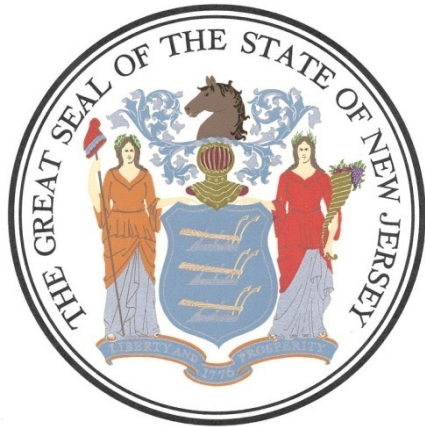


State of New Jersey

Office of the State Comptroller

A. Matthew Boxer, Comptroller



An Analysis of

**LEGAL FEES PAID BY
NEW JERSEY LOCAL
GOVERNMENTS**

June 25, 2013

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I. Introduction

In projects we have undertaken over a period of years, the Office of the State Comptroller (“OSC”) has encountered various deficiencies in the way municipalities and school districts handle their contracts for legal services. Based on that work, we decided to take a closer look at the issue of legal fees paid by local government units, with the goal of providing guidance to these entities concerning their management of the attorneys they hire.

The potential financial impact of developing more cost-effective practices in this area is significant. OSC estimates that municipalities and school districts across the state collectively spend more than \$100 million on legal services each year, not including amounts spent by other local government units such as counties, fire districts and independent authorities.

For this report, OSC specifically analyzed the procurement of legal services and payment of legal fees by five different local government units. We found a series of failures to incorporate best practices in these areas. In some cases, we uncovered conduct sufficiently egregious to warrant further investigative review and, in one case, a criminal referral. Ultimately, this report aims to demonstrate, specifically and practically, how these five government entities and others in New Jersey can benefit from employing the best practices we have identified. We recommend that government entities throughout the state consult the guidance and examples set forth in this report to achieve greater transparency and cost savings in their dealings with their attorneys.

II. Methodology

We engaged in a multi-step process to select the local government units (“LGUs”) that we would focus on for our legal billings analysis. First, we identified a group of municipalities and school districts with potentially deficient practices based upon a review of publicly available data as well as information provided to this office by third parties. Within that group, we selected a subset of LGUs that reflect the geographic diversity of the State. Once this initial group of LGUs was identified, we requested from them documents and information related to their recent legal expenses.

Based on the information received, we selected five of the entities for a more in-depth review of their legal fees. We focused primarily on LGUs with significant outside counsel costs, as this factor presented a higher risk for billing abuses. Ultimately, we selected for our review the following three municipalities and two school districts:

LGU	Type of Entity	Location	Estimated Population/Students in 2010
Township of North Bergen	Municipality	Hudson County	60,700
Town of West New York	Municipality	Hudson County	49,700
Township of Medford	Municipality	Burlington County	23,000
Freehold Regional High School District	School District	Monmouth County	11,800
Plainfield Public Schools	School District	Union County	6,400

As part of our review, we researched prevailing legal billing practices and relied on outside sources and commentators in assessing the most effective and efficient such practices. Specifically, we consulted sources such as New Jersey statutes and regulations, case law, American Bar Association materials, law review and industry articles, and the billing guidelines of the New Jersey Attorney General's Office and various public and private entities.* While the best practices we identified are by no means exhaustive, they establish a basic framework for LGUs to consult when contracting with outside counsel and managing their legal departments.

* See, e.g., N.J.S.A. 18A:18A-1 et seq.; N.J.S.A. 18A:18A-5(a)(1); N.J.S.A. 18A:18A-42; N.J.S.A. 19:44A-20.4-7; N.J.S.A. 40A:11-1 et seq.; N.J.S.A. 40A:11-3(b); N.J.S.A. 40A:11-5(1)(a)(i); N.J.S.A. 40A:11-13; N.J.S.A. 40A:5-16; N.J.S.A. 40A:9-22.1 et seq.; N.J.A.C. 6A:23A-6.3; *Loigman v. Township of Middletown*, 409 N.J. Super 1 (App. Div. 2009); *Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn*, 410 N.J. Super. 510 (App.Div. 2009), certif. denied, 203 N.J. 93 (2010); *United States v. NCH Corp.*, 2010 U.S. Dist. LEXIS 94486 (D.N.J. 2010); *Rendine v. Pantzer*, 141 N.J. 292 (1995); *Missouri v. Jenkins*, 491 U.S. 274 (1989); N.J. R. Prof. Conduct 1.4(b), 1.5 and 7.1; ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 93-379 (1993); New Jersey Office of the Attorney General, Division of Law, *Outside Counsel Guidelines* (2011); Office of the State Comptroller, *Best Practices for Awarding Service Contracts* (March 2010); New Jersey Department of Community Affairs, *Guide to the "New Jersey Local Unit Pay-to-Play" Law* (Nov. 2005); William G. Ross, *The Ethics of Time-Based Billing*, 58 Ala. L. Rev. 40 (1997); Gerald F. Phillips, *Time Bandits: Attempts by Lawyers to Pad Hours Can Often Be Uncovered by a Careful Examination of Billing Statements*, 29 W. St. U. L. Rev. 265 (2002); Lisa G. Lerman, *Scenes from a Law Firm*, 50 Rutgers L. Rev. 2153 (1998); Andre Gharakhanian and Yvonne Krywyj, *The Gunderson Effect and Billable Mania: Trends in Overbilling and the Effect of New Wages*, 14 Geo. J. Legal Ethics 1001, 1013 (2001); William G. Ross, *The Honest Hour: The Ethics of Time-Based Billing by Attorneys* (1996); Bennett Feigenbaum, *How to Examine Legal Bills*, 177 J. of Accountancy 84 (1994); James P. Schratz, *Billing Guidelines and Fee Disputes: A Case Law Review*, 18 Trial Dipl. J. 159 (1995); Gerald F. Phillips, *Reviewing a Law Firm's Billing Practices*, Prof. Law. (2001); Michael Downey, *Introduction to Law Firm Practice* (2010); Bank of America, Legal Department, *Outside Counsel Procedures* (Jan. 2011); Defense Research Institute, *Recommended Case Handling Guidelines for Insurers* (2000), available at <http://www.dri.org/News/DRIRReports>; Federal Deposit Insurance Corporation, *Outside Counsel Electronic Billing Deskbook* (Oct. 2012), available at <http://www.fdic.gov/buying/legal/ebilling/>; Rees W. Morrison, *Hot Button Issues In Outside Counsel Guidelines*, New York Law Journal (Dec. 2008), available at <http://gcnewyork.com/columns08/121808morrison.html>; Rees W. Morrison, *Staffing Using Core Teams*, GC New York, New York Law Journal (July 2007), available at <http://www.gcnewyork.com/archives2007.html>; Thomas A. Gilligan, Jr., *Beware the Slippery Slope of Padding*, For the Defense (Nov. 2009), available at <http://www.dri.org/News/DRIRReports>; Bret Baccus and Matthew Schuetz, Huron Legal, *Top 10 Practical Suggestions for Managing Outside Counsel Spend*, Association of Corporate Counsel (March 2011), available at <http://www.acc.com/legalresources/publications/topten/Outside-Counsel-Spend.cfm>; Litigation Limited, *The Litigation Limited Guide to Law Firm Overbilling* (2012), available at <http://documents.jdsupra.com/e1a459c7-1c7e-45d2-a40c-e43b31c8c503.pdf>.

