

REQUEST FOR QUALIFICATIONS

FOR

Special Counsel
Division of Rate Counsel

Issued by the
State of New Jersey
Division of Rate Counsel

Date Issued:
January 5, 2022

Question and Answer Cut-off Date:
February 9, 2022

Proposals Due:
March 4, 2022

Brian O. Lipman
Director, Division of Rate Counsel

State of New Jersey
Division of Rate Counsel
140 East Front Street, 4th Floor
PO Box 003
Trenton, NJ 08625

**REQUEST FOR QUALIFICATIONS ("RFQ")
FOR
Special Counsel for Certain Practice Area Designations**

1.0 PURPOSE AND INTENT

The Division of Rate Counsel ("Counsel") represents and protects the interests of consumers of electricity, natural gas, water/sewer, telecommunications, cable TV and insurance. Rate Counsel intends to retain outside counsel interested in serving as special counsel, under the direction and control of Rate Counsel, in the area of federal energy regulation.

The term of the special counsel designations made pursuant to this RFQ will be two years.

1.1 PROPOSAL SUBMISSION

A sealed original and three sealed copies of the proposal must be marked "Special Counsel RFQ" and delivered or post marked no later than 11:59 p.m. on March 4, 2022 to the following:

BRIAN O. LIPMAN, ESQ.
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4th FLOOR
PO BOX 003
TRENTON, NJ 08625

Proposals may not be delivered by fax or e-mail.

1.2 QUESTION AND ANSWER

Rate Counsel will accept questions pertaining to this RFQ from all potential bidders electronically. Questions shall be directed to David Wand, Esq. at the following email address:

dwand@rpa.nj.gov

Questions will be accepted until **FEBRUARY 9, 2022**.

In the event that it becomes necessary to clarify or revise this RFQ, such clarification or revision will be by addendum. Any addendum to this RFQ will become part of this RFQ and part of any designation of a firm as special counsel as a result of this RFQ.

ALL RFQ ADDENDA WILL BE POSTED ON THE DIVISION OF RATE COUNSEL'S WEBSITE.

It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this RFQ.

Rate Counsel reserves the right to reject any and all proposals received in response to this RFQ, and to waive minor noncompliance in a proposal. We further reserve the right to make such investigations as deemed necessary as to the qualifications of any and all firms submitting proposals in response to this RFQ. In the event that all proposals are rejected or Rate Counsel, at any time, deems the number of qualified firms receiving designations as the result of this RFQ to be insufficient to meet potential needs, Rate Counsel reserves the right to re-solicit proposals.

2.0 RFQ SCOPE OF SERVICES

Rate Counsel seeks to have access to counsel with substantial experience in the practice areas of wholesale ratemaking, competitive wholesale markets, transmission planning, transmission cost allocation, and regulatory policy in the electricity and natural gas industries (collectively, the Practice Area). Particular expertise is necessary in areas pertaining to the Federal Energy Regulatory Commission (FERC), PJM Interconnection, L.L.C. (PJM), the United States Department of Energy (USDOE), as well as experience in federal judicial appeals. Counsel must also be free of any conflict of interest.

On all aspects of the retention, counsel must work in consultation with appropriate Rate Counsel Staff and/or consultants. Retention may include the following:

- a) Identification, monitoring, reporting, and analysis of significant developments at the FERC, PJM and the USDOE that have significant potential to affect the cost of electricity or natural gas to New Jersey customers, and/or the reliability of the supply of electricity or natural gas to New Jersey customers;
- b) In notice and comment proceedings with respect to such significant developments, preparing written comments and/or delivering oral testimony or presentations;
- c) Litigating or otherwise appearing in proceedings before the FERC, USDOE and in the judicial system with respect to matters that have significant potential to affect the cost of electricity or natural gas to New Jersey customers, and/or the reliability of the supply of electricity or natural gas to New Jersey customers. Such litigation or appearances may involve drafting pleadings, motions, briefs, and all other papers to be filed at the agency or in court; conducting and responding to discovery; attending pre-hearing, hearing and post-hearing appearances; conducting settlement negotiations and handling appeals. Counsel may be asked to handle any or all issues arising in the litigation or proceeding. Counsel may also be asked to work in cooperation with counsel for other parties in such litigation or proceeding, including sharing of any of the responsibilities described above.

3.0 REQUIRED COMPONENTS OF THE RFQ PROPOSAL

Proposals must respond to each of the following requests in the order indicated. Please provide the information requested below for all counsel who may perform any of the requested services.

