

Maine Turnpike Authority
Legal Services 2012-2017
REQUEST FOR PROPOSALS

The Maine Turnpike Authority (MTA) hereby solicits proposals from individual attorneys and law firms to represent the MTA on an at will basis. The MTA shall select one or more respondents to serve as approved counsel in one or more of the practice areas listed below. Respondents selected as approved counsel will be expected to enter into a contract to provide legal services to the MTA on an at-will, as needed basis for a five year period to commence in the fourth quarter of 2012. As needs arise, task orders under the contract will be issued to Approved Counsel to provide specific services. MTA intends to secure at least two firms or attorneys to serve as Approved Counsel in each practice area.

The MTA's selection of Approved Counsel will be based on its evaluation of the respondent's written proposal, qualifications, experience, references, fee structure and an interview, if MTA requests one.

Areas of Legal Services

Respondents' written proposal should state in which of the following areas of legal work the respondent is competent and willing to provide services to the MTA.

Bonding and Finance: Representation of the MTA during multi-million dollar revenue bond financings, including but not limited to preparation of closing documents, official statement and issuance of opinion on tax exempt status. Advice concerning requirements of the MTA's bond indenture and other legal requirements related to tax exempt revenue bonds, including but not limited to securities law and tax law questions. Experience in representing large issuers of tax exempt revenue backed bonds is required, and any attorneys or firms selected as approved counsel in this field must be approved by the Trustee appointed under the Maine Turnpike Authority's existing bond indenture.

Eminent Domain: Property acquisition, valuation and the management and trial of eminent domain proceedings.

Environmental Law and Permitting: Advice concerning operational issues as well as the permitting of specific projects. Expertise in dealing with state and federal environmental laws and regulations, including hazardous waste laws, the Clean Water Act, storm water and wetlands issues, wetland mitigations, the Site Location of Development Law, and local land use law.

General Litigation & Insurance: Representation in miscellaneous litigation, including liability suits, contract disputes, and claims involving damage to Authority property. This category also includes advice to the Authority on insurance coverage and representation of the Authority in negotiations with insurance companies and potential litigants.

Labor Law: In a public union environment, handling of grievances, arbitrations, contract negotiations, fact finding, interest arbitration, claims before the Maine Labor Relations Board, human relations issues including statutes governing the workplace such as the Maine Human Rights Act, federal anti-discrimination laws, FLSA, FMLA, and ADA.¹

Real Estate Law: General property issues, easements, boundary questions, impediments to title, liens, rights of way and transportation and utility corridors

Workers Compensation: Advice and representation on all aspects of workers compensation claims and proceedings.

¹ Please see the Section on Alternative Compensation Arrangements below.

All work assigned to Approved Counsel is at the discretion of the MTA. MTA handles many legal issues with its own staff. The MTA reserves the its discretion to engage any attorney or law firm to represent the MTA in particular matters from time to time, including attorneys or firms who are not approved counsel.

Qualifications, Experience and References

For every area of legal work indicated above for which a Respondent has offered to provide legal services, the proposal must identify the principal attorney who will provide the service, as well as other attorneys who may assist. The proposal should demonstrate the qualifications, competence and capacity of the attorneys to represent the MTA in that particular field. Resumes should be submitted for each attorney listed. References should be identified.

Good Standing, License and Discipline

All attorneys listed in the proposal must be in good standing and possess a license to practice law in Maine. The proposal must describe, for the firm and every attorney listed, every complaint filed with the Maine Board of Bar Overseers within the past ten years against that attorney or firm and every lawsuit filed in Maine within the past ten years against that attorney or firm alleging misconduct related to the practice of law or dishonesty of any kind. For each complaint or lawsuit listed, the proposal must include the date filed and in what forum, the parties involved, a short description of the subject matter, the resolution of the claim, and the date resolved.

Insurance

The firm or attorneys listed in the proposal must carry Professional Liability Insurance with a limit of at least \$1,000,000 per occurrence. Respondents shall provide the MTA with certificates of insurance, shall maintain uninterrupted coverage, and shall provide the MTA with copies of policies if requested.

Access and Availability

Respondents must identify the primary office address of the attorneys identified as providing services to the MTA. Respondents will also address how casework for the MTA will be managed, including the standard response time to answer questions and provide assistance as well as availability in emergency situations when immediate consultation is needed.