We then examined each of the five selected LGU's legal services procurement and contract management processes within the framework of these best practices. We specifically reviewed documents such as contract advertisements and solicitations, the contracts themselves, and the billing invoices subsequently submitted by outside counsel. We also conducted interviews with public officials from each of the five LGUs, as well as with those outside counsel for whom we had additional questions.

We provided a draft copy of the relevant portions of this report to the five selected LGUs and the other entities referenced in this report for their review and comment. We received responses from nearly all of them. Some of the responding parties endorsed our findings and the effort to provide guidance to LGUs on the management of legal counsel. Other parties provided additional factual information that was used to refine the findings herein. All of the responses we received were considered in preparing this final report and have been incorporated herein where appropriate.

III. Executive Summary

This report is divided into two primary sections. In the “Best Practices for Engaging and Managing Legal Counsel” section, we provide guidance to New Jersey’s local governments concerning engaging and managing legal counsel. Then, in the “Analysis of Legal Billing Practices at Selected Local Governments” section, we compare five government entities’ actual practices to the identified best practices to determine whether those entities could have increased transparency, achieved cost savings or otherwise improved their contract management by adopting those best practices.

The identified best practices focus on four primary categories of guidance to LGUs: (1) developing policies and procedures regarding the procurement, use and management of legal counsel, (2) conducting a competitive procurement for legal counsel, (3) drafting formal, written contracts with legal counsel and (4) managing those contracts. Section IV of this report discusses these best practices, which are set forth in detail in the Appendix to this report.

Section V of this report discusses our review of legal billing practices in the Township of North Bergen, the Town of West New York, the Township of Medford, the Freehold Regional High School District and the Plainfield Public Schools. Our analysis found that if these five LGUs were to adopt the best practices set forth in this report, the result would be significant cost savings, enhanced transparency and overall improvements in the legal services received.

Several of the LGUs acknowledged that they had not been conducting any substantive review of the legal bills they received. This led to overbilling, increased legal costs and duplicative and unauthorized services being performed by legal counsel. Among our specific findings were the following:

- One municipality employed an attorney for more than 20 years, yet the municipal administration did not know what his position was, who supervised him or what services he actually provided. We are referring this matter to the State's Division of Criminal Justice.
- That same mid-sized municipality employed a municipal attorney at a salary that was substantially higher than that of the senior counsel at the four largest municipalities in the State. That same attorney delegated work to a law firm that he is affiliated with, apparently in violation of local government ethics laws.
- In one municipality, a law firm improperly charged hourly at the attorney billing rate for administrative services (i.e., taking telephone messages, faxing) performed by a secretary.
- Another municipality had a contract with its municipal attorney that contained ambiguous language as to what services were covered by the pre-set retainer and what services could be billed at an hourly rate, apparently leading to overpayments for legal services.
- Similarly, in one school district, the school board attorney billed hourly for services that he acknowledged were not authorized to be billed, including clerical tasks such as setting up new case files. In addition, the attorney submitted bills with incorrect calculations.

Each of these deficiencies could have been avoided by use of the best practices set forth in this report.

IV. Best Practices for Engaging and Managing Legal Counsel

A. Developing Policies and Procedures

As an initial step, all LGUs should establish internal policies and procedures regarding the procurement, use and management of both in-house salaried attorneys and outside legal counsel. Developing such policies and procedures can help to reduce legal costs, ensure transparency and promote accountability. The policies and procedures should set forth, for example, specific processes for procuring outside counsel, requesting legal advice from outside counsel, authorizing outside counsel to perform specific legal services and monitoring legal spending. The Appendix to this report sets forth a comprehensive list of the issues that should be addressed in such policies and procedures.

In addition, if an LGU employs in-house, salaried attorneys, it should develop clearly defined job descriptions or job duties for these employees. This helps to ensure adequate supervision and to distinguish between tasks that will be performed by in-house attorneys and those that will be delegated to outside counsel.

B. Conducting a Competitive Procurement

New Jersey's Local Public Contracts Law ("LPCL"), *N.J.S.A.* 40A:11-1 et seq., and the Public School Contracts Law ("PSCL"), *N.J.S.A.* 18A:18A-1 et seq., govern LGUs' procurement of legal services. Under both of these statutes, legal services qualify as "professional services" and are therefore exempt from the public advertising requirements that apply to other types of public contracts. For such professional services contracts, LGUs are required only to: (1) pass a

resolution awarding the contract with supporting reasons for the action, (2) print a brief notice in a newspaper stating the nature, duration and amount of the contract, and (3) ensure that the term of the contract does not exceed 12 months.

In the absence of more substantive legal requirements, OSC has previously issued best practice guidance for awarding service contracts in our report, *Best Practices for Awarding Service Contracts*. In that report we highlighted the need for competition, transparency, and accountability in the award of such contracts in order to promote public confidence in the contracting process and to ensure that government entities are obtaining cost-effective services. Those same principles apply to legal services contracts. For example, we recommend that LGUs broadly advertise the availability of legal services contracts and judge responsive proposals based on pre-determined, merit-based criteria made known in advance. The Appendix to this report sets forth specific guidance as to how these principles apply to legal services contracts.

C. Using Formal Written Contracts

One of the most effective ways to prevent abusive or fraudulent legal billing practices is to use a clearly defined and unambiguous legal services contract. The American Bar Association and New Jersey courts have instructed lawyers that they must disclose to clients the basis upon which the client will be billed. In order to avoid overbilling and potential fraud, OSC recommends that the contract address, at a minimum, the following: (1) the scope of services to be provided and any retainer arrangement, (2) the billing rate and terms, (3) charges for administrative work and secretarial services, (4) billing for ancillary expenses and disbursements, (5) billing for travel time, (6) staffing expectations, (7) detail required in billing invoices and (8) block billing. Each of these topics is discussed below.

1. Scope of Services and Retainer

LGUs should ensure that their contracts with outside counsel clearly define the scope of work to be performed by the attorney and any objectives or deliverables to be achieved. The scope of work clause included in the contract should mirror the scope of work description contained in the Request for Proposals (RFP) or Request for Qualifications (RFQ). For example, if the RFP/RFQ states that a school district is seeking a school board attorney to attend monthly board meetings and provide routine advice to the school board in exchange for a fixed monthly retainer fee, the contract itself should reflect that arrangement.

New Jersey courts require that LGUs clearly define the fee arrangements in the contract to ensure that there is no overlap between services included as fixed compensation and those billed at an hourly rate. As referred to previously, many LGUs compensate outside counsel through fixed compensation called a “retainer.” Under a retainer agreement, the LGU pays the attorney a fixed amount, generally on a monthly basis, as payment for specified services. Any services performed that do not fall within the scope of services covered by the retainer are typically billed at an hourly rate. For example, a school district may pay its school board attorney a retainer of \$12,000 annually for the attorney’s attendance at monthly school board meetings and for providing routine legal advice to the school board. All legal matters outside of that scope, such as contract reviews, legal research or litigation, could be billed separately by the attorney at an agreed upon rate. Careful compliance with the terms of such a retainer agreement is important. If a law firm improperly bills hourly for a task that should be covered by the retainer, the practical effect is that the LGU is paying twice for the same services.

