



**APPOINTMENT TO THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY NEW JERSEY WIND PORT
PROJECT SPECIAL COUNSEL POOL**

1. [W]e represent various developers who engage w[ith] EDA for funds and grants. If representing EDA in the RFP would foreclose us from continuing to do this then we will not be able to respond Please advise

Being designated to the Special Counsel Pool does not create a conflict. However, at any time that the Division of Law seeks a retention to represent NJEDA for the Wind Port, conflicts checks are required as described in the Outside Counsel Guidelines (at [Revised Outside Counsel Guidelines 2022.pdf \(nj.gov\)](#)) in Section II. Specifically, Paragraph II.1.a) prohibits Special Counsel from “[r]epresenting private parties before the State client (or its officers) in an adversarial, transactional or non-adversarial proceeding. By way of example and not limitation, outside counsel are prohibited from representing any private party before a State client in connection with applications for government approvals”

2. The RFQ says that “[t]he State of New Jersey frequently hires law firms as outside counsel to represent the State in litigation, bond, and other legal matters.” Does this RFQ apply to the selection of bond counsel for upcoming wind port financings? That is, in order to be eligible to be selected as bond counsel for future wind port financings, must a firm be included in the list of firms to be selected pursuant to this RFQ?

No. This RFQ is not for the selection of bond counsel for future Wind Port financing. Bond counsel for any future Wind Port financing will be selected from the State Bond Counsel Pool.

3. [T]he minimum qualifications in the RFQ are as follows:

(a) Experience as counsel for United States and other public sector/governmental entities located in the United States or elsewhere in respect to greenfield infrastructure projects, including both conventional delivery methods (such as Design-Bid-Build or Design-Build) and public-private partnerships (P3), including concessions. Legal experience related to ports/maritime and offshore wind is preferred.

(b) Experience in all areas of state and federal law applicable to the NJWP Project, including corporate transactions, project finance, public finance, environmental law, construction, nuclear regulation, development and real estate law, maritime law and waterfront development, port operation, and insurance law.

(c) Expertise in commercial negotiations and transactional support related to manufacturing, marshalling, and marine operation leases.

(d) Expertise in federal tax/securities law applicable to the types of obligations described herein.

2.2 Failure by a firm to meet these Minimum Requirements will result in the proposal's immediate rejected.

And the scope of services include commercial and landlord tenant support, NJWP Project support (which includes for instance environmental law and permitting, nuclear regulation, and insurance, and NJWP Project Operations, which includes maritime law and waterfront development, port operation, and foreign trade zone support.

I'm listing all of this because these are a lot of drastically unrelated services and, in order to propose, a firm needs to certify that it will meet all of the minimum requirements AND be prepared to provide all of the scope of services. I just want to confirm that this is truly what the state intends, that a firm must be able to provide all of the services, or can a firm respond to certain services (e.g. Project/public finance and commercial/tenant support but perhaps not nuclear regulation)? In other words, is the State looking for a firm to provide all of the services, or for multiple firms to comprise a pool that can provide all of the services. If it is the latter, and a firm can submit for only certain of the services, perhaps the

RFQ should be clarified.

Section 2.1 is modified as follows: (with deletions shown within brackets and additions shown as bold):

- 2.1 (a) Experience as counsel for United States [and] **or** other public sector/governmental entities located in the United States or elsewhere in respect to greenfield infrastructure projects, **which may include** [including] both conventional delivery methods (such as Design-Bid-Build or Design-Build) and public-private partnerships (P3), including concessions. Legal experience related to ports/maritime and offshore wind is preferred.
- (b) Experience in [all areas] **at least one area** of state and federal law applicable to the NJWP Project, including [corporate transactions,] project finance, [public finance,] environmental law, construction, [nuclear regulation,] and development and real estate law[, maritime law and waterfront development, port operation, and insurance law]. **Experience in nuclear regulation is preferred.**
- [(c) Expertise in commercial negotiations and transactional support related to manufacturing, marshalling, and marine operation leases.
- (d) Expertise in federal tax/securities law applicable to the types of obligations described herein.]

Additionally, Section 4 is modified as follows:

The Attorney General is seeking proposals from qualified firms to serve in the Pool to support the ongoing development of the NJWP Project. **Subject to the retention of a firm from the Pool for a specific retention as set forth in Section 5.1,** Special Counsel's **possible** deliverables are broken into the following categories:

- (a) Commercial and Landlord/Tenant Support – Support the NJEDA in

commercial negotiations with prospective tenants and provide landlord/tenant support related to any existing executed leases and subleases.