Compensation

Each Respondent must submit a statement which describes its fees and billing practices, including the charge for all attorneys listed, support staff and expense categories. Services that will be provided free of charge, at a reduced rate, or on other than a hourly fee basis should also be described. Respondents shall address how the MTA will be billed for consultations between two attorneys who are both members of the Respondent firm. The MTA shall not be charged for the services of any attorney or support staff person not listed in the Proposal unless specifically agreed to beforehand.

Alternative Compensation Arrangements

The MTA is interested in receiving proposals for alternative compensation arrangements, particularly in the field of Labor Law. These arrangements could include, but would not necessarily be limited to, proposals to provide services for a fixed annual fee. The MTA currently spends an average of approximately \$160,000 a year in the area of labor law, of which an average of \$50,000 is spent on arbitration. The MTA is interested in exploring methods of stabilizing and reducing these costs.

Selection / Authority General Consultant Conditions

The MTA reserves the right to waive any informalities in proposals, to negotiate with any respondent, and to accept or reject any or all proposals as may best serve the interests of the MTA. The selection of any respondent is contingent on the negotiation of acceptable contract terms with that respondent, based upon the Authority's

Consultant General Conditions, dated May 31st, 2012, a copy of which is attached. *It is the responsibility of each respondent to clearly identify in its proposal which, if any, of the provisions of the Authority's Consultant General Conditions is unacceptable or problematic as written to the respondent.*

Formalities of Proposal

Proposals will be accepted at the office of the Maine Turnpike Authority until 3 P.M. Eastern Standard Time on August 31st, 2012. In order to be considered responsive, the proposal must be printed on standard size (8.5 x 11) paper. Each proposal shall be prepared simply, provide straightforward, concise delineation of the Respondent's capabilities, and will fully address every element required by this RFP. Please limit the body of the response to a maximum of five double sided or ten single sided pages using a minimum of 10 point font. All resumes, project descriptions, or other enclosure information may be included as appendices and will not count toward the page limit. Proposals and questions regarding this RFP shall be clearly marked "Proposal: Legal Services 2012-2017" and shall be addressed to "Jonathan Arey, Staff Attorney, Maine Turnpike Authority, 2360 Congress Street, Portland, Maine 04102." Mr. Arey may be contacted at 207-482-8136.

**MAINE TURNPIKE AUTHORITY
CONSULTANT CONTRACT /GENERAL CONDITIONS
Independent Financial Risk Analysis for the York Toll Plaza**

Authority Division/Department: Administration
Authority Contact Person: Jonathan Arey
Type of Services: Legal Services

Contract #: _____
Project Location: N/A
Project Contract Not to Exceed Amount: \$ _____
Project Contract Begin Date: _____
Project Contract Expiration Date: _____

Vendor Customer #:

This Contract is entered into by and between the Maine Turnpike Authority (Authority) with its principal administrative offices located at 2360 Congress St, Portland, Maine 04102, and **Wilbur Smith Associates** (hereinafter referred to as “the Consultant”), with its principal place of business located at 900 Chapel St., Ste 1400, New Haven, CT. 06510.

The following attachments are hereby incorporated into this agreement by reference:

- 1. The MTA Request for Proposals - dated May 30, 2012**
- 2. Final Scope of Work (to be developed in consultation with consultant based upon consultant's proposal)**

In the event of a conflict in terms between any of the contract documents, the following order of precedence will apply:

- 1. The Request for Proposals**
- 2. This Contract / Consultant General Conditions**
- 3. Applicable Task Order¹**
- 4. Final Scope of Work**

Purpose

This contract is an ordering agreement which provides for an indefinite quantity of consultant services for which the extent is not determined. Task orders issued under this contract are typically limited by a not to exceed total value and cover a specific period of time. The Authority will assign specific tasks and projects under this contract to the consultant. In every case a detailed scope of work, list of key personnel to be used and cost will be agreed to for each task or

¹ Individual Task Orders will be issued as services are required defining the scope of each assignment under this contract.

project and included by reference in a separate Task Order. No Task Order shall be binding until signed by both parties to this Contract.