2. Billing Rate and Terms

In addition to setting forth the scope of services and general billing arrangements in the contract, the LGU also should set forth the billing rates. Some LGUs prefer to designate different hourly rates for different attorneys based on their level of experience (e.g., \$170/hour for partners and \$150/hour for associates). Other LGUs utilize a “blended rate” whereby a firm is compensated at the same hourly rate for all work performed by its attorneys. Regardless of the payment method the LGU decides to use, it should ensure that those terms are clearly set forth in the contract. Furthermore, hourly rates should remain fixed for the duration of the contract term unless the contract specifies otherwise or the parties subsequently agree otherwise in writing.

3. Administrative Work and Secretarial Services

While it may be appropriate to pay an hourly billing rate for the services of a paralegal, LGUs should not pay an hourly rate for the services of secretarial or other administrative staff. Administrative support is considered part of the outside counsel’s overhead and is built into its rate structure. Such administrative support includes the services of word processors, librarians, and any information technology professionals. Moreover, purely clerical or secretarial tasks should not be billed at a paralegal or attorney rate regardless of who performs them.

4. Expenses and Disbursements

In their contracts with outside counsel, LGUs also should specifically address ancillary expenses and disbursements in order to maintain control of these costs. The contract should specify whether the contracting entity will reimburse counsel for expenses such as photocopies, faxes, long distance telephone charges, legal research costs, travel expenses and courier services. In any event, LGUs should pay only for actual expenses incurred. For example, LGUs should

not reimburse attorneys for estimated expenses or pay surcharges on fixed-fee expenses such as telephone charges. In order to keep track of these disbursements, LGUs should request that their attorneys submit monthly, itemized bills that detail any disbursements for which the attorney is seeking reimbursement.

5. Billing for Travel Time

The contract also should set forth the extent to which travel time can be billed by an attorney, if at all. Many of the contracts we reviewed in connection with this report did not include any mention of whether time the attorney spent traveling could be billed at the attorney's typical hourly rate, which led to inconsistent billing practices.

As a best practice, OSC recommends that LGUs compensate attorneys at their regular rates for "productive" travel time, that is, time spent working while traveling. We suggest that non-productive travel, on the other hand, generally be compensated at no more than 50 percent of the contracted hourly billing rate.

6. Staffing Expectations

Contracts with outside counsel also should address the LGU's staffing expectations for its legal matters. While it is essential for LGUs to have adequate and responsive legal support, LGUs and their attorneys should exercise care to avoid overstaffing.

Staffing needs may vary from project to project, but the contract should at a minimum contain general staffing parameters. The contract should designate an attorney or attorneys as the primary contact(s) at the firm. Additionally, the contract should address the propriety of multiple attorneys billing for internal conferences or attendance at meetings or outside events. Establishing such limits helps manage legal costs and enables the LGU to avoid paying for the

firm's "associate development." Lastly, we note that it is often most efficient for the same attorney or team of attorneys to handle a matter from start to finish. By consistently using the same attorneys on a given project, those attorneys can develop institutional knowledge and the LGU can avoid inefficiencies and costs associated with staffing changes.

7. Detailed Billing Invoices

As required by law, LGUs should require their attorneys to submit detailed, monthly billing invoices in order to be compensated for their services. *N.J.S.A. 40A:5-16*. At a minimum, billing invoices should include the following information: (1) matter name, (2) date of service, (3) attorney's name or identification number, (4) attorney's hourly rate, (5) total charge for each task or billing entry, (6) a detailed description of the services provided or tasks performed and all individuals involved, (7) the amount of time spent on each particular service or task, and (8) an itemized list of any expenses or disbursements.

The description of the services rendered should provide the LGU with enough information to be able to determine whether the services provided and fees charged were reasonable. Vague, incomplete or non-descriptive entries should not be accepted.

8. Block Billing

Similarly, LGUs should not allow "block billing," which is the practice of grouping together multiple activities or tasks under one time entry. Block billing obscures the amount of time spent on each particular task, precluding LGUs from determining whether the time billed was reasonable. Individualized, separate billing entries add transparency to legal bills and enable LGUs to avoid payment for improperly billed tasks.

D. Managing Legal Counsel Contracts

To ensure effective management of legal counsel contracts, LGUs should designate one employee who will have primary responsibility for reviewing the LGU's legal bills. This employee should be familiar with the terms of the legal services contract and the LGU's ongoing legal matters. The designated employee should conduct a detailed and thorough review of all legal billing on a monthly basis to determine whether the billing complies with contractual requirements and to confirm that all charges are appropriate.

In addition to the monthly review of legal billing, LGUs also should periodically assess the structure of their legal counsel arrangements to determine whether cost savings or other improvements can be achieved. For example, the LGU should analyze whether a retainer agreement with outside counsel continues to make sense financially, or whether an in-house salaried attorney would be more cost-efficient. LGUs also should periodically review their practices in the area of legal services to ensure that their operations are in compliance with their stated policies and procedures.

V. Analysis of Legal Billing Practices at Selected Local Governments

As part of our analysis, we reviewed the legal billings of several law firms that provided legal services to the five selected LGUs. In many instances, these firms and the public agencies receiving their services utilized the best practices set forth in this report. In the sections that follow, we highlight some of the deficiencies that we identified during our review.

A. Township of North Bergen

The Township of North Bergen (“North Bergen” or the “Township”) is located in Hudson County. North Bergen’s population in 2010 was 60,773 and its 2010 budget was \$85,402,107. In Fiscal Year (“FY”) 2011, the North Bergen legal department consisted of ten attorneys including a Township Attorney. North Bergen also contracted with twelve law firms for additional legal services. In FY 2011 North Bergen paid \$420,885 in salaries to the attorneys in its legal department and paid an additional \$863,458 in legal fees to outside counsel, for a total of \$1,284,343 spent on legal services for the year.

For our review, we examined North Bergen’s FY 2011 legal services expenditures and specifically the billing invoices submitted by the law firm of Chasan Leyner & Lamparello, which was North Bergen’s highest billing outside legal counsel. Our analysis identified numerous deficiencies as described in detail below.

North Bergen has never conducted a comparative review concerning its Township Attorney's salary to determine if the current arrangement is cost efficient.

North Bergen's Township Attorney handles the Township's day-to-day legal issues, such as reviewing procurement documents, responding to records requests, meeting with other Township officials and serving as the liaison with the Township's outside attorneys. He also provides legal services such as drafting ordinances and resolutions, addressing personnel matters and attending meetings of the Township's governing body. Litigation and certain other legal services are delegated by the Township Attorney to one of North Bergen's outside counsel.

In FY 2011, North Bergen paid its Township Attorney a salary of \$207,870 plus an additional \$16,469 for unused vacation time. North Bergen informed us that it has never conducted a comparison of the Township Attorney's salary to that of other full-time municipal attorneys in New Jersey, or considered other compensation arrangements such as using a pre-set retainer with outside counsel. According to information reported to the New Jersey State League of Municipalities in 2011, North Bergen's Township Attorney was the highest paid municipal attorney in the State. In fact, North Bergen provides a substantially larger salary to its Township Attorney than any of the four largest New Jersey municipalities pay their highest ranking in-house counsel. The Township Attorney's salary also was significantly larger than that of the State Attorney General (\$141,000), the State's chief law enforcement officer who supervises a department comprised of more than 600 attorneys and 8,000 total employees. The following chart illustrates this comparison:

Entity	2010 Population	Title of Highest Ranking Counsel	FY2011 Salary
Newark	277,140	Corporation Counsel	\$154,057
Jersey City	247,597	Corporation Counsel	\$124,032
Paterson	146,199	Corporation Counsel	\$92,721
Elizabeth	124,969	Director, Law Department	\$134,136
North Bergen	60,773	Township Attorney	\$207,870

North Bergen’s Township Attorney also has received annual raises in line with the raises provided to North Bergen’s union employees. This has been accomplished through annual changes to the Township Attorney’s employment agreement. We recommend that North Bergen conduct a review to determine whether the compensation being paid to its Township Attorney is appropriate.