3.1 FIRM PROFILE AND EXPERIENCE

- A. Indicate the date your firm was established.
- B. Describe the legal services provided by your firm.
- C. Describe your firm's specialty and/or area(s) of expertise.
- D. Identify the number of employees in your firm (licensed attorneys; legal support staff; other support staff).
- E. Describe the participation of women and minorities in your firm. Please note the number of women partners and associates and minority partners and associates and indicate the percentage of your firm that is owned by women and by minorities.
- F. Describe any special training or experience members of your firm possess that may assist in providing the requested legal services.
- G. Explain how your firm develops estimates of the total cost of representing a client in a litigation matter, including the cost of experts as needed, and estimates of the total cost of preparing written comments and delivering oral testimony on behalf of a client in a notice-and-comment proceeding. Include in the estimate your firm's procedures for evaluating and disclosing the level of uncertainty in such cost estimates.
- H. Identify any agencies or departments of the State of New Jersey represented by the firm during the last five (5) years. For each agency or department, provide the name of the agency or department, a description of the matter or matters that the firm worked on for the agency or department, the dates of the engagement and the name and contact information of the State employee responsible for overseeing the work of the firm on that matter.
- I. Identify any State agencies or departments before or against which the firm has regularly appeared on behalf of other clients. Please note that Rate Counsel, as a public entity, is precluded by the Rules of Professional Conduct from waiving conflicts of interest. See RPC 1.7(a)(2) and RPC 1.7(b)(2).

- J. If your firm is designated as special counsel, you have a continuing obligation to disclose to Rate Counsel any actual or potential conflicts. Additionally, retained counsel must agree not to undertake any future representation that might result in the disclosure of Rate Counsel's work product to potential or actual adversaries of Rate Counsel.
- K. Identify any governmental entities, agencies, or political subdivisions, other than the State of New Jersey, that the firm represents or has represented. Include the time period during which the firm represented each such agency and the nature of the work performed.
- L. Describe the firm's approach to maintaining responsive communication with Rate Counsel and keeping Rate Counsel informed of problems and progress.
- M. Provide a representative listing of the firm's major private and public sector clients, including all public utilities represented by the firm.
- N. Identify two or more federal judges before whom the firm's litigators regularly appear.
- O. Provide the name, address, telephone number, e-mail address, and facsimile number for the contact person in your firm.

3.2 LITIGATION QUALIFICATIONS AND EXPERIENCE IN THE PRACTICE AREA.

- A. Identify and give the office location of each attorney who practices in the Practice Area. Please indicate what percentage of your firm's practice is in the Practice Area.
- B. List all attorneys in your firm that have at least five years of experience in litigation pertaining to the Practice Area.
- C. Describe your firm's experience in litigation pertaining to the Practice Area, by listing cases litigated involving this practice area since 2000 (identifying by case name and legal citation, if any), including the result of such litigation.
- D. State the qualifications and experience of the particular attorneys proposed to staff the work. For each attorney that would be involved in handling the work as special counsel on behalf of the State, provide a detailed resume including information as to:
 - a. Education, including advanced degrees;
 - b. Years and jurisdictions of admission to practice;

- c. Number of years engaged in litigation practice in the Practice Area;
 - d. General work experience (including an indication of whether the individual has tried any cases and, if so, approximately how many);
 - e. Any professional distinctions in litigation (e.g., trial certification, teaching experience);
 - f. Area(s) of specialization; and
 - g. Office location of the attorney.
- E. Describe the role that each particular attorney listed in D above would play in providing the services listed in 2.0(a) and/or (b) and (c), and the approximate percentage of the work that each would perform. Percentages for junior lawyers may be listed separately or in the aggregate.

3.3 OTHER QUALIFICATION INFORMATION

- A. Identify all adverse determinations against your firm or any of its partners, associates or employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints of any kind under any local, State or Federal laws, regulations, court rules, or Rules of Professional Conduct.
- B. Identify and describe in detail any indictments, convictions or civil offenses arising directly or indirectly from the conduct of business by your firm or any of its partners, associates, employees, or agents.
- C. Identify any material arrangements, relationships, associations, employment or other contacts that may cause a conflict of interest or the appearance of a conflict of interest if your firm acts as litigation counsel to the State of New Jersey or any of its departments, offices, or divisions.
- D. Identify your firm's malpractice insurer and describe the insurance limits.
- E. Confirm that your firm covers litigation costs, any bonds required by a court, and any potential liability under Fed.R.Civ.P. 11.
- F. Confirm that your firm agrees to abide by the Standards for Submittal and Review of Special Counsel Invoices.
- G. Confirm that upon selection as special counsel your firm will provide all vendor certifications required by Public Law 2005, Chapters 51 and 271.

