



**On Call Counsel Services with Respect to  
Interstate Commerce Rail and  
Maritime Transportation Matters**

**Project 10909 / Contract 10909-001  
Questions & Answers  
October 7th, 2024**

In connection with the **Request for Proposals** relating to the **On Call Counsel Services with Respect to Interstate Commerce Rail and Maritime Transportation Matters** released by NYCEDC on **September 15<sup>th</sup>, 2024**, the questions from potential Respondents and answers provided by NYCEDC are below.

- 1. Q: Would it be possible to apply for a specific aspect, such as drafting and reviewing documents, leading or participating in negotiations and providing legal advice related to a large-scale development project?**

A: Yes. Respondents may apply for a specific aspect of the Services; however, please note that it is NYCEDC's intention to retain a firm with experience in Interstate Commerce Rail and Maritime Transportation matters to serve as on call legal counsel with respect to those areas.

- 2. Q: Is NYC able to identify any specific upcoming infrastructure projects that they expect to need counsel to advise on and, if possible, identify how those projects are anticipated to be structured, funded and procured?**

A: Pursuant to its annual contracts with the City of New York, NYCEDC promotes and manages freight and intermodal transportation development throughout the City. The City properties managed by NYCEDC include marine terminals, rail lines, rail yards and intermodal transportation facilities and waterfront property. The requested legal services will involve advising NYCEDC on issues pertaining to this wide spectrum of rail and maritime transportation assets.

- 3. Q: In terms of the experience requirements and weighting criteria, does the award strictly require direct and "extensive experience advocating (on behalf of a government agency or office) before relevant administrative and regulatory agencies, including, among others, the Surface Transportation Board, the Federal Railroad Administration and the Federal Maritime Commission"? If the answer to question number 1 is "no", would experience representing companies before one of these agencies be considered sufficient?**

# NYCEDC

A: As per the RFP, NYCEDC is seeking counsel experienced in several areas, including (i) experience advising on and litigating matters related to interstate commerce and transportation, including among other things, rail and/or maritime transport, (ii) experience advocating before relevant administrative and regulatory agencies, including among others, the Surface Transportation Board, the Federal Railroad Administration and the Federal Maritime Commission, (iii) experience drafting and reviewing documents, negotiating and providing other legal advice, all in connection with large – scale development projects, including, for example, the development and operation of rail and maritime facilities and (iv) familiarity with the interests, concerns, needs and limitations of municipalities and other public or quasi-public organizations. Responses will be evaluated in line with the Selection Criteria set forth in the RFP.

**4. Q: Would an analysis of compliance with one or more of the above agencies’ regulations for private sector companies potentially qualify as the requisite experience?**

A: Please see the answer to Question #3.

**5. Q: Would an analysis of compliance with federal agencies’ regulations - other than those agencies listed in question number 1 - for private sector companies potentially qualify as the requisite experience?**

A: Please see the answer to Question #3.

**6. Q: Is experience representing a government agency or office in court required?**

A: Please see the answer to Question #3.

**7. Q: The RFP Scope of Services includes the following note: “Respondent may be asked to serve as lead litigation counsel on such matters [litigation before City, state and federal courts...].” Can additional information be provided on the parameters of this, such as, under what conditions would the Respondent be asked to serve as lead litigation counsel, and with what frequency?**

A: NYCEDC is seeking on call legal services with respect to interstate commerce, rail and maritime transportation matters. As discussed in Question #2, NYCEDC promotes and manages freight and intermodal transportation development throughout the City. The City properties managed by NYCEDC include marine terminals, rail lines, rail yards and intermodal transportation facilities and waterfront property. The requested legal services will involve advising NYCEDC on issues pertaining to this wide spectrum of rail and maritime transportation assets, including providing advice with respect to, and assistance with litigation before City, state and federal courts. If selected, it is expected that the parties would discuss any potential litigation in further detail at that time.

8. **Q: The fourth selection weighting criteria includes assessment of “the terms under which the Respondent will commit its personnel to be accessible and responsive to NYCEDC on a daily basis”. Can you provide any additional detail on the likely parameters of this criterion, such as number of personnel, title/role of personnel (i.e., is this requirement specific to attorney personnel?). As a follow-up to question 7 above, could you provide any examples or context?**

A: We are not able to provide that information at this time. Per the RFP, please provide a complete listing of all attorneys who would be involved in rendering the Services, together with an indication of their titles and responsibilities (e.g. billing partner, senior partner, senior associate, paralegal, etc), a description of their qualifications and past relevant experience and an estimate of the availability of each of these individuals to provide the services. The Proposal should include a resume and/or detailed statement of professional experience for each such person, including a statement of education background, and a list of current bar admissions.