North Bergen’s Township Attorney appears to have violated the Local Government Ethics Law by delegating legal work to a law firm with which he is affiliated.

The Township Attorney is also Of Counsel with Chasan Leyner & Lamparello, P.C. (“Chasan”), a law firm that separately contracts with North Bergen as outside counsel. As noted previously, in FY 2011 Chasan was North Bergen’s highest billing outside legal counsel, billing a total of \$371,407. The Township Attorney reported to us that he does not receive a salary or similar earnings from Chasan but is provided an office and other support services at the firm and is affiliated with the firm. Although he no longer practices law outside of his position with North Bergen, his name is on the law firm’s letterhead, his biography is on the firm’s website and he is

listed in the firm's directory. The law firm's managing partner informed us that in exchange for these benefits, the Township Attorney provides the firm with a presence in the municipal law field based in part on his position as North Bergen's Township Attorney.

According to the Township Administrator, the Township Attorney helped develop North Bergen's RFQ for outside counsel and participated in the evaluation of proposals, including the proposal submitted by Chasan. The Township Attorney denied having any such involvement in the evaluations. In any event, the Township Attorney reported to us that when a new legal matter or legal issue arises in North Bergen, he unilaterally decides whether he will handle the matter himself or if it should be delegated to one of North Bergen's outside counsel. The Township Attorney chooses which particular outside counsel to delegate each matter to based on the area of law at issue and the Township's prior experience with each outside counsel. As part of this process, he routinely delegates the Township's legal matters to Chasan (but is not responsible for reviewing and approving the resulting billings on behalf of the Township).

Under the Local Government Ethics Law, "No local government officer or employee shall act in his official capacity in any matter where he . . . or a business organization in which he has an interest, has a direct . . . or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment." *N.J.S.A. 40A:9-22.5*. The Township Attorney is an employee of North Bergen. Furthermore, he acts "in his official capacity" when he assigns North Bergen's legal matters and if he participates in the Township's evaluation of vendor proposals. As a result of his dual positions as North Bergen's Township Attorney and Of Counsel with the Chasan firm, his actions described above appear to be a violation of the Local Government Ethics Law. The Township Attorney informed us that when he entered into the Of Counsel arrangement with Chasan, he sought and received approval from the attorney ethics

board concerning the arrangement. However, the ethics standards that apply to local government employees are different than those that apply to all New Jersey attorneys. We therefore have referred this matter to the Local Finance Board, which adjudicates local government ethics issues, for review and any appropriate action.

North Bergen did not follow the evaluation procedures set forth in its legal services RFQ.

The Township's RFQ for outside legal counsel listed six specific evaluative criteria on the basis of which responsive proposals would be scored including, for example, the firm's reputation in the field and samples of their recent work product. In contrast to these stated criteria, however, the Township Administrator informed us that actually "80 percent of the evaluation came from prior experience [with the outside counsel] and proximity of the firm to North Bergen." North Bergen did not utilize the pre-set evaluative criteria set forth in the RFQ when it conducted its evaluation. Moreover, despite the fact that the RFQ listed these specific criteria, the Township Administrator told us that the Township did not actually score the proposals or take any steps to document any evaluation that it undertook.

The Township's RFQ also stated that responsive proposals would be evaluated by the Township's governing body, the Board of Commissioners. Nevertheless, we were advised by the Township Administrator that the evaluation of proposals actually was conducted by the Township Administrator and the Township's CFO, with input from the Township Attorney. Conversely, the Township Attorney asserted that he did not participate in the evaluation of the proposals. While Township officials did not agree on which particular Township employees conducted the evaluation, it is clear that North Bergen did not comply with the evaluation process set forth in its own RFQ. While it is not our intention to suggest any negative opinion on

the qualifications of the firms ultimately selected, in the interest of transparency and fairness to interested vendors LGUs should follow the evaluation procedures set forth in their solicitation documents.

Neither the RFQ nor any internal policies specified North Bergen's process for allocating legal work among its pool of outside counsel.

North Bergen awards contracts to multiple attorneys and law firms in various designated areas of law, thereby creating a pool of attorneys for each subject matter. The RFQ did not specify how North Bergen intended to delegate legal work among the pool of attorneys and simply stated that “all legal work will be allocated on an as needed basis.” According to the Township, the delegation of legal work is based on the Township’s prior experience with the various outside counsel. An RFQ should describe the process for the allocation of legal work among pooled attorneys and law firms in order to maximize transparency and avoid the appearance of improper favoritism.

North Bergen permitted a law firm to bill \$60,000 for legal services it was not authorized to provide.

The Chasan law firm was awarded a contract to perform services in eight different legal areas, ranging from general litigation to labor law. Our review found that the law firm also billed the Township approximately \$60,000 in the area of landlord/tenant law, despite the fact that it had not been awarded a contract to perform such services. Neither North Bergen nor Chasan’s managing partner were able to explain how this error occurred. Several other of North Bergen’s outside counsel were awarded contracts to perform landlord/tenant legal services, but they were not actually allocated any work in this area. The Township Attorney’s unauthorized

delegation of this work to a law firm that he is affiliated with highlights the previously cited concerns related to the Local Government Ethics Law. To avoid violations of the LPCL and the State's pay-to-play laws, LGUs should permit outside counsel to perform work only in areas in which they have been awarded contracts or otherwise authorized to perform services.

North Bergen does not enter into formal written contracts with its outside counsel.

North Bergen did not enter into formal written contracts with its outside counsel and instead used its RFQ and award resolution as the contract. However, the only contractual terms set forth in those documents were the hourly billing rate and the general areas of law encompassed by the arrangement. By failing to specify pertinent contractual terms such as the scope of services, the expenses and disbursements that can be charged to the Township and the appropriate billing rate for paralegal staff, North Bergen subjected itself to a risk of incurring unexpected and unnecessary expenses. The Township Administrator initially stated to us that he did not feel that formal written contracts with outside counsel were necessary since the Township "trust[ed]" its outside counsel. The Township Attorney subsequently advised us, however, that the Township intends to enter into formal written contracts with its outside attorneys as part of its next legal services procurement.

North Bergen paid one of its outside counsel approximately \$25,000 for non-descriptive billings.

In FY 2011, a senior partner at the Chasan firm billed the Township up to \$25,000 based on billing entries that did not specifically describe the legal work being performed. This deficiency was compounded by the fact that many of these charges were contained in block-billed entries, making it impossible to quantify the exact amount that was improperly billed. The

vast majority of the entries in question were vaguely described as communications between the attorney and either the Township Attorney or the Mayor. Other entries reflected generic efforts such as “misc. attention to file re: litigated matters.” All of these non-descriptive entries were billed to the firm’s “general file,” so it is impossible to determine the specific legal matters to which these tasks pertained. The attorney advised us that he is intentionally non-descriptive with billing entries for certain matters to protect the municipal administration from public records requests that might disclose litigation strategy or politically damaging information. This practice, however, hinders transparency, heightens the risk of improper payments and is inconsistent with the public source of the payments at issue.

