



## **SARATOGA TECHNOLOGY + ENERGY PARK**

### **and OTHER REAL ESTATE LEGAL SERVICES**

Request for Proposals

RFP No. 1162

**PROPOSALS DUE:** February 13, 2008 by 5:00 PM\*

The New York State Energy Research and Development Authority (NYSERDA) is seeking proposals from qualified counsel to primarily advise on legal issues related to the development and operations of the Saratoga Technology + Energy Park (STEP) in addition to any other real estate related NYSERDA-wide issues. The contract term will be five years after contract execution.

**Proposal Submission:** Proposers must submit seven (7) copies of the proposal with a completed and signed proposal checklist attached to the front of each copy. One of which must contain an original signature. Proposals must be clearly labeled and submitted to:

**Roseanne Viscusi, RFP No. 1162  
NYS Energy Research & Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399**

If you have technical questions concerning this solicitation, contact Mitchell Khosrova at (518) 862-1090, ext. 3380 or [mk2@nyserda.org](mailto:mk2@nyserda.org), or Kevin Hunt at (518) 862-1090, ext. 3259 or [klh@nyserda.org](mailto:klh@nyserda.org). If you have contractual questions concerning this solicitation, contact: Doreen Darling at (518) 862-1090, ext. 3216 or [djd@nyserda.org](mailto:djd@nyserda.org).

No communication intended to influence this procurement is permitted except by contacting Mitchell Khosrova (Designated Contact) at (518) 862-1090, ext. 3380 or [mk2@nyserda.org](mailto:mk2@nyserda.org), or Kevin Hunt at (518) 862-1090, ext. 3259 or [klh@nyserda.org](mailto:klh@nyserda.org). Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

\*Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned. Faxed or 3-mailed proposals will not be accepted. Proposals will not be accepted at any other

NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's web site at [www.nyserda.org](http://www.nyserda.org).

## **I. INTRODUCTION**

NYSERDA is a public benefit corporation of the State of New York created and operating under the provisions of Public Authorities Law, §§1850 *et. seq.* The purposes and powers of the NYSERDA include promoting and developing energy and environmental facilities at the site now known as the Saratoga Technology + Energy Park (STEP); conducting energy research, development, and demonstration programs; providing services to facilitate improvements in energy efficiency in the public and private sector; providing objective analysis of energy issues; managing radioactive wastes and facilities in West Valley, New York; and reducing costs of public utility and other energy facilities through tax-exempt non-recourse revenue bond financing.

STEP is a first-of-its-kind technology park devoted to clean-energy, energy efficient and environmental technologies.

### **HISTORY OF THE STEP SITE**

In 1945, the federal government acquired a 165-acre parcel of land located in the Town of Malta, Saratoga County. Throughout the latter 1940s, 1950s, and early 1960s, the federal government, its site operator -- General Electric Company (GE) -- and other federal contractors used the site, then known as the Malta Test Station, for rocket engine and fuel testing and space research activities. The federal government then put the property on the market as surplus. At the request and in the name of the State, NYSERDA's predecessor, the New York State Atomic and Space Development Authority (ASDA), acquired it in 1964, then added 280 adjacent acres, and renamed the site the Saratoga Research and Development Center (SRDC). The site continued to be used for various federal space-related and weapons testing work by lessees who were federal contractors. NYSERDA assumed ownership of the property when it was created as ASDA's successor in 1975 and changed the site's mission to that of energy research and development.

In 1982, NYSERDA's Board determined as a matter of policy that the SRDC did not have strong prospects for use for its energy research and development mission at that time and that NYSERDA should try to dispose of the site. In December of 1984, NYSERDA sold an 81-acre core portion of the old federal Malta Test Station part of the SRDC to a tenant federal contractor, Wright-Malta Corporation, originally spun off from GE. Wright-Malta has performed federal weapons testing at the site and continues to do so. The sale left NYSERDA with nearly 360 acres of land and four buildings. In 1996, NYSERDA sold an additional 84 acres to Wright-Malta. Wright-Malta now owns the entire original 165-acre Malta Test Station property and NYSERDA owns the 280 acres acquired by the State in the late 1960s, including one building completed in about 1970.