9. **Q: Could you provide the range of hours (minimum and maximum) you anticipate will be required in the performance of this contract on a monthly basis?**

A: NYCEDC is seeking on call counsel related to the assets and issues set forth in response to Question #2. It is difficult to determine a minimum or maximum; however, we can state that over the course of the last 3 years, the current legal team has billed approximately 50 hours.

10. **Q: Do the attorneys that will appear before the STB/Maritime Commission on behalf of EDC need to be located in New York, and/or admitted to the NYS bar?**

A: No.

11. **Q: Are the proposers required to submit any business integrity questionnaire(s) in PASSPort, including any Background Investigation forms referenced in RFP Section V(e)(4)?**

A: PASSPort is not required under the terms of the RFP. Firms under consideration will be subject to an internal NYCEDC background investigation check. Upon request by NYCEDC, a Respondent will supply information requested to complete such Background Investigation and to address any questions raised as a result of such investigation. Failure to supply such information or failure to supply it in a timely matter upon request by NYCEDC may result in a Respondent from any further consideration.

12. **Q: Are any components of the proposal required to be submitted in PASSPort?**

A: Respondent should submit their proposals pursuant to the instructions set forth on the project web page (which can be found on <https://edc.nyc/rfps>).

# NYCEDC

13. **Q: Will EDC consider an extension of the proposal submission date given that answers to critical go/no-go questions may not be made available to proposers until October 7<sup>th</sup>?**

A: Yes, the NYCEDC will extend the proposal submission date to October 23, 2024.

14. **Q: Please provide more guidance with respect to the following restriction stated in the retainer agreement:**

*“ Your law firm, while acting as special counsel to NYCEDC under this retainer, will not represent any other person, or act in any other capacity in connection with a tenant, permittee, licensee or occupant of any: (a) NYCEDC-owned property, (b) City-owned or Port Authority of New York and New Jersey-owned property that is either leased to, and/or managed by, NYCEDC or NYCLDC, or (c) property that is leased from the City for which NYCEDC acts as lease administrator on behalf of the City.”*

**a. Specifically:**

- i. To what extent is a matter considered “in connection with” other parties? Is this limited to representing clients in connection with lease, permit, license, or occupancy of NYCEDC, NYC, PANYNJ, NYCLDC properties?
- ii. Does this restriction apply only to matters on which the selected firm will be advising EDC? More specifically, if the firm is advising EDC on matters under the scope of contract involving Tenant Y, is the firm precluded from representing Tenant Y on any matters (even though unrelated to EDC) for the duration of this contract?
- iii. We request revisions to this clause to clarify and narrow its scope for several reasons, including the practical reality that there are more than 17,000 entries on New York City’s published list of City-owned and City-leased properties (not including PANYNJ). As a full-service law firm with over 1,000 attorneys, we represent thousands of clients in connection with specific properties, and we do not track, and are not privy to information needed to know or track, whether any clients or potential clients may be a tenant, permittee, licensee, or occupant of one of these properties, including as subs or through related entities.

- b. If EDC will not consider extending the proposal submission date, we respectfully request that the answer to this question be provided as soon as possible before the October 7 questions deadline.**

A: The referenced language in the retainer agreement may be qualified by the requirement set forth in Section III of the RFP that the selected Respondent, during the term of the retainer agreement, will not represent any other person, or act in any other capacity, in connection with any matter for which the selected Respondent is providing



legal services under the retainer agreement. As set forth in Section V(e) of the RFP, Respondents must also disclose any actual or potential conflicts of interest the Respondent's firm would have as a result of its association with, or representation of NYCEDC, NYCLDC, the City or any City agency. In this regard, please identify the names and addresses of any corporations, City agencies or quasi-public entities for whom the Respondent acts as general outside counsel, or for whom it regularly handles matters. Per the request, NYCEDC will agree to extend the submission deadline to October 23, 2024.

**15. Q: Does this contract have M/WBE participation goals?**

A: No, there are no M/WBE participation goals for this RFP.