Entire Contract / No External Documents - The parties agree that this contract, with attachments specifically referenced above, including any task orders which may be issued, represents the entire agreement between the parties and that no external documents or communications of any kind, including but not limited to any form contracts or standard conditions produced by Consultant, will alter the terms of this contract or affect the interpretation of these contract terms. The Authority and Consultant agree that the terms herein shall not be modified except by a written agreement signed by both parties.

The Authority and the Consultant, in consideration of the mutual promises set forth in this Contract, hereby agree as follows:

A. Scope of Work. The Consultant agrees to complete all work as detailed in the Contract Documents in accordance with the prevailing standard of care for attorneys and any applicable rules or standards of conduct. The Consultant shall be responsible for furnishing all supervision, labor, equipment, tools, supplies, permanent and temporary materials required to perform the services. The Authority shall have the right to alter the nature and extent of the services as provided in this Contract with the understanding that services beyond the scope may require additional compensation on a time and materials basis as well as an adjustment to the Project Schedule.

B. Time / Damages for Delay. *Not applicable to this Contract unless otherwise agreed to in Task Order.*

C. Team Members. The names of the Project Manager, other key personnel, and any sub-consultants utilized under this Contract shall be identified in writing by the Consultant if requested by the Authority. No substitutions of listed Consultant Team Members shall be allowed without prior notification and approval by the Maine Turnpike Authority.

D. Sub Consultants. A Consultant may not enter into a subcontract with a party unless that party is specifically identified in the applicable Task Order. The Consultant must first notify the Authority's designated Contact Person before retaining any other Sub-consultants. The Authority retains the right to reject any Sub-consultant, in the Authority's sole discretion. The Consultant is responsible for assuring that its Sub-consultant has sufficient skill and experience necessary to perform the work properly, and for coordination and management of all its Sub-consultant(s) to achieve the intent of the Contract. The Consultant agrees not to bring any claims for damages sought by its Sub-consultant(s) against the Authority and hereby indemnifies and holds the Authority harmless against any claims arising from its failure to coordinate and manage its Sub-

consultants and from any and all claims or liabilities arising from services performed by its Sub-consultant consistent with the Indemnification provision hereinafter set forth. Subcontracting does not alter the Consultant's obligations under a Contract. All subcontracts of the Consultant, and all lower tier subcontracts, shall contain or incorporate by reference all applicable provisions of this Contract.

E. Project Records. The Consultant shall keep full, true and accurate records of all costs incurred, time and expenses billed and compensation received under this Contract. The Consultant shall make all such materials available at all reasonable times and shall furnish copies thereof, if requested, without cost to the Authority, during the Contract period and for three years from the date of final payment under the Contract. The Authority shall have the right on an annual basis through its accountants or representatives to examine and audit all such records, including but not limited to internal consultant time sheets and expense statements, and all other documents that may be reasonably necessary from an auditors perspective to provide supporting data for such records, and the consultant shall make all such records readily available for such annual examination without charge to the Authority.

F. Deliverables / Intellectual Property. All documents and data produced by Consultant pursuant to this Contract ("Work Product") shall be considered work for hire and the Authority shall possess sole ownership rights therein. Consultant agrees to execute any assignment of rights which the Authority may reasonably deem necessary to ensure the transfer of said ownership. All Work Product, whether printed or electronic, shall, upon completion of the work or as requested, be filed at no cost with the Authority in a format and media acceptable to the Authority. Consultant may not charge the Authority for any cost involved in reproducing, compiling or delivering any Work Product owned by the Authority under this paragraph to the Authority.

G. Affirmative Action. Pursuant to 5 MRSA 784, Consultant agrees that during the performance of any contract with the Authority:

1. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions, transfers, recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
2. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap.
3. The Consultant will send to each labor union or representative of the workers with which he has a collective or bargaining agreement, or other contract or understanding,

whereby he is furnished with labor for the performances of his contract, a notice, to be provided by the contracting department or agency, advising the said labor union or workers' representative of the Consultant's commitment under this section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment.

4. The Consultant will cause the foregoing provisions to be inserted in all contracts for any work covered by this agreement so that such provisions will be binding upon each Sub consultant.

5. Consultants and Sub-consultants with contracts in excess of \$50,000 will also pursue in good faith affirmative action programs.