North Bergen officials could not explain the job duties of several of the Township’s in-house attorneys, including one attorney that allegedly received a salary and benefits without North Bergen’s knowledge.

As previously noted, as of FY 2011 ten in-house attorneys worked in North Bergen’s legal department. When we initially asked the Township Attorney and the Township Administrator about the job responsibilities of several of the in-house attorneys, both were unsure of what services those attorneys actually provided. They also informed us that other than the Township Attorney, none of the in-house attorneys have written employment agreements or job descriptions that define their duties. Ultimately, after several inquiries by this office, the Township was able to provide at least some documentation concerning the responsibilities of all but one of those individuals.

When we initially asked the Township Attorney and the Township Administrator about the job duties of the remaining in-house attorney (the “In-House Attorney”), we were informed that he was paid a salary of \$18,807 in FY 2011. They stated that they were unsure if he was

North Bergen's Alcohol Beverage Control Board Attorney or its Tenant Advocate. Following our interviews and a follow-up document request, North Bergen advised us that they commenced an internal review to determine whether he was actually performing any job duties for North Bergen.

Immediately after North Bergen commenced its review and requested information from the In-House Attorney regarding his job duties, he submitted a letter resigning from his position. North Bergen subsequently asserted to us that he had received a salary for unknown job duties without the consent of any Township officials. As a result, North Bergen advised us that it would be referring the matter to the Hudson County Prosecutor's Office to determine whether any criminal violations had been committed by the In-House Attorney.

When we interviewed the In-House Attorney, he disputed North Bergen's claims that he was receiving a salary without the knowledge of North Bergen officials. According to the In-House Attorney, he was assigned the job of Housing Attorney sometime between 1988 and 1990 and was not provided a job description and did not report to anyone in the Township. He understood that his job responsibilities were to provide legal services to North Bergen residents with housing-related issues. The In-House Attorney stated that from his initial appointment until 2006, he was active in his role as Housing Attorney. However, he said that after a falling out with a Township construction code official, he stopped receiving that legal work and had to try to "create" his own work. He stated that despite his efforts, there were multiple instances in which the Township Attorney took Housing Attorney work away from him and delegated it to the Chasan firm at an hourly billing rate.

The In-House Attorney further stated that despite the lack of work being assigned to him, throughout his employment with the Township he was routinely solicited to make political

contributions to a local party committee, stating that his contributions in 2012 to this committee totaled \$6,600. A search of Election Law Enforcement Commission (“ELEC”) records show that he has contributed \$17,000 to this committee since 2009. The In-House Attorney specifically noted that three months before our interview of him, the Township Attorney himself had solicited a political contribution from him in the amount of \$1,000 on behalf of a political action committee that was opposing one of the Mayor’s political rivals. (Shortly after our inquiries concerning this matter, the political action committee returned this contribution to the In-House Attorney.)

In addition to his \$18,807 salary, North Bergen provided health benefits to the In-House Attorney in FY 2011 at a cost to taxpayers of \$26,206. Furthermore, he was enrolled in the state pension system as an employee of North Bergen from 1988 through 2011.

We have referred the matter of the In-House Attorney’s employment at North Bergen to the State’s Division of Criminal Justice to determine whether any criminal violations have been committed.

North Bergen provides health benefits to several in-house attorneys at a cost that is substantially more than those attorneys’ salaries.

In the course of reviewing amounts paid by North Bergen in connection with legal services, we noted that the Township provides health benefits to several of its part-time attorneys despite the fact that the annual premium paid by North Bergen for these benefits is substantially more than the salaries paid to the attorneys. The following chart sets forth the payments at issue in FY 2011:

Position	Annual Salary	Annual Cost of Health Benefits	North Bergen Contribution	Attorney Contribution
Housing Attorney	\$18,807	\$26,368.92	\$26,206.81	\$162.11
Public Defender	\$10,897	\$26,368.92	\$26,274.95	\$93.97
Public Defender	\$21,359	\$26,368.92	\$26,184.84	\$184.08
Public Defender	\$10,898	\$26,368.92	\$26,274.95	\$93.97

In addition, North Bergen has adopted an ordinance that entitles retired North Bergen employees and their dependents to lifetime health benefits at North Bergen’s expense. The ordinance permits these benefits to be provided to retired part-time employees.

The State’s Division of Local Government Services (“LGS”) requires all municipalities to complete a Best Practices Inventory Questionnaire that is considered when State aid to municipalities is determined. LGS’ stated goal underlying this questionnaire is to “improve financial accountability and transparency.” The FY 2013 questionnaire specifically asks municipalities whether they (a) exclude healthcare coverage for part-time elected and appointed officials and (b) limit health benefits to full-time employees. North Bergen’s policy of providing health benefits to part-time employees raises questions about whether this is an efficient use of public money, and could jeopardize a small percentage of North Bergen’s State aid. We recommend that North Bergen conduct a review to determine whether providing health benefits to part-time employees is cost efficient and in the interest of taxpayers.

B. Town of West New York

The Town of West New York (“West New York” or the “Town”) is located in Hudson County. As of the 2010 Census, its population was 49,708 and its FY 2010 budget was \$72,440,942. In FY 2011, West New York employed three in-house attorneys: an Assistant Town Attorney, a Rent Control Attorney, and a Tax Attorney. In addition, West New York reported that it contracted with 13 different law firms for legal services in FY 2011. West New York paid \$40,000 in salaries to its in-house attorneys and spent \$777,704 on outside legal counsel in FY 2011, for a total of \$817,704 spent on legal services for the year. For our review, we examined the legal billing practices of the two law firms that served as both the Town’s Tenant Advocacy Attorney and Municipal Court Public Defender. (At the beginning of FY 2011, those services were performed by the Campbell Ortiz firm, but when the partner responsible for the account left the firm, the services were performed by his new firm, Dario, Yacker, Suarez & Albert, L.L.C.).

West New York’s internal purchasing and record keeping was disorganized, leading to overpayments for legal services.

Throughout our review we encountered difficulty in obtaining complete information from West New York relating to its legal expenses. For example, when we requested West New York’s total legal payments for FY 2011, the Town failed to include the payments made to the law firm that was the Town’s highest billing outside counsel and served as its Town Attorney during that time period. West New York officials were unable to explain how this oversight occurred.

As part of our review, we compared billing invoices to amounts paid so that we could determine whether any payments were improperly made to the Town's outside attorneys. Our examination of that payment history identified \$4,485 in overpayments made to West New York's Tenant Advocacy Attorney for services rendered in 2010 and 2011. The Town's Municipal Administrator separately advised us that as result of our inquiries, West New York independently identified a \$7,725 overpayment that had been made to its former municipal prosecutor. Specifically, the administrator reported that the municipal prosecutor had been paid twice for services provided to West New York in December 2011. The Town was not able to provide an explanation for these overpayments, but has committed to seek repayment.

West New York made minimal efforts to publicly advertise its legal services RFQs, resulting in a limited pool of respondents.

In FY 2011, West New York conducted a competitive procurement for the selection of its outside attorneys. As part of that process, the Town issued an RFQ with pre-set evaluative criteria, publicly advertised the RFQ on its website and passed award resolutions with supporting reasons. We noted that for each advertised area of law, West New York received responses only from one or two law firms, resulting in minimal vendor competition. Although not required by State law, West New York should consider advertising the availability of its attorney contracts through additional means beyond its own website in order to generate more competition for these services. Increased vendor competition could lower the costs of legal expenses, leading to savings for taxpayers.

