

# Choosing Outside Legal Counsel Guidelines

SBEX Policy No. 442-10  
Adopted: July 20, 1995  
Last Amended: July 20, 1995

## Table of Contents

1. Purpose
2. Definition
3. Exceptions
4. Attorney General as Sole Provider of State Legal Services
5. Notice of Need
6. Solicitation of Interest to Participate
7. Disqualifications
8. Requests for Proposals
9. Attorney General to Screen Applicants
10. Board of Examiners Approval
11. Appointment of Counsel

### 1. Purpose

The 1995 Idaho Legislature enacted Senate Bill No. 1217, amending chapter 14, title 67 of the Idaho Code, effective July 1, 1995. The amendments provide that the Attorney General will recommend to the Board of Examiners those attorneys he believes should be authorized to provide legal representation to the state. The Board of Examiners, in turn, will select those attorneys or firms so recommended by the Attorney General who can best provide quality legal services for state entities at an acceptable cost. The purpose of these guidelines is to outline the process to be used in selecting such attorneys and firms and to assure that the process of awarding contracts will be open, competitive, and merit-based.

### 2. Definition

For purposes of these guidelines, the term "state agency" includes all state officers, departments, boards, commissions, divisions, bureaus, councils, and other state entities.

### 3. Exceptions

These guidelines do not apply to the legislative and judicial branches of government or to the governor, the colleges and universities, or the self-governing agencies. Sections [67-1401](#) and [1406](#), Idaho Code, exempt each of these entities from the mandates regarding acquisition of outside legal services.

### 4. Attorney General as Sole Provider of State Legal Services

Section [67-1401](#), Idaho Code, states that the Attorney General shall have the primary right and responsibility to provide legal advice and legal representation to all state agencies, other than those listed above. Thus, when a state agency has a need for legal services, the Attorney General may elect to provide the legal services from resources within the Office of the Attorney General or may authorize the retention of private legal counsel on a case-by-case basis.

### 5. Notice of Need

Any state agency that has a need for legal advice or legal representation shall notify the Attorney General of that need. If the Attorney General elects not to provide the legal services, these guidelines provide the

means of awarding contracts for legal services to outside counsel. If there is not sufficient time to follow the procedures outlined in these guidelines, the Attorney General, pursuant to section [67-1409\(1\)](#), Idaho Code, may appoint counsel for the state agency on a case-by-case basis.

## **6. Solicitation of Interest to Participate**

The Attorney General shall solicit written expressions of interest from members of the Idaho State Bar who wish to provide legal services by contract to state agencies. This solicitation notice shall be published in a manner sufficient to bring it to the attention of Idaho attorneys and law firms. The notice shall be renewed as often as necessary to secure a roster of qualified attorneys and law firms to perform legal services which are anticipated by state agencies.

## **7. Disqualifications**

Attorneys and law firms that provide contract legal services to state agencies may not participate in or bring suit against the State of Idaho during the pendency of such contract unless this prohibition is waived in writing by the Attorney General. An attorney who has worked as a deputy attorney general may not provide contract legal services to a state agency for one year after leaving employment as a deputy attorney general unless this prohibition is waived in writing by the Attorney General. An attorney must be in good standing with the Idaho State Bar and must carry adequate malpractice insurance in order to provide contract legal services to state agencies.

## **8. Requests for Proposals**

The Attorney General shall issue a formal request for proposals (RFP) to attorneys and law firms that have indicated in writing an interest in providing legal services by contract to state agencies. The RFP shall indicate the type of legal services to be provided and shall request interested attorneys and law firms to state their qualifications and proposed costs for providing these legal services.

## **9. Attorney General to Screen Applicants**

The Attorney General shall review the applications from attorneys and law firms and shall recommend to the Board of Examiners those applicants that the Attorney General determines to be most qualified and cost-effective in providing any needed contract legal services. The Attorney General shall weigh the following factors, and such others as he deems appropriate, in making his recommendation to the Board of Examiners:

- (a) The magnitude or complexity of the case.
- (b) The attorney or firm's proof of good standing in the bar.
- (c) The attorney or firm's ability to provide the needed legal services as evidenced by past success in handling such matters.
- (d) The attorney or firm's use of alternative dispute resolution techniques as evidenced by past success in engaging in these techniques.
- (e) The attorney or firm's geographical proximity to the case and the state agency.
- (f) The attorney or firm's prior experience with the state agency.
- (g) The attorney or firm's billing methodology and proposed rate.
- (h) The attorney or firm's current adversarial position or conflicts of interest with the state agency.

(l) The attorney or firm's willingness to use resources of the state agency and of the Attorney General's Office to minimize cost.

(j) The attorney or firm's plan to implement and employ cost containment measures.

The Attorney General may recommend attorneys or law firms for particular cases, for board categories or cases, for all cases within a geographical area, or in any other manner the Attorney General determines will provide qualified and cost-effective legal services to state agencies.

## **10. Board of Examiners Approval**

The Board of Examiners, upon receipt of the Attorney General's recommendations, shall determine and approve those attorneys and law firms that are available to provide legal services by contract to state agencies. This approval may be open-ended or for a time certain as the Board of Examiners deems appropriate.

## **11. Appointment of Counsel**

A state agency which has need for legal services which the Attorney General has declined to provide with in-house resources, shall be notified by the Attorney General of the selection of counsel from among the attorneys and law firms approved by the Board of Examiners and acceptable to the Attorney General for deputization.

The Attorney General may award contract work on a case-by-case basis, for an entire category of work, for an entire geographical area, for an indefinite time period, or for a time certain. The Attorney General may adopt a uniform rate for legal services and require attorneys or law firms to provide services at that rate.

Approved and signed by the State Board of Examiners at Boise, Idaho the twentieth day of July in nineteen hundred and ninety-five.

\_\_\_\_\_/s/ J.D. Williams\_\_\_\_\_  
J.D. Williams, Secretary to the Board of Examiners  
and Idaho State Controller