and paralegals) and expenses. The total contract amount should be stated, preferably in a "not to exceed" form.
5. Whether there have been discussions with the OAG concerning the use of outside counsel in this matter and, if so, with whom;
6. A list of all contracts between your agency and the attorney or firm within the past 3 years, including the OSC number, the start and end dates and the amounts thereof, and
7. The Comptroller's contract number, if known.

8. If the contract involves litigation, the letter or memorandum must also state:

- a) the name of the action or proceeding (including the Index number or other Court docket number);
- b) its venue; and
- c) a description of the nature of the action or proceeding.

Amendments or extensions to outside counsel contracts must explain all changes being made and the reasons therefore. Please consecutively number each amendment. If the amendment was authorized by the original agreement, please cite the relevant contract clause.

Please be specific in supplying information. General statements may result in approval delays when the OAG requests further information from you.

All outside counsel contracts must also contain the following clauses:

a) "Opinions prepared by retained attorneys or law firms construing the statutes or Constitution of the State of New York do not constitute the opinion of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Appeals and Opinions Bureau, Department of Law, State Capitol, Albany, New York."

b) "The retained attorney or law firm will represent the State of New York in judicial litigation related to the services to be provided under this agreement only when such services are specifically requested by the State agency's counsel and approved by the Attorney General. Such approval must be requested separately for each matter to be litigated and must be received prior to the commencement of services therefore,

Please be advised that all outside counsel contracts, even those not requiring prior OSC approval, must have the prior approval of the OAG.

Authorities, boards, corporations and other quasi-State agencies requiring OAG approval should cite their statutory authority to hire outside counsel.

Please send your memo with the contract to the Contract Approval Unit, Office of the Attorney General, The Capitol, Albany, NY 12224.

For any questions pertaining to outside counsel contracts, please call Peter Favretto at (518) 474-1697.

Thank you for your consideration.