West New York failed to conduct a substantive review of its Tenant Advocate and Public Defender's monthly billing invoices, leading to improperly billed services.

The Town did not conduct a substantive review of its monthly legal billing invoices during the period we reviewed. West New York's then-Municipal Administrator informed us that he did not conduct a substantive review of the monthly invoices and that he thought this task may have been performed by the then-Town Attorney or the staff of the then-Chief Financial Officer. However, both of these individuals advised us that their offices did not perform any substantive review.

The failure to conduct a proper review had fiscal consequences for the Town. Our own review of the monthly billing invoices submitted by the Tenant Advocacy Attorney and Public Defender in FY 2011 found that the firm improperly billed up to \$16,395 for administrative work apparently performed by a legal secretary billing at the attorney rate of \$150 per hour. As a result of block billing, it is impossible to parse out all of the improper entries from the appropriate entries. Common examples of these recurring improper entries include: "taking messages," "client intake" and other purely administrative tasks such as scanning, faxing and photocopying documents.

The \$16,395 also included \$3,735 in services described as "translation" or "interpretation." Both the partner responsible for the billing and his secretary acknowledged to us that the secretary provided the translation services (billed at the attorney rate) and that these services should not have been billed to West New York.

The applicable contracts specify that West New York will not pay for "supportive services" such as "secretarial help." The partner responsible for the account acknowledged that these services described above should not have been billed and advised us that he intends to

provide an appropriate refund to West New York. When we questioned current West New York officials about the improper billing, we were informed that as a result of our inquiries they separately identified concerns with other billings by the same law firm. As a result, they have withheld additional outstanding payments to the firm.

C. Township of Medford

The Township of Medford (“Medford”) is located in Burlington County. The total population in Medford as of the 2010 Census was 23,033 and its annual budget for 2010 was \$23,957,072. In 2010, Medford contracted with ten law firms for its various legal services and spent a total of \$693,979 on those services. Of that amount, \$578,367 was paid to the law firm of Parker McCay, P.A. as Township Attorney and Municipal Prosecutor. Our analysis of those payments identified the following deficiencies.

Medford’s contract with its Township Attorney was ambiguous as to which matters were covered by the retainer and those permitted to be billed at an hourly rate, which may have led to overpayments for legal services.

Our review of the Township Attorney’s legal billings in 2010 identified approximately \$50,000 of potential overlap between services included under the retainer agreement and those billed at an hourly rate. Specifically, the applicable contract lists services such as attendance at council meetings, preparation of resolutions and ordinances, and conferences with the Township Manager as falling within the retainer. The contract also states that “extraordinary legal services, including litigation and other projects requiring legal services” in addition to the general legal services specified above can be billed separately at an hourly rate. According to Parker McCay, it billed any task related to litigation or any complicated or ongoing matters at an hourly rate.

The firm asserted that the retainer only covered “everyday matters,” such as preparing basic council meeting agendas, resolutions, ordinances and responding to public record requests. However, this distinction was not explicit in the contract itself and there is no documentation approving these services being billed at an hourly rate. We identified numerous instances where tasks that appeared to be covered by the retainer were billed by the Township Attorney at an hourly rate. For example, the law firm billed hourly for tasks such as drafting ordinances and resolutions, attending certain council meetings and discussions with the Township Manager.

The current Township Manager informed us that he had similar concerns about the retainer situation when he became Township Manager in May 2011. He advised us that due to these concerns, Medford no longer has retainer agreements with any of its outside counsel and instead pays for all legal services at a flat hourly billing rate.

Medford’s retainer payments to its Township Attorney were not fully transparent and did not comply with State policy.

Medford’s Township Attorney contract specified that an \$8,000 monthly retainer would be paid from the following Medford budget line items: one-third from “Legal,” one-third from “Sewer & Water” and one-third from “Department of Planning and Enforcement.” Both Medford and the Township Attorney acknowledged to us that the services actually rendered under the retainer did not correspond proportionately with the budget line items from which these payments were made. Neither Medford nor the law firm knew why the retainer payments had been set up in this manner.

LGS recommends that all LGUs apply legal services payments to a Legal Services account or otherwise indicate that the funds at issue are to be used for legal services. Medford’s budgeting practice was not transparent and was not in compliance with LGS guidance.

D. Freehold Regional High School District

The Freehold Regional High School District (“Freehold”) consists of six high schools located in western Monmouth County. As of FY 2011, Freehold served more than 11,000 students in grades 9 through 12. According to State Department of Education (“DOE”) data, Freehold spent \$42 per pupil on legal services in FY 2011, just below the \$44 per pupil statewide average for districts serving high school students. In FY 2011, Freehold spent a total of \$493,414 on outside legal costs, all of which was paid to the law firm of Schwartz, Simon, Edelstein & Celso LLC as its Board Attorney. Our analysis of those payments identified deficiencies as described in detail below.

Freehold’s Board Attorney submitted bills that were non-descriptive and block-billed, making it impossible to determine whether the billed tasks should have been covered under the retainer.

Freehold’s contract with its Board Attorney states that “routine” telephone calls and correspondence are included within Freehold’s monthly retainer payment of \$1,250. The term “routine” is defined simply as “brief telephone conversations or other inquiries which do not require research and/or a written response.” We identified approximately 260 billing entries charged to Freehold at an hourly rate for which we were unable to determine whether the conversation or communication should have been covered under the retainer. These 260 entries were either part of a block bill or so non-descriptive that we were unable to determine whether the communication was “routine.” For example, the Board Attorney routinely billed hourly for telephone calls with district personnel, but provided little or no description of the subject matter of these calls. This deficiency was compounded by the fact that the charges were contained in block-billed entries, making it impossible to determine whether the conversation was “brief.”

Freehold's Business Administrator advised us that that when he reviewed the bills for payment, he did not consider whether "routine" communications were being improperly billed at an hourly rate. Clearer retainer language and descriptive, individualized billing by the Board Attorney could have minimized the district's costs and prevented potentially duplicative billing.

Without documented authorization, Freehold permitted its Board Attorney to exceed agreed upon caps on legal costs.

Freehold's contract with its Board Attorney capped the total annual amount that could be billed by counsel at \$213,000, but permitted the firm to request relief from the cap for "extraordinary matters." The contract excluded from the cap legal fees incurred in connection with special education matters as well as fees reimbursed or paid for by insurance. Our review found that the Board Attorney exceeded the terms of the cap by approximately \$89,000. Freehold did not take any formal written action authorizing the law firm to exceed the cap or take other steps to document any authorization. By failing to take formal action or document any authorization to exceed the cap, Freehold engaged in a practice that lacked transparency concerning its legal costs.

Freehold did not comply with the requirements of the PSCL by failing to cite supporting reasons in the resolution authorizing the contract award to its Board Attorney.

Freehold's resolution appointing Schwartz, Simon, Edelstein & Celso as its Board Attorney for FY 2011 was deficient because it did not contain supporting reasons for the appointment as required by the PSCL. In addition, Freehold did not use a competitive vendor selection process in procuring the firm. Although school districts are not legally required to engage in competitive procurements for outside counsel under the PSCL, we recommend that

they use such a process in order to ensure that they are obtaining the most cost-effective legal services.

Prior to our commencement of this review, Freehold contacted OSC to seek assistance with improving the district's procurement process for outside counsel. As a result, our office met with the Business Administrator and assisted with the development of a competitive procurement template. The Business Administrator informed us that he has shared this template with other school administrators in Monmouth County.

