TO: Interested Parties
FROM: Judy Zeprun Kalman, Deputy General Counsel
RE: Review and Approval Process for Legal Services Contracts
DATE: January 21, 2015
[*Superseding*: Memorandum dated May 18, 2012]

Departments subject to M.G.L. c. 30, § 65 must obtain approval by the Office of the Attorney General ("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 May 18, 2012 titled, "Review and Approval Process for Legal Services Contracts."

Under M.G.L. c. 30, § 65 (a)(3), the 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 (Office of the State Comptroller, Expenditure Classification Handbook, object codes H09 and N03), 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 to request that a SAAG be appointed, 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, the statement should indicate that the attorney or, in the case of a firm, no attorney in the firm, has any 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 which confirms 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 any such conflicts of interest exist, the Department should 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, and the Department has the responsibility to monitor whether the attorney or firm's proposed representation of another client presents a conflict of interest.

6. Attach a résumé of the attorney providing legal services or, in the case of a firm, the firm biography.

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. 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.

Departments do not have to wait until the Contract is executed to send the documentation to the AGO for review, and the AGO does not need to see the Contract itself. 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.

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.