In 1985, significant levels of hazardous chemicals were found in water from wells located on the portion of the site that had been sold to Wright-Malta. The water was used for drinking as well as other purposes and supplies the entire site, not just the part sold to Wright-Malta. Additional NYSERDA investigation detected some of those substances on the property it still held. NYSERDA began investigating the sources and extent of the contamination and made Wright-Malta install an air stripper to help remove the contaminants from the water being withdrawn from the wells.

In 1987, under the federal "Superfund" law, the U. S. Environmental Protection Agency (EPA) added the entire 445 acre site, including the original Malta Test Station and the 280 subsequently obtained acres to the National Priorities List of sites contaminated by hazardous substances, as the "Malta Rocket Fuel Area." EPA issued an administrative order to "potentially responsible parties" associated with the site, including NYSERDA requiring a remedial investigation and feasibility study (RI/FS) to determine the sources and extent of contamination and evaluate the clean-up options. In 1990, NYSERDA entered into a Participation Agreement with GE and the U. S. Department of Defense (DOD) to conduct the RI/FS and share its costs. The site was thoroughly investigated and it was determined that the only issue of ongoing concern is some ground water contamination that is predominantly under the property owned by Wright-Malta. That ground water is being treated by GE pursuant to a Consent Decree with EPA issued in 1998. The EPA has determined that as long as the ground water is treated before use, even the Wright-Malta property does not present any unacceptable risks to health.

After the environmental concerns were addressed, NYSERDA again looked at the property to determine its best use. NYSERDA joined with the Saratoga Economic Development Corporation (SEDC) and the University at Albany to form a joint effort to develop the property as a technology park devoted to clean energy, energy efficient, and environmental technologies. STEP is the only technology park in the nation with this focus. Governor Pataki announced the establishment of this effort in August, 2001.

NYSERDA has since leased the existing building to companies that fit STEP's mission. Subsequently, NYSERDA developed a master plan for the site and completed installation of all infrastructure required for the first stage of development. A ground lease has now been granted to a competitively selected private developer who is currently in the final stages of constructing a new +/- 105,000 sf multi-use, multi-tenant building at 107 Hermes Road. This building has been almost fully leased prior to its completion.

Currently, plans are also underway for the design and construction of an Alternative Fuel Vehicle Research Laboratory (AFVRL) by the New York State Department of Conservation to be located at STEP. The construction of AFVRL will ensure that needed emissions testing capabilities remain in New York State, and enable New York State to address numerous energy and fuel diversification issues and opportunities.

Additionally, an educational facility, TEC-SMART, is being planned to be built and staffed by Hudson Valley Community College. TEC-SMART will serve as training and educational facility providing the skilled technicians needed for the semiconductor manufacturing and alternative energy technology industries.

Additional background information on NYSERDA is available at [www.nyserda.org](http://www.nyserda.org).

## II. SCOPE OF SERVICES

The firm selected will be expected to provide legal advice, counsel, and representation for NYSERDA with respect to issues involving the development of the STEP site. These services could include, but are not limited to, representation in real estate transactions and the full gamut of permitting, environmental review, and business issues that may be involved in the development of the site requiring sound judgment, legal opinions, and recommendations related to SEQRA, zoning, Industrial Development Authorities (IDA) relationships, agreements with federal and state entities providing funding, and negotiating agreements with various contractors. It is also possible that NYSERDA may engage in a sale of its own real estate/building or purchase or lease new land/building.

Proposers must demonstrate experience and expertise in the areas stated above, an understanding of NYSERDA's clean-energy and environmental technologies mission at STEP, and experience in real estate development (with a preference for experience in the development of technology or office parks) and transactions.

## III. PROPOSAL REQUIREMENTS

Proposers must submit seven (7) copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this Request for Proposal. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned.** Faxed or e-mailed copies will not be accepted.

### **Procurement Lobbying Requirements - State Finance Law sections 139-j and 139-k**

Procurement lobbying requirements contained in State Finance Law sections 139-j and 139-k became effective on January 1, 2006. (The text of the laws are available at: <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>). In compliance with §139-j and §139-k of the State Finance Law, for proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of \$15,000, additional forms must be completed and filed with

proposals: (1) a signed copy of the Proposal Checklist including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form. Failure to include a signed copy of the Proposal Checklist referenced in this solicitation will disqualify your proposal.

Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, the RFP number, and the page number. The proposal must be in the following format:

A. Qualifications and Personnel. In setting forth its qualifications, each interested firm should provide, in concise but adequate detail, the information sought below.