H. Sexual Harassment. Consultants are responsible, under Maine State Law, for ensuring and maintaining a work environment that is free from sexual harassment. The Consultant shall comply with all relevant provisions of Maine State Law in regard to sexual harassment including, but not necessarily limited to, 5 MRSA 4572, 26 MRSA 806-807, and the regulations of the Maine Human Rights Commission.

I. Applicable Laws, Regulations and Procedures. In the performance of its services under this Contract, the Consultant shall comply with all applicable laws, regulations, and professional standards.

J. Invoicing: Unless otherwise agreed to in the Scope of Work or other document specifically referenced by this Contract and incorporated herein, compensation and reimbursement of Consultant will be governed by the following provisions.

1. Submission of Invoices. Invoices shall be submitted monthly by the Consultant to the Authority's designated Contact Person. Invoices shall be submitted in a form designated in advance as acceptable to the Authority, including a matter number assigned by the Authority if requested by the Authority. Separate matter numbers may be included on the same invoice if the matters are delineated and subtotaled in separate portions of the invoice.

2. Direct Expenses. Direct expenses such as telephone, tolls, reproduction costs, per diem and approved Sub-consultant(s) costs shall be billed at actual cost. The reimbursable costs for mileage and per diem (lodging which requires overnight stay and meals) shall not exceed the current amount allowed by the United States General Services Administration. This information can be found at (www.gsa.gov). No mark-up on direct expenses or Sub-consultant costs will be allowed.

3. Mileage. The Authority will reimburse for project related mileage at the rate set by the United States General Service Administration, this can be found at www.gsa.gov. The Authority will not reimburse for mileage incurred between the employee's residence and their regular reporting location. Mileage must be recorded on a daily basis and submitted monthly along with other allowable expenses incurred.

4. Lodging. The Authority may pay lodging in lieu of mileage if it is more economical. Reimbursement for lodging shall be the lesser of the actual cost of the lodging or the per diem lodging rate as evidenced by a receipt. Lodging per diem is a maximum not to exceed amount. Rates are established for specific locations in the continental United States. A link for the GSA rates can be found at <http://www.gsa.gov>. A standard per diem rate will also be established which will apply to any location not specified. The Authority will only reimburse up to the Federal Maximum Lodging Allowance. If accommodations cannot be arranged within this allowance the Consultant must request, in advance and in writing, written approval from the Authority. Lodging must be submitted monthly along with other allowable expenses incurred.

5. Payment of Invoices. The Maine Turnpike Authority will make payment within 30 days of receipt of an acceptable invoice. The Authority's review, approval, acceptance of, or payment for, services provided under a Contract shall not be construed to operate as a waiver of any rights, claim or damage, under the Contract, or of any cause of action arising out of the contractual performance. The Authority may deduct and/or disallow sums otherwise due the Consultant for unacceptable performance, work, or actions inconsistent with contract requirements. The Authority will not pay any additional amounts for interest or inflation related to late payments.

K. Indemnification: Consultant promises to indemnify and hold harmless the Authority and its officers, agents and employees from any and all claims, judgments, losses, damages, expenses (including reasonable attorney fees, court costs, arbitration or other dispute resolution costs), and any liabilities of every kind or nature alleged to have been caused by any negligent act, error, or omission or willful misconduct by the Consultant or Sub-consultant(s) in the performance and furnishing of services under the Contract. The preceding sentence shall not constitute a waiver of any defense, immunity or limitation of liability that may be available to the Authority, or its officers, agents or employees, under the Maine Tort Claims Act (Title 14 M.R.S.A. 8101 et. seq.), and shall not constitute a waiver of other privileges or immunities that may be available to the Authority. This indemnification provision shall survive any termination or expiration of the Contract.

N. Insurance: All insurance coverage must be provided by an insurance company or companies licensed or approved to do business in the State of Maine by the Maine Bureau of Insurance. Consultant and Sub-consultant(s) shall pay all premiums and take all other actions necessary to keep required insurances in effect during such times as Contract obligations exist. Certificates of Insurance shall be provided to the Authority upon execution of a Contract and on an annual basis thereafter. The maximum deductible for any type of insurance required shall not normally exceed \$50,000.00. However, the Authority may increase the maximum deductible upon a showing of sufficient assets as determined by the Authority. A Consultant may request a waiver for coverage requirements or insurances that may not be applicable for the work to be performed.