Freehold's contract with its Board Attorney permitted the firm to charge an administrative fee based on a percentage of the total amount billed.

Freehold's contract with its Board Attorney permitted the firm to charge for disbursements a monthly "administrative fee" of 2.75 percent of the total amount billed, as opposed to requiring the firm to itemize its actual disbursements. The Board Attorney asserted to us that Freehold saved money by utilizing this administrative fee structure. However, there is no evidence to support any such cost savings because the firm did not document the disbursements it actually made. As noted previously, commentators have discouraged use of such estimates. Concerns of overpayment are even greater here because the specific billing process being used provided an increased financial incentive for the firm to bill for its substantive legal work at a higher volume.

Nearly 60 percent of the attorneys employed by the Board Attorney law firm (30 out of 54 attorneys) billed Freehold for legal services in FY 2011.

In FY 2011, 30 different attorneys from Schwartz, Simon, Edelstein & Celso billed Freehold for legal services, representing nearly 60 percent of the attorneys employed at the firm

that year. In the course of discussing this issue with Freehold’s Business Administrator, he separately noted that historically there had been instances in which multiple attorneys from the firm had attended the same meetings on behalf of Freehold. He advised us that he had objected to this practice because he did not feel it was appropriate for multiple attorneys to bill for attendance at such meetings. According to the Business Administrator, upon his request the firm stopped the practice. As noted previously, LGUs should limit the number of attorneys permitted to bill for services as a means to avoid overcharges.

E. Plainfield Public Schools

Plainfield Public Schools (“Plainfield”) is comprised of 15 schools located in the City of Plainfield in Union County. In FY 2011, Plainfield served more than 6,400 students in grades kindergarten through twelfth grade. According to DOE data, Plainfield spent \$71 per pupil on legal services in FY 2011, nearly double the statewide average of \$36 per pupil for other districts that include kindergarten through high school.

In FY 2011, Plainfield contracted with two law firms for legal services and paid \$424,931 in outside legal costs. Our review focused on bills submitted by the law firm of Pickett & Craig, Esqs., which billed \$281,323 as Plainfield’s Board Attorney. Our analysis identified numerous deficiencies as described in detail below.

Plainfield did not establish evaluative criteria in its legal services RFP or document the basis for the selection of its Board Attorney.

In FY 2011, Plainfield conducted a competitive procurement to select its Board Attorney. As part of this process, it publicly advertised an RFP and conducted interviews with several of the law firms seeking the contract. This process led to the award of a contract to Pickett &

Craig. However, Plainfield’s resolution appointing Pickett & Craig was deficient because it did not contain supporting reasons for the award as required by the PSCL.

Moreover, Plainfield did not establish evaluative criteria in its RFP or otherwise document the basis for its selection of its Board Attorney. In response to our resulting inquires, the Business Administrator stated to us that the interview component of the process was the primary basis for the Board’s selection and noted that the firm’s representative was “personable” and “has his own radio show.” He did not offer any merit-based factors underlying the Board’s selection. Although it is not our intention to suggest any negative opinion on the qualifications of the firm ultimately selected, by not establishing evaluative criteria or documenting the basis for its selection Plainfield apparently failed to use recommended merit-based criteria in its selection process.

Plainfield entered into a contract with its Board Attorney that had a significantly narrower retainer scope than that defined in the RFP, resulting in additional and unnecessary legal fees.

Plainfield’s RFP required vendors to make a proposal that included a retainer amount to cover a number of designated legal services. In its proposal, Pickett & Craig represented that it would provide all of those designated services for a monthly retainer fee of \$5,000. However, the ensuing contract between Plainfield and the firm contained a significantly narrower retainer scope than what was required in the RFP and agreed upon in the firm’s proposal. The following chart illustrates some of these differences:

Type of Legal Service Included in the Retainer Payment	RFP	Contract
Telephone calls	“Unlimited telephone conferences with school administrators and authorized board members.”	“Routine” telephone calls. “Routine” is defined as “all matters that do not require research, follow-up and are not connected to any ongoing or pending cases involving the School District and/or does not involve more than ten (10) minutes of attorney time and effort at any one time.”
Legal Advice	“Advice ... requested by the board or school business administrator.”	<p>“Routine” advice and advice to members of the Board at committee meetings and all public meetings.</p> <p>“Routine” is defined as “all matters that do not require research, follow-up and are not connected to any ongoing or pending cases involving the School District and/or does not involve more than ten (10) minutes of attorney time and effort at any one time.”</p>
Legal Research	“Simple research ... requested by the Board or school business administrator.”	Not covered at all.

The Business Administrator advised us that he was not aware of these discrepancies. When we asked the principals of the firm how these changes occurred, they contended that the narrower retainer scope was based on Plainfield’s contract with its prior Board Attorney. In any event, the parties have not been able to provide any compelling explanation as to why the contractual language ultimately selected contradicted that of the RFP and the responsive proposal, which would have been more advantageous to taxpayers.

As a result of the discrepancies in the scope of the retainer, we reviewed the Board Attorney's FY 2011 billing invoices to determine whether the firm billed at an hourly rate for any services that should have been included under the retainer as per the RFP. Our review identified approximately \$20,000 in services billed at an hourly rate that seemingly would have been included under the proposed retainer. Because many of these charges were contained in block-billed entries, it is impossible to quantify the exact amount improperly billed. By entering into a contract with a narrower retainer scope than what was required by its own RFP, Plainfield incurred unnecessary legal fees.

Plainfield violated State regulations by failing to record its contacts with outside counsel, document requests for legal advice and limit the number of staff members authorized to request legal advice.

Plainfield's annual legal costs have exceeded 130 percent of the statewide average per pupil, thereby subjecting Plainfield to the requirements of State regulations set forth at *N.J.A.C. 6A:23A-5.2*. Those regulations require designated districts to establish policies that include limiting the number of district personnel who are authorized to contact outside legal counsel, maintaining logs of such contacts, and comparing legal invoices to those logs. During the time period of our review, Plainfield had policies in effect that satisfied the requirements of these regulations. However, as conceded by Plainfield's Business Administrator during our interview of him, the district did not actually follow these policies. Plainfield did not maintain the required legal contact log, document requests for legal advice or limit the number of staff members authorized to request such advice. Although in response to a draft of this report the Business Administrator asserted that there had been compliance with the regulations, Plainfield did not provide any logs or similar evidence to support that assertion.

By failing to follow its own policies, Plainfield subjected itself to a risk of paying for services not actually incurred and circumvented State measures that were intended to limit its legal costs. We are referring this matter to DOE for its review and any action deemed appropriate.

Plainfield failed to conduct a thorough review of its Board Attorney's monthly billing invoices, leading to improperly billed services.

Plainfield's Business Administrator advised us that he was responsible for reviewing Plainfield's monthly legal billing invoices. He stated, however, that he did not conduct a comprehensive substantive review of the monthly invoices, but instead "perused" them for obvious errors. The Business Administrator informed us that he did not identify any errors or challenge any bills in FY 2011.

Our own review of the monthly invoices submitted by the Board Attorney in FY 2011 found that the firm improperly billed Plainfield as much as \$59,000. Specifically, we found that the firm billed up to \$21,000 for administrative work that included opening files and tasks described as "firm administration." The law firm acknowledged to us that those amounts should not have been billed. We also identified up to \$38,000 in services billed at an hourly rate that should have been covered under even the limited retainer set forth in Plainfield's contract with the law firm. Examples of these services included attendance at board meetings and updating case status reports. Again, as a result of block billing, it is impossible to parse out all of the improper entries from the appropriate entries.