- (b) NJWP Project Development – Support the NJEDA’s ongoing NJWP Project development and construction efforts, including project finance, [public finance (including federal funding),] industrial environmental [law] **issues** and permitting, construction, **and** nuclear regulation[, and insurance].
- (c) NJWP Project Operations – Support the NJWP Project’s operational needs, particularly as related to [maritime law and] waterfront development, [port] **infrastructure asset** operation, and foreign trade zone support. This includes supporting the NJEDA in contracting with a long-term operator, which may involve a concession-type arrangement.

4.1 Commercial and Landlord/Tenant Support. The NJEDA is in, or anticipates being in, active negotiations with prospective tenants interested in utilizing the NJWP site to support their offshore wind activities. Prospective tenants include both offshore wind developers and Tier 1 manufacturers. Special Counsel **may be retained to support** [will be expected to have expertise in] complex commercial transactions, particularly related to [tenant] **port and industrial lease and sublease** negotiations [and New Jersey real estate law].

Special counsel **may be retained to support NJEDA’s landlord and port operator relationships**, [will be knowledgeable in] port-sited marshalling and manufacturing [activities] **tenants**, [insurance,] industrial/environmental [regulations] **issues**, and [other] **any** due diligence [as necessary]. To support the NJWP Project’s commercial and real estate needs, Special Counsel **may be retained** [will be expected] to: 1) draft contracts in a timely manner that meet NJEDA and state requirements, are acceptable to market, and result in commercially sound outcomes; 2) coordinate commercial efforts between NJEDA, its consultants and advisors, and the Attorney General’s Office; and 3) attend

meetings as required. Special Counsel **may also be retained** [will also be expected] to support NJEDA in any landlord/tenant issues related to NJEDA's leases with tenants, as well as NJEDA's headlease (**ground lease**) with PSEG. Because the NJWP Project is adjacent to an active nuclear power plant, Special Counsel [must provide] **may be asked to provide or retain a secondary firm with** expertise in nuclear regulation.

4.2 NJWP Project Development. [The NJWP Project is a P3-style infrastructure project. As a result,] Special Counsel **may be retained** [is expected] to support development and construction of the project, in conjunction with NJEDA's financial advisor, technical advisor, environmental [firm] **consultant**, the New Jersey Attorney General's Office, security consultant, and other professional advisors as necessary. In that context, Special Counsel **may be retained** [will be expected] to provide detailed input on the legal considerations, best practices, and financing plan of the NJWP Project that maximizes overall value for the NJEDA and the State and minimizes short term and long-term risk and liability. **Special Counsel may be requested to provide advice with regard to P3-style financing mechanisms, including, but not limited to concessions.** [Financing considerations include state appropriation-backed bonds, state appropriated funding, and federal funding opportunities. It is not expected, at this time, that the NJWP Project will be funded through private financing.] Special Counsel **may also be retained in relation to** [must also have expertise in New Jersey] construction [law] and project delivery [standards] **matters**, as well as environmental, permitting, [and insurance considerations] related to large scale infrastructure construction.

4.3 NJWP Project Operations. The Port is being developed and constructed in phases. As a result, when any parcel within the NJWP Project is completed and becomes operational, Special Counsel **may be retained to** [shall] provide legal drafting, analysis, and meeting support related to state and federal maritime port operations. **Such support may be in relation to** [This includes expertise in] federal regulation of navigable waterways, foreign trade zones, stevedoring and wharf-related activities, security and customs considerations, Tier 1 manufacturing, and third-party port

operator procurement.

4.4 Additional Services. The Attorney General may require additional legal advisory services (“Additional Services”) if the Attorney General, in its sole discretion, determines that Additional Services are required and that such services are in the best interest of the NJEDA and the State. Any firm submitting a proposal pursuant to this RFO acknowledges and agrees that the Attorney General is under no obligation to request Additional Services and reserves the right, at his sole discretion, to separately contract for any such Additional Services.

4. What other skill sets [in addition to construction law and environmental] are needed to supplement the activities of the NJEDA. Looks like permitting is being handled in house and the property has been acquired?

