

QUESTIONS & ANSWERS
Maine Public Employees Retirement System
RFP No. 2025-002 Investment Counsel Services

Conflicts of Interest

1. Could you please provide us with a complete list of agencies, departments, boards, commissions, officials, or any other names that MainePERS would like us to run conflicts on, as described in Section 10(b)(v) of the proposal package?
2. The RFP requests a detailed description of any possible conflicts of interest, including any lawsuits or disputes where the firm represents interests adverse to MainePERS or the State of Maine or any of its agencies, departments, boards, commissions or officials. We recognize that representing a client adverse to MainePERS would create an ethical conflict under the Maine Rules of Professional Conduct. Typically, we would not consider the representation of a client adverse to the State of Maine or its agencies, departments, etc. to create a conflict. If we are awarded a contract with MainePERS, what representations adverse to the State of Maine or its agencies, departments, etc. (other than representations adverse to MainePERS) would constitute a conflict of interest requiring a conflict waiver? Would MainePERS provide the firm with an advance waiver of such conflicts?
3. Can you please confirm that MainePERS would be considered the sole client of our law firm should we be awarded this work for purposes of the attorney-client relationship and conflicts of interest identification? Or would you require any other agency, department, or office of Maine also to be a client for purposes of the attorney-client relationship or for conflicts of interest identification under the rules of professional conduct?

ANSWER: We are narrowing this requirement to “A detailed description of the existence of any possible conflicts of interest, including any lawsuits and disputes where the firm represents interests adverse to MainePERS or the State of Maine.” This answer constitutes an amendment to the RFP. While MainePERS will be the sole client, approval of the Maine Attorney General is required for any engagement of counsel by MainePERS, and potential conflicts with the State of Maine may be considered in the approval process.

4. Lawyers within our firm also represent investment fund sponsors. Suppose MainePERS wants to invest in a fund that our firm already represents. Obviously in that situation we would not represent MainePERS on its investment into the fund (and MainePERS would work with other counsel on that deal). Would MainePERS have an issue with us continuing to work with that fund sponsor on fund matters?

ANSWER: This is generally acceptable.

Compliance with 5 M.R.S. § 784

5. Section 5.7 of the Services Agreement requires the contractor to comply with 5 M.R.S. section 784. Section 784(5) requires contractors with contracts in excess of \$50,000 to pursue in good faith affirmative action programs. Do you have any specific guidance for contractors with respect to the affirmative action requirement?
6. Do the affirmative action program requirements apply only to employees working directly on the state contract, to all employees within the contractor's organization, or to some other subset of employees?
7. Is there a specific employee threshold that triggers the affirmative action obligations? If so, what is the minimum number of employees required for these obligations to apply?
8. Is there guidance or examples on what constitutes a compliant affirmative action program? Are there any recommended formats or templates similar to what the Maine DOT has issued:
<https://www.maine.gov/mdot/civilrights/docs/davisbacon/Contractor'sGuidetoEEO2016.pdf>
9. How should contractors determine if their workforce is imbalanced in terms of minorities, women, and persons with disabilities? Are there specific criteria or metrics to assess this?
10. How does the state monitor compliance with affirmative action requirements? Are there periodic reviews or audits, or is compliance solely based on complaints received?

ANSWER: MainePERS does not provide specific guidance to Bidders or Vendors regarding the requirements of 5 M.R.S. § 784.

Hold Harmless Provision

11. Section 5.9 of the Services Agreement is a hold harmless provision. The provision imposes an uninsured risk on the firm and could impair coverage under the required malpractice insurance. Does MainePERS have any flexibility to alter the terms of this provision?

ANSWER: MainePERS will consider a Bidder's stated objection (including suggested modifications) to any provisions of the Services Agreement (Attachment B to the RFP).

Current and Historical Information

12. Which law firms are currently on MainePERS' legal panel?

ANSWER: Chapman and Cutler LLP and Morgan, Lewis & Bockius LLP

13. How many private-market fund investments has MainePERS made in each of the past three years?

ANSWER: Approximate average of 30 private market fund investments (including both new investment, co-investment, and continuation vehicles) per year over the previous three years.

14. What is MainePERS' typical legal spend on a primary investment in a commingled private fund?

ANSWER: MainePERS declines to answer.

Legal Fees

15. Attachment A states that Attorney General's approval of a law firm's appointment is anticipated to "include a cap on fees based on the expected fees to be earned during the term of the contract. If the cap is reached, further approval would be required before additional fees could be incurred."

- a. Could you please elaborate on how this works?
- b. We are familiar with providing budgets (some of which may be on a capped fee basis) for individual projects. But without knowing the nature of the deals in question or the number of such deals to be pursued, how can an overall "cap on fees" for the duration of the contract (which Section 4.1 of Attachment B contemplates could be for 5 years) be established?

ANSWER: MainePERS will recommend a cap to the Attorney General based on the selected Bidder's fee structure and anticipated needs. We are not asking Bidders to propose a cap or to provide services without compensation after a cap is reached. If the cap is being approached and MainePERS wishes to continue receiving the services, it will request a new cap from the Attorney General. If the cap is reached and a new cap has not been established, counsel will cease legal services.

16. Within Attachment C – Price Sheet, there isn't an outline for considering rate increases for the duration of the 5 year contract term. Would MainePERS be open to considering year-over-year rate increases for the duration of the five-year commitment?

ANSWER: MainePERS will consider pricing by Bidders including differing rates over the five-year commitment.

Vendor Security Requirements

17. Section 5.13 of the form of Investment Counsel Services Agreement requires a Contractor to comply with MainePERS' Vendor Security Requirements set forth in Exhibit 3. There is a statement within Exhibit 3 indicating that other requirements may be imposed on a Contractor by the Director of Information Technology's designee based on a particular Bidder and proposal and subject to negotiation. Given the open-ended nature of the commitment to comply with Vendor Security Requirements that may be determined at a later date, are you able to provide confirmation that MainePERS will not prohibit a Contractor from utilizing artificial intelligence and machine learning tools provided that (i) such tools otherwise meet a Contractor's information systems security requirements and data confidentiality protections applicable to a Contractor's data generally and (ii) all of such tools require additional attorney review and action to be implemented?

ANSWER: MainePERS will consider a Bidder's use of artificial intelligence and machine learning tools, including the Bidder's policies or guidelines around its use. MainePERS expects any use of artificial intelligence or machine learning to be disclosed and subject to MainePERS' consent before its use in relation to MainePERS' data.