3.4 ADDITIONAL INFORMATION

The forms listed below must be completed and submitted with the bid proposal. They can be downloaded from the Department of Treasury website:

<http://www.state.nj.us/treasury/purchase/forms.shtml>.

- [Ownership Disclosure](#)
- [MacBride Principles](#)
- [Chapter 271 Vendor Certification and Political Contribution Disclosure Form](#)

NOTE: A copy of a valid New Jersey Business Registration must be submitted. If not already registered with the New Jersey Division of Revenue, registration can be completed online at the Division of Revenue website:

<http://www.state.nj.us/treasury/revenue/index.html>

4.0 FEES

State the fixed monthly rate at which you would provide the services listed in 2.0(a) and/or the hourly rates at which the personnel listed below would provide the services listed in 2.0(b) and (c):

Partner:

Associate:

Clerks and law assistants (summer associates
or law school graduates awaiting bar results):

Paralegals:

Experts:

Before commencing the provision of services in a particular matter, Special Counsel will provide the State with a non-binding estimate of the total cost of providing the services in connection with that matter.

5.0 ADDITIONAL TERMS

- A. No endorsement: Designation as special counsel does not constitute an endorsement by the State of New Jersey, or Rate Counsel.
- B. Effect of RFQ response: A response to this RFQ will not bind or otherwise obligate the State of New Jersey to include the responding firm on the list of special counsel.
- C. Nothing in this RFQ is intended to limit or constrain the discretion of Rate Counsel in exercising any authority, duty, prerogative or power established or recognized by the Constitution, statutes, Executive Orders, regulations, or case law.

6.0 SELECTION PROCESS

All proposals will be reviewed to determine responsiveness. Rate Counsel may reject non-responsive proposals without evaluation, but may waive minor non-compliance. An Evaluation Committee will evaluate responsive proposals. The Evaluation Committee will have a minimum of three members. The following evaluation criteria categories, separate or combined in some manner, and not necessarily listed in order of significance, will be used to evaluate proposals received in response to this RFQ:

- Knowledge and experience of attorneys in the practice area;
- Experience of the firm in the practice area;
- Resources of the firm;
- Approach to communication with Rate Counsel; and
- Past experience of the State with the firm and/or attorneys.

Proposals will be ranked based on technical merit and the highest scoring firm(s) offering the best value to the State will be recommended for selection.

7.0 OUTSIDE COUNSEL DESIGNATIONS AND RETAINER AGREEMENTS

A firm selected pursuant to this RFQ for designation as special counsel, with the approval of the Attorney General and the Governor, will be the subject of a special counsel designation, pursuant to N.J.S.A. 52:17A-13.

8.0 EVALUATIONS

At the conclusion of each case handled by a firm, but in no event less frequently than annually, the Director of Rate Counsel, Brian O. Lipman or his designee shall evaluate the firm's performance.

Attachments: Requirements of N.J.S.A. 19:44A-20.13 et seq.
Standards for Submittal and Review of Special Counsel Invoices

ATTACHMENT 1

Requirements of N.J.S.A. 19:44A-20.13-25 (Formerly Executive Order 134)

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted N.J.S.A. 19:44A-20.13 - 25 on March 22, 2005 (the "Legislation"), retroactive to October 15, 2004, superseding the terms of Executive Order 134. Pursuant to the requirements of the Legislation, the terms and conditions set forth in this section are material terms of any contract resulting from this RFQ:

Definitions

For the purpose of this section, the following shall be defined as follows:

a) **Contribution** - means a contribution reportable as a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act." P.L. 1973, c. 83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Through December 31, 2004, contributions in excess of \$400 during a reporting period were deemed "reportable" under these laws. As of January 1, 2005, that threshold was reduced to contributions in excess of \$300.

b) **Business Entity** - means any natural or legal person, business corporation, professional services corporation, Limited Liability Company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. The definition of a business entity includes (i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person's spouse or child, residing in the same household.