Energy? Maritime?

The minimum qualifications identify the required skill set. However, see answer to Question 3 above for the revised minimum qualifications.

5. Section 2.2 of the Request for Qualifications indicates that “Failure by a firm to meet these Minimum Requirements will result in the proposal’s immediate rejection.” Given that this solicitation is for a pool, is the intent to qualify each law firm in one or more of the areas of expertise identified in Section 2.1(a) through (d)? Or, is each law firm required to possess all of the areas of expertise identified in Section 2.1(a) through (d)?

Each law firm must possess all the minimum qualifications. However, see answer to Question 3 above for the revised minimum qualifications.

6. Section 6.1(G) of the RFQ requests a description of the firm's presence in New Jersey. In order to participate in the pool, is a firm required to have a New Jersey location?

Section 6.1(G) requires a description of the firm's presence in New Jersey if there is one. However, there is no requirement for the firm to have an office in New Jersey. The criteria that will be used to evaluate a proposal are listed in Section 8.1 of the RFQ.

7. Under Section 7.10, "no joint submissions will be accepted." Does this statement preclude a relationship where one law firm is the lead firm that subcontracts with a second law firm?

No. This statement precludes a submission by two firms proposing to be jointly designated. A secondary law firm, retained by a firm retained from the New Jersey Wind Port Project Pool, is acceptable as set forth in Section III.J of the Division of Law's Outside Counsel Guidelines.

8. Please could you confirm whether every law firm that responds to the RFQ must have all of the qualifications listed in Section 2 (Minimum Qualifications) of the RFQ, including those areas of expertise that might often be provided by specialists in that particular area (e.g. environmental law, nuclear regulation, real estate etc.)? Alternatively, would it be permissible for a firm to respond on the basis that it has qualifications in the majority of the areas described, allowing NJEDA to access specialist input provided by others to the extent needed?

Each law firm must possess all the minimum qualifications. However, see answer to Question 3 above for the revised minimum qualifications.

9. Please could you confirm whether proposers should identify in our proposals which of the three categories described in Section 4 (Scope of Services) of the RFQ are being responded to?

The Scope of Services lists the possible scope of services that may be required

from a firm if a firm is retained from the New Jersey Wind Port Project Special Counsel Pool. See Section 5.1 in the RFQ for an explanation of the selection of firms for the New Jersey Wind Port Project Special Counsel Pool and how the Pool will be used to retain a firm for a specific transaction. See also the revised Section 4 in the answer to Question 3.

10. In order for a proposer to be selected for a category described in Section 4 (Scope of Services) of the RFQ, please could you confirm whether that law firm must have experience in all of the areas for that category listed in Section 4 (Scope of Services) of the RFQ, including those areas of expertise that might often be provided by specialists in that particular area (e.g. environmental law, nuclear regulation, New Jersey real estate etc.)? Alternatively, would it be permissible for a firm to be selected for a particular category on the basis that it has qualifications in the majority of the areas described, allowing NJEDA to access specialist input provided by others to the extent needed?

The minimum qualifications in Section 2.1 list the required experience. However, see answer to Question 3 above for the revised minimum qualifications.

11. Total for all categories of scope identified in the RFQ, what is the maximum quantity of firms that NJEDA intends to select for Pool contracts?

There is no set maximum number of firms or a target number of firms to be designated to the Pool.

12. Among each individual category of scope described in RFQ Sections 4.1-4.3, what is the maximum quantity of firms that NJEDA intends to select?

The firms designated to the Pool will not be categorized by specific category of scope in the Scope of Services. See Question 9 for an explanation of the Scope of Services.

13. In referencing “fee caps” in Sections 5.1, 5.2, 6.5(B) of the RFQ, is NJEDA referring to (a) maximum hourly rates that may be charged for services, (b) not to exceed limitations (“NTEs”) on total fees charged for a particular engagement, or (c) both

maximum hourly rates and NTEs.

As required by Section 6.5 of the RFQ, a firm's proposal must include hourly rates. Those hourly rates shall remain fixed for the duration of the Pool as stated in Section 6.5. The hourly rates approved for the designation of a firm to the Pool shall be the hourly rates applicable to any retention of a firm from that Pool. Thus, the fee cap, as proposed by a firm for a retention and subject to review and approval by the Division of Law, is the maximum not to exceed amount based on the hourly rates approved with the designation of the firm.