In response to our ensuing inquiries, one of the principals of Pickett & Craig offered to reimburse Plainfield for the improper billings. He also asserted that these improper billings did

not recur in FY 2012. However, when we reviewed a two-month sample of FY 2012 monthly invoices, we found that similar tasks were again improperly billed.

Our review of the monthly invoices also identified a series of incorrect calculations involving, for example, the total amount of billable hours recorded and the total amount charged per month. The principals of Pickett & Craig stated to us that they did not know how this occurred and hypothesized that it may have been due to a “glitch” in their automated billing system. We also noted that following these errors that inflated the bills, downward adjustments had been applied to the monthly invoices based on a determination by the firm of what they described as the amount they felt Plainfield would be “comfortable paying.” All of these issues highlight the need for LGUs to conduct a thorough review of all billing invoices on a monthly basis. Plainfield’s Business Administrator informed us that as a result of the improper billing that we brought to his attention, he identified similar billing issues in subsequent invoices that Pickett & Craig submitted and had the bills reduced accordingly. We further recommend that Plainfield recover all previous payments made to Pickett & Craig that were improperly billed.

Appendix -- Best Practices Checklist for Engaging and Managing Legal Counsel

The following checklist provides guidance to local government units (LGUs) for engaging and managing legal counsel. These best practices are divided into four categories: (1) developing policies and procedures, (2) conducting a competitive procurement, (3) drafting written contracts with legal counsel, and (4) managing legal counsel contracts.

1. Developing Policies and Procedures

Developing policies and procedures regarding the procurement, use and management of legal counsel can help reduce legal costs, ensure transparency and promote accountability. Specifically, we highlight the following best practices:

- ✓ *Establish policies and procedures for procuring legal counsel.* Determine who is responsible for developing the Request for Qualifications, what evaluative criteria will be used, who will participate in the evaluation of the responses and how scoring will be documented. Ensure that the procurement process complies with state and local pay-to-play laws.
- ✓ *Develop clearly defined job descriptions and job duties for in-house counsel.* Ensure appropriate supervision of those attorneys.
- ✓ *Determine who is responsible for delegating work to outside counsel or determining whether work should be performed in-house.* Clearly distinguish between services that should be provided by in-house counsel as opposed to those to be provided by outside counsel.
- ✓ *Establish processes for requesting legal advice.* Determine who is authorized to contact outside counsel to request legal advice and what internal documentation should be maintained reflecting those contacts. School districts should further ensure that their internal policies and procedures comply with the requirements of *N.J.A.C. 6A:23A-5.2(a)(2)*.
- ✓ *Periodically review operating practices to ensure that those practices are in compliance with stated policies and procedures.*

2. Conducting a Competitive Procurement

The following best practices for procuring legal services are designed to promote public confidence in the public contracting process and ensure that LGUs are obtaining the most cost-effective services:

- ✓ *Ensure the pool of potential law firms or attorneys submitting proposals is as expansive as possible.* Broadly advertise legal services contracts on websites, in newspapers and through other available media. Endeavor to secure proposals from numerous law firms for each area of expertise sought.
- ✓ *Draft clear and unambiguous solicitations.* Solicitations for legal services should contain a clear and unambiguous statement of the work to be performed by the attorney or the area of law in which the attorney will be delegated work. The solicitation should clearly distinguish which services, if any, will be covered under a retainer and which services the attorney may bill for at an hourly rate.
- ✓ *Judge proposals based on pre-determined, merit-based criteria made known to vendors in the Request for Proposals (RFP) or Request for Qualifications (RFQ).* If certain criteria are more important to the LGU than others, consider assigning different weights to each criterion based on its relative importance. If the LGU uses an RFQ process to establish a pool of pre-qualified law firms or attorneys to perform services in a particular area of law, the LGU should specify in the RFQ how work will be delegated among the attorneys in that pool. For example, the LGU may select from the pool based on price quotations, on a rotating basis or based on other evaluative criteria specified in advance by the LGU.
- ✓ *Establish a qualified evaluation committee.* Ensure that the members of the evaluation committee are qualified to judge the strengths and weaknesses of the proposals. Carefully screen potential committee members to ensure that they are impartial arbiters in compliance with the Local Government Ethics Law, *N.J.S.A. 40A:9-22.1 et seq.*, and the School Ethics Act, *N.J.S.A.18A:12-21*.
- ✓ *Use a scoring process understandable to evaluators and vendors and maintain appropriate documentation.* Provide the criteria upon which proposals will be judged in writing to members of the evaluation committee prior to judging the proposals to allow for fully informed decision making. Members of the evaluation committee should provide written comments explaining the score they give to each proposal. This ensures a record of the decision-making process and a basis for review in the event of a legal challenge. Document every step of the evaluative process.

3. Using Formal Written Contracts with Legal Counsel

Contracts with outside legal counsel should address, at a minimum, the following topics related to billing and fee arrangements:

- ✓ *Scope of services/retainer arrangement:* The scope of work and the scope of the retainer should mirror the scope of work and scope of retainer included in the RFP or RFQ. Ensure there is no overlap between services to be covered by the retainer and those that can be billed hourly.
- ✓ *Billing rate and terms:* Set forth the approved billing rates for attorneys for the term of the contract.
- ✓ *Administrative work and secretarial services:* The contract should make clear that administrative work and secretarial services may not be billed at an hourly rate.
- ✓ *Expenses and disbursements:* Pay only for actual expenses incurred. The contract should set forth which expenses are reimbursable and should require itemized bills that detail disbursements.
- ✓ *Billing for travel time:* Set forth whether travel time is billable and at what rate.
- ✓ *Staffing expectations:* Designate a primary contact person at the LGU for the law firm. Address staffing expectations with regard to legal matters including conferences, court appearances and external meetings.
- ✓ *Detailed billing invoices:* Ensure that billing invoices include: (1) matter name, (2) date of service, (3) attorney's name or identification number, (4) attorney's hourly rate, (5) total charge for each task or billing entry, (6) a detailed description of the services provided or tasks performed and all individuals involved, (7) the amount of time spent on each particular service or task, and (8) an itemized list of any expenses or disbursements. Non-descriptive entries should not be accepted.
- ✓ *Block billing:* Require individualized, separate billing entries for each task performed. Do not allow block billing.

4. Managing Legal Counsel Contracts

With proper management of legal services contracts, LGUs can avoid excessive, unauthorized or fraudulent charges and can improve the quality of the legal services they receive.

The following have been identified as best practices in this regard:

- ✓ *Designate one employee who will have primary responsibility for reviewing the LGU's legal bills.* The designated employee should conduct a detailed and thorough review of all legal billing on a monthly basis to determine whether the billing complies with contractual requirements and whether all entries are appropriate. For example, the employee should confirm that all billing entries are individualized (i.e., not block billed) and sufficiently detailed, that the appropriate billing rate has been applied, that expenses have been itemized and that the monthly charges have been correctly calculated.
- ✓ *Periodically review the structure of legal counsel arrangements to determine whether costs savings or other improvements can be achieved.*
- ✓ *If the LGU has established a cap on legal services fees, the LGU should monitor those fees and ensure compliance with the cap.* If the cap must be exceeded, ensure there is appropriate written authorization to do so.