1. Professional Liability. The Consultant and its Sub-consultant(s) shall purchase and maintain a Professional Liability insurance policy for negligent acts, errors and omissions that provides minimum liability coverage of \$1,000,000 per claim and annual aggregate. The Consultant's policy shall cover negligent acts, errors or omissions by the Consultant and Sub-consultant(s) engaged by Consultant and other any person or entity for whom the Consultant is legally liable arising out of the rendition of services pursuant to the Contract. Each Sub-consultant's policy shall cover negligent acts, errors or emissions of the Sub-consultant. The Authority reserves the right to adjust liability coverage on a task order basis as it deems appropriate.

2. Workers' Compensation Insurance. Consultant and its Sub-consultant(s) shall carry Workers' Compensation Insurance or shall qualify as a self-insurer with the State of Maine Workers' Compensation Board, all in accordance with the requirements of the laws of the State of Maine. When maritime exposures exist, coverage should be arranged to include United States Long Shore and Harbor Workers coverage.

3. Compliance The Consultant and its Sub-consultants, and those each are legally liable for shall be in compliance with this section provided they agree to provide a copy of any applicable insurance policies upon request and:

- a. Procure coverage under one policy of insurance and agree to provide, upon request, a copy of their insurance policy covering all risks arising out of performance of the Contract(s); or
- b. Procure separate insurance policies to cover all risks arising out of performance of the Contract(s). In either case, a Certificate of Insurance must be filed for each policy indicating that all required insurance has been obtained prior to performance of services under a Contract.

O. Termination or Suspension.

1. Suspension. The Authority has the right to suspend upon written notice any or all services at any time for any reason as it deems necessary. Consultant shall terminate or suspend performance of the Services on a schedule acceptable to Authority, and Consultant shall receive payment for all acceptable services performed through the date of suspension plus any costs reasonably and necessarily incurred by Consultant to effect such suspension.

2. Termination for Convenience. The Authority may terminate the Contract for convenience or for any reason that is in the best interest of the Authority. Terminations for reasons beyond the control of the Consultant are terminations for convenience. The Authority shall notify the Consultant of such terminations by sending a Notice of Termination for Convenience.

In case of a Termination for Convenience, the Authority shall pay for all accepted items of work as of the date of termination. After receipt of Notice of Termination for Convenience from the Authority, the Consultant may also submit a claim for additional damages or costs not covered above or elsewhere in the Contract to the Project Manager within 60 sixty days of the effective termination date. Such claim may include such cost items as project investigative costs, overhead expenses attributable to the project terminated, Sub-consultant(s) costs not otherwise paid for, and any other cost or damage item for which the Consultant reasonably believes reimbursement should be made. In no event, however, shall loss of anticipated profits be considered as part of any settlement.

The Authority shall respond in writing to such claim within 60 days of receipt.

3. Remedies. Nothing in this Contract shall limit any legal remedy the Authority may have against Consultant for claims arising out of performance of this Contract.

P. Jurisdiction. This contract shall be governed by the laws of the State of Maine. By execution of this contract, Consultant agrees to submit itself for the purposes of any legal action arising under this contract to the jurisdiction of the courts of the state of Maine, and waives in advance any objections it may have to the jurisdiction or venue of said courts.

Q. Severability. If any provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be deemed affected thereby.

R. Representations. By signing below, the Consultant hereby represents that to the best of the Consultant's knowledge and belief, that Consultant has thoroughly read this Contract, understood its comments and agreed to its terms. Consultant also certifies that there is no legal, contractual or financial impediment to Consultant's successful completion of this contract and that the person signing below is fully authorized to legally bind Consultant to the terms of this Contract.

IN WITNESS WHEREOF, the Consultant, for itself, its successors and assigns, hereby execute two (2) originals of this Contract and thereby binds itself to all covenants, terms, and obligations contained in the Contract Documents. The effective date of this Contract will be on the date last signed below by a Maine Turnpike Authority representative.

CONSULTANT

MAINE TURNPIKE AUTHORITY

Sign: _____ Date: _____

Sign: _____ Date: _____

(Please Print Name and Title Here)

(Please Print Name and Title Here)

WITNESS

Sign: _____ Date: _____

(Please Type Name and Title Here)