14. What categories of the scope described in RFQ Sections 4.1-4.3 does NJEDA expect to, or typically, impose fee caps?

The Division of Law will retain firms from the Pool and typically requests fee caps for each retention. See Section III.C of the Outside Counsel Guidelines for additional information regarding fee caps.

15. Will fees for specialized legal services be negotiated and/or subject to a fee cap?

See answers to Questions 13 and 14.

16. For purposes of RFQ Section 2, we appreciate the importance of minimum qualifications. However, several of the existing minimum qualifications will preclude many firms, including our firm and other small and mid-sized firms, from competing for elements of the scope of work which they could otherwise provide. We recommend removing the minimum requirements entirely because of their preclusive effect, and instead relying on the evaluation process to select the pool of firms.

See answer to Question 3 above for the revised minimum qualifications.

17. If the minimum requirements in RFQ Section 2 are generally retained, please remove at least the requirement that firms have requiring experience in "all" potentially applicable areas of state and federal law, but instead addressing this through the evaluated requirements for the separate scopes of work.

See answer to Question 3 above for the revised minimum qualifications.

18. If the minimum requirements in RFQ Section 2 are generally retained, in RFQ 2.1(b) please remove nuclear regulatory and maritime law. These are relatively specialized areas of law and could be instead included as “preferred” areas of experience (as is already the case under 2.1(a)).

See answer to Question 3 above for the revised minimum qualifications.

19. If the minimum requirements in RFQ Section 2 are generally retained, in RFQ 2.1(b) please remove expertise in manufacturing, marshalling, and marine operation leases. These are relatively specialized areas of law and could be instead included as “preferred” areas of experience (as is already the case under 2.1(a)). Alternatively, this could only be required in relation to the Commercial and Landlord/Tenant Support area of law.

See answer to Question 3 above for the revised minimum qualifications.

20. In revising the minimum requirements, please consider incorporating an additional evaluated factor the experience of firms in managing teams of attorneys and firms, cross-disciplinary coordination, and in providing advice on areas of law outside their core areas of expertise.

With regard to the minimum requirements, see answer to Question 3 above for the revised minimum qualifications. No change is being made to the evaluation criteria listed in Section 8.1 of the RFQ.

21. For purposes of RFQ 6.1.E, we suggest establishing the cut off for small firms at 50 attorneys. While definitions vary, this would align with the standard used by some industry groups (such The National Association of Law Placement). Given the breadth of the scope of work, we believe this is also a more realistic cut-off for relevant small firms.

No change is being made to Section 6.1.E of the RFQ.

22. Please also clarify the consequence for evaluation purposes of being a small firm.

The status of a firm as a small firm does not impact the evaluation as set forth in Section 8.1 of the RFQ.

23. Please remove the requirement that no joint submissions will be permitted, at least as it relates to small firms, as this will preclude our firm and similar small and boutique firms from competing for this solicitation.

No change is being made to the prohibition on joint submissions in Section 7.10 of the RFQ.

24. Please provide clarification on which forms are due with the RFP and which are due after retention is granted, but before the Retention Agreement is executed. In section 6.3 paragraph F, it states "Confirm that upon selection as Special Counsel, your firm will provide the updated Ownership Disclosure, Affirmative Action Supplement with Affirmative Action Employee Information Report and the certifications required by Public Law 2005, Chapters 51 and 271, Executive Order 333 (Murphy 2023), and Public Law 2012, Chapter 25 and Public Law 2022, Chapter 3, as further explained in Exhibit A. These forms are initially required with your response to the RFQ and then required by law again at any retention.", but in Exhibit A, paragraph I, it states "Special Counsel shall complete the following forms or otherwise satisfy the following requirements prior to the State executing a Retention Agreement with Special Counsel. Completion of these requirements will be easier if they are done in the order presented below. Note that the Special Counsel must use the same TIN/EIN and related taxpayer identity for all of these registrations, disclosures and certifications". Please identify when these forms are due.

As stated in Section 6.3.F, the listed forms are due with the response to the RFQ and are also due when each individual retention is approved but before the Retention Agreement is executed.

25. Because the answers to a number of our questions will dictate if we respond or

not – we would like to request the deadline be extended to allow us for sufficient time to prepare our response.

The deadline to submit a response is extended to November 29, 2023.