Breach of terms of the legislation

It shall be a breach of the terms of the contract for the Business Entity to (i) make or solicit a contribution in violation of the Legislation, (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor, or to any State or county party committee; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or

consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of the Legislation; or (viii) directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

Certification and disclosure requirements

a) The State shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor, or to any State or county political party committee during certain specified time periods

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by the Legislation have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C. 527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required form and instructions, available for review on the Division of Purchase and Property website at <http://www.state.nj.us/treasury/purchase/forms.shtml>, shall be provided to the intended awardee for completion and submission to the Purchase Bureau with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Division, in care of the Purchase Bureau Buyer, the Certification and Disclosure(s) within five (5) business days of the State's request. Failure to submit the required forms will preclude award of a contract under this RFQ, as well as future contract opportunities.

c) Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Division of Purchase and Property website at <http://www.state.nj.us/treasury/purchase/forms.shtml>, shall be provided to the intended awardee with the Notice of Intent to Award.

State Treasurer Review

The State Treasurer or his designee shall review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the contractor. If the State Treasurer determines that any contribution or action by the contractor constitutes a breach of contract that poses a conflict of interest in the awarding

of the contract under this solicitation, the State Treasurer shall disqualify the Business Entity from award of such contract.

Additional Disclosure Requirement of P.L. 2005, c. 271

Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to P.L. 2005, c. 271, section 3 if the contractor receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the contractor's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

STANDARDS FOR SUBMITTAL AND REVIEW
OF SPECIAL COUNSEL INVOICES
(Revised: January 2022)

The following requirements and conditions will apply to payments made to the law firm unless specifically agreed otherwise. While the State is willing to consider variations from the following requirements, such variations will be considered in comparing the law firm's proposal to any other proposals that are submitted. The hourly rates agreed to shall not be subject to renegotiation during the two year duration of the contract.

In providing representation to the State, the law firm is expected to perform in a manner designed to provide quality representation at the least possible cost. Counsel shall be diligent and zealous in handling the file. Counsel shall keep the attorney within the Division of Rate Counsel identified in the law firm's retention letter apprised periodically of the status of the case and shall discuss all significant issues with him or her. Counsel shall provide updates on the status of the case as significant events occur. The updates shall include any significant developments in the case, discovery or motions made or contemplated, any settlement opportunities or recommendations and any significant upcoming events. Interoffice conferences for which more than one attorney's time is billed are to be avoided where consistent with quality representation, as is the attendance of more than one attorney at meetings, court appearances or depositions. Travel time of attorneys is to be billed at fifty percent of the regular billing rate and no reimbursement will be provided for time spent compiling and computing invoices. Routine filing and file organization by paralegals or clerical staff should not be billed.

Invoices are to be submitted monthly and shall be paid in accordance with the engagement letter. The invoices shall contain a detailed statement of the time spent by each individual on each activity, including a statement of the type of activity, the subject matter, and all persons involved. Wherever feasible, each activity should be separately recorded (i.e., entries for various activities should not be routinely "lumped" under one time entry). Each activity should be reported in time intervals specified to the nearest tenth of an hour.

Unless a specific agreement is reached to the contrary, the State will pay for only the following categories of disbursements:

1. Travel: Automobile travel will be reimbursed at the mileage rates recognized by the Internal Revenue Service. When traveling by means other than private automobile, actual costs will be reimbursed and the law firm shall use the least cost reasonable means of transportation (e.g., coach fare).

2. Copying and Telecopying: \$0.15 a page. Volume copying should be performed by an outside service where feasible.

3. Meals: Meals will not be reimbursed. Law firms are also specifically advised that they are not to pay for meals of State employees except where such meals are provided incidental to the conducting of a meeting within the firms' offices.

4. Telephone: Long distance telephone charges are reimbursable where documentation is provided regarding the date, duration and parties to the call.

5. Messenger and express mail services: Such charges are reimbursable but must be kept to a minimum.

6. Computer research: Invoice must state the issue researched and costs must be kept to a minimum.

7. Expenses: Costs directly related to representation such as filing fees in federal court, depositions transcript costs and service costs are the only such costs reimbursable.

8. Third party contracts: Bills of third parties under contracts are reimbursable only where the third party contract is approved in advance by the Director of the Division of Rate Counsel. Third party contracts include but are not limited to contracts for experts, investigators and interpreters.

The law firm shall maintain books and records, including retention of computer runs and billing reports that verify all disbursements that are billed to the State.