1. State the names of the partners and associates who would be assigned to NYSERDA's account, provide their resumes, and describe the percentage of the firm's time commitment to the NYSERDA account that each person would be anticipated to provide.

State the name of the point person that would lead all activities herein and be in direct contact with NYSERDA. It is strongly suggested that this person be a partner in the law firm.

2. **Describe the experience and expertise of the firm and the individuals listed in response to item 1 above in dealing with real estate development issues, especially development of technology parks and similar projects, including related infrastructure, such as water, gas, sewer, telecommunications, and electric power.**

3. State the experience and expertise of the firm and the individuals listed in response to item 1 above in dealing with each State Environmental Quality Review Act issues; zoning; Industrial Development Authorities (IDA) relationships; and agreements with federal and state entities providing funding especially as they relate to real estate development.

4. State the experience and expertise of the firm and the individuals listed in response to item 1 above in general representation of public entities, including particularly New York State public benefit corporations or public authorities.

5. Provide three client references, including names of contacts and telephone numbers.

6. Identify the nature of any potential conflict of interest your firm might have in providing counsel services to NYSERDA:

(a) State whether your firm represents or has represented any other party with an interest in the facilities at STEP.

(b) Discuss fully any conflicts of interest, actual or perceived, which might arise in connection with your firm's involvement with NYSERDA. If conflicts do or might exist, describe how your firm would resolve them. Please be aware that representation of any other party with an interest in STEP would be prohibited without the express written approval of NYSERDA, which would be unlikely.

7. Identify any litigation or administrative proceedings to which you are a party and which would either materially impair your ability to perform the services enumerated herein and for which this RFP was issued, or if decided in an adverse manner, materially adversely affect the financial condition of your firm.

8. Provide any other information you believe would make your law firm's representation of NYSERDA superior to other firms' representation.

**B. Cost.**

**1. State the rates at which the services of partners, associates, and non-attorney law clerks, paralegals, or other paraprofessionals would be provided to NYSERDA during the first two years of representation; which partners and associates are expected to perform which services, to the extent reasonably projectable; and how these services would be billed. Include:**

(a) For each attorney whose resume is provided in response to III (A)(I) above, your normal hourly rate and the hourly rate you propose to charge NYSERDA.

(b) Projected services to be provided by each attorney whose resume is provided in response to III(A)(1) above, to the extent available.

(c) For each applicable category of non-attorney law clerk, paralegal, or other paraprofessional, your normal hourly rate and the hourly rate you propose to charge NYSERDA.

(d) Costs of any anticipated clerical support, if billed separately.

(e) A schedule of all disbursements which you anticipate will result in a charge to NYSERDA and the rate for each.

In responding to this item III(B)(1), provide one or more of the following, in respondent's order of preference: (i) an hourly rate for all partners and a separate hourly rate for all associates; (ii) a blended hourly rate for all partners and associates; and (iii) the individual hourly rates for each partner and each associate.

2. State the bases on which any other firm expenses related to services provided to NYSERDA would be billed, if other than cost.

3. State any special considerations with respect to billing or payment of fees and expenses that your firm offers and that you believe would differentiate it from other proposers and make your firm's services as counsel more cost effective for NYSERDA.

#### C. Contract.

1. In responding to III (C)(1), provide the retainer agreement your firm proposes using if selected by NYSERDA under this RFP.

### IV. EVALUATION AND SELECTION

A. Evaluation Factors. In evaluating proposals submitted in response to this RFP, NYSERDA will consider the following factors, not necessarily in order of importance.

1. Experience in general and, in particular, as counsel in matters involving real estate and business development, especially development of technology parks, specifically including SEQRA, zoning, Industrial Development Authorities (IDA) relationships, agreements with federal and state entities providing funding, and negotiating agreements with various contractors, and an understanding of NYSERDA's clean-energy and environmental technologies mission at STEP, and experience in real estate development (with a preference for experience in the development of technology or office parks) and transactions.

2. Quality and depth of the firm's expertise in providing similar services, including, but not limited to, past performance on projects and programs of magnitude or complexity comparable to or greater than STEP. For those firms who have worked as counsel in any capacity for NYSERDA, the quality of work in any such matter will be considered.

3. Commitment of time, resources, and ideas to NYSERDA.
4. Availability to and facility for working with NYSERDA attorneys and STEP Program staff.
5. Anticipated cost of services and willingness to work with NYSERDA to minimize costs. (Although proposed fees will be taken into account in the selection process, NYSERDA reserves the right to negotiate, with any firm selected, lower fees or a different fee structure than proposed.)
6. Information provided by client references.
7. Overall organization and quality of proposal, including cohesiveness, conciseness, and clarity of response.

B. Selection Process. A selection committee consisting of NYSERDA staff will review and evaluate proposals according to the evaluation criteria set forth above. The committee will make a recommendation to NYSERDA management which will make the final determination.

## **V. PROPOSAL INSTRUCTIONS**

### A. Limitations.

1. This RFP does not commit NYSERDA to award a contract, pay any costs incurred in the preparation of a response, or procure or contract for services of any kind whatsoever. NYSERDA reserves the right to accept or reject any or all responses as a result of the RFP, to negotiate with any or all considered firms, or to cancel this RFP in whole or in part.
2. A proposing firm may be asked to submit additional information, attend interviews, or negotiate concerning aspects of the proposal, and to submit any price, technical, or other revisions to its proposal which may result from such negotiations.
3. From among the proposals received, NYSERDA intends to select one law firm to serve as counsel to NYSERDA. It is anticipated that the firm or firms selected will serve in that capacity, at the pleasure of NYSERDA, for a two-year period with the possibility of annual renewals, at NYSERDA's discretion for an additional three years.

B. Format. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal.

### C. Proposal Submission.

1. Proposals must be submitted in two parts. Part I must consist of responses to the management items [III(A) above]. Part II must consist of complete contract cost and pricing information [III(B) above] and the proposed retainer agreement [III (C) above]. Each part must be complete, so that it can be evaluated independently.
2. All material submitted in response to this RFP will become the property of NYSERDA.
3. The proposal must be signed by a person authorized to bind the firm.
4. The completed Proposal Checklist, attached, must be attached to the front of each copy.
5. Non-responsive proposals include, but are not limited to, those that:
  - (a) are irregular or not in conformance with RFP requirements and instructions;
  - (b) are conditional, incomplete, indefinite or ambiguous;
  - (c) are intended to accomplish only part of the overall work;
  - (d) have no signature or an improper one; or
  - (e) are not submitted on time.

NYSERDA may waive minor informalities or irregularities in a proposal that are merely a matter of form and not substance and the correction of which would not be prejudicial to other proposals.

## VI. **GENERAL CONDITIONS**

**Proprietary Information** - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial

enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to accept it from disclosure, including a written statement of the reasons why the information should be accepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 [www.nyserda.org/nyserda.regulations.pdf](http://www.nyserda.org/nyserda.regulations.pdf). However, NYSERDA cannot guarantee the confidentiality of any information submitted.

**Omnibus Procurement Act of 1992** - It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises, as bidders, subcontractors, and suppliers on its procurement Agreements.

Information on the availability of New York subcontractors and suppliers is available from:

Empire State Development  
Division For Small Business  
30 South Pearl Street  
Albany, NY 12245

A directory of certified minority- and women-owned business enterprises is available from:

Empire State Development  
Minority and Women's Business Development Division  
30 South Pearl Street  
Albany, NY 12245

**State Finance Law sections 139-j and 139-k** - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>

The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

**Tax Law Section 5-a** - NYSEDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSEDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at [http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td_606_fill_in.pdf)). Prior to contracting with NYSEDA, the prospective contractor must also certify to NYSEDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a perspective contractor prior to contacting and filed with NYSEDA. See, ST-220-CA (available at [http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf) ). The Department has developed guidance for contractors which is available at [http://www.tax.state.ny.us/pdf/publications/sales/pub223\\_606.pdf](http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf).

**Contract Award** - NYSEDA anticipates making one award under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSEDA may request additional data or material to support applications. NYSEDA will review the retainer agreement included in a proposal and consider its use if the proposal is selected for award by NYSEDA under this RFP. NYSEDA expects to notify proposers in approximately 8 weeks from the proposal due date whether your proposal has been selected to receive an award.

**Limitation** - This solicitation does not commit NYSEDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSEDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSEDA's best interest.

**Disclosure Requirement** - The proposer shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSEDA after the award of a contract, NYSEDA may exercise its stop-work right pending further investigation, or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances. Proposers must also disclose if

they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

Attachments

Attachment A - Proposal Checklist

Attachment B -Disclosure of Prior Findings of Non-Responsibility