



BOND COUNSEL SERVICES
Request for Proposal ("RFP") 1277

Proposals Due: Wednesday, August 5, 2009 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority ("NYSERDA") invites proposals from law firms interested in providing bond counsel and other trust and financial related services to NYSERDA in connection with its past and future issuance of bonds, notes, and other obligations ("bonds").

Proposal Submission: Proposers must submit five (5) 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 1277
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Sara L. LeCain, Esq. at (518) 862-1090, ext. 3423, or sll@nyserda.org. If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507, or vwf@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting Sara L. LeCain, Esq. (Designated Contact) at (518) 862-1090, ext. 3423, or sll@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 e-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.

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 "New York State Energy Research and Development Authority Act" or "Act"). The purposes and powers of NYSERDA include conducting energy research, development, and demonstration programs; managing radioactive wastes and facilities at the Western New York Nuclear Service Center in West Valley, New York; managing certain premises and facilities in Malta, New York, known as the Saratoga Technology + Energy Park; administering an Energy Efficiency Services program, a Residential Energy Affordability Program, an Energy Analysis program, a Systems Benefit Charge Program, a Renewable Energy Portfolio Standard Program, and a Radioactive Waste Policy and Nuclear Coordination program and reducing costs of public utility and other energy facilities through tax-exempt or taxable non-recourse revenue bond financing.

Currently, NYSERDA has outstanding approximately \$3.6 billion in tax-exempt bonds issued on behalf of New York State investor-owned utilities.

II. Issues

During the last five fiscal years, NYSERDA's financing program has consisted of the following transactions:

	<u>Type</u>	<u>Mode</u>	<u>Principal Amount</u>
<u>Fiscal Year: April 1, 2008 - March 31, 2009</u>			
Solid Waste Disposal	Utility conversion	Tax-exempt: fixed	\$ 70 m
Pollution Control	Utility conversion	Tax-exempt: fixed	\$ 50 m
Pollution Control	Utility conversion	Tax-exempt: variable	\$ 74 m
Pollution Control	Utility conversion	Tax-exempt: variable	\$ 63.5 m
Pollution Control	Utility conversion	Tax-exempt: variable	\$ 37.5 m
<u>Fiscal Year: April 1, 2007 - March 31, 2008</u>			
None			
<u>Fiscal Year: April 1, 2006 - March 31, 2007</u>			
None			
<u>Fiscal Year: April 1, 2005- March 31, 2006</u>			
Local Furnishing of Gas	Utility refunding	Tax-exempt: fixed	\$ 82 m
Local Furnishing of Gas	Utility refunding	Tax-exempt: variable	\$ 55 m
Local Furnishing of Electric Energy	Utility refunding	Tax-exempt: variable	\$ 126.3 m
Pollution Control	Utility refunding	Tax-exempt: variable	\$ 65 m
Local Furnishing of Gas	Utility conversion	Tax-exempt: variable	\$ 50 m
<u>Fiscal Year: April 1, 2004 - March 31, 2005</u>			
Pollution Control	Utility refunding	Tax-exempt: variable	\$ 115.705 m
Pollution Control	Utility refunding	Tax-exempt: variable	\$ 204 m
Pollution Control	Utility refunding	Tax-exempt: variable	\$ 60.5 m
Local Furnishing of Gas	Utility refunding	Tax-exempt: variable	\$ 99 m
Pollution Control	Utility conversion	Tax-exempt: variable	\$ 63.5 m
Pollution Control	Utility conversion	Tax-exempt: variable	\$ 37.5 m
Pollution Control	Utility conversion	Tax-exempt: fixed	\$ 42 m

Pollution Control	Utility conversion	Tax-exempt: fixed	\$ 30 m
Pollution Control	Utility conversion	Tax-exempt: fixed	\$ 60 m

During these periods, NYSERDA periodically participated in, and also engaged the services of bond counsel for, transactions related to letter of credit substitutions, replacements of remarketing agents, the addition of credit facilities, obtaining rulings from the Internal Revenue Service, and other activities.

Additional background information on NYSERDA, including by-laws, is available on the NYSERDA website at www.nyserda.org. Official statements for recent NYSERDA financings are available from NYSERDA upon request. Please contact Sara L. LeCain, Esq. at (518) 862-1090, ext. 3423, or sll@nyserda.org for more information.

III. Scope of Services

NYSERDA requests proposals from law firms interested in being selected to be one of up to two law firms that are used to provide bond counsel and other trust and financial related services to NYSERDA. The firm or firms selected will be expected to act as bond counsel for NYSERDA on all aspects of bond issues, as assigned, for a period of up to five years beginning on or about January 1, 2010 and ending on or about December 31, 2015. Such services would be expected to include, but need not be limited to:

- (a) Negotiating, preparing, reviewing, and delivering any documents related to financings, including but not limited to project financing agreements, participation agreements, trust indentures, bond purchase agreements, and tax regulatory agreements, and advising on appropriate covenants for inclusion in agreements between NYSERDA and the other involved parties.
- (b) Preparing and reviewing preliminary official statements, official statements, remarketing circulars, and other disclosure documents necessary or appropriate to the authorization, issuance, sale, or delivery of bonds.
- (c) Rendering an objective opinion with respect to any authorization and issuance of or conversion of the interest rate on bonds; the delivery of new or revised letters of credit and other liquidity and credit facilities; refinancings; appointment or substitution of remarketing agents, market agents, trustees, auction agents, and other parties to a bond issue; and amendment of related documents, including required bond counsel opinions on the exclusion of interest paid on the bonds from gross income for federal income tax purposes and for state and local income tax purposes, as appropriate.
- (d) Advising on federal and state tax and securities law matters and changes thereto, the investment and expenditure of bond proceeds, and the collection, investment, and application of monies used to pay debt service on bonds.
- (e) Preparing, reviewing, or advising NYSERDA with regard to resolutions, notices, and other documents or procedures required in connection with financings.
- (f) Drafting, analyzing, advising, or commenting on federal and state legislation, regulations and rules, NYSERDA guidelines, and other matters which may have an impact on the financing program.
- (g) Participating in meetings with utilities and other potential borrowers, rating agencies, underwriters, NYSERDA's Members (board of directors) and Audit and Finance Committee, and other parties, as necessary or appropriate.
- (h) Assisting with preparation of schedules for the issuance of bonds and assignment of

responsibilities of involved parties.

- (i) Providing any other legal services, advice, or opinions relating to NYSERDA's financing program, other trust-related services, and other financial matters, as requested.

The firm or firms selected as bond counsel would also be expected to provide its services on bond issues closed up to December 31, 2015.

IV. **Proposal Requirements**

Proposers must submit five (5) copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this RFP. 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 is 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:

Proposals must be submitted in two parts. Part I must consist of responses to the management and qualifications items [IV(A) below]. Part II must consist of complete contract cost and pricing information [IV(B) below]. Each part must be complete, so that it can be evaluated independently.

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

1. For the years 2006, 2007, and 2008 state:
 - (a) the number and dollar volume of revenue bond issuances by New York State, local governments in New York State, or State or local public authorities or public benefit corporations in New York State for which your firm acted as bond counsel, co-bond counsel, underwriters counsel, underwriters co-counsel, tax counsel, or special counsel;
 - (b) the number and dollar volume of public utility or special energy project revenue bond issuances and electric power and related facilities revenue bond issuances for which your firm acted as bond counsel, co-bond counsel, underwriters counsel, underwriters co-counsel, tax counsel, or special counsel; and
 - (c) the interest rate modes allowable, security, and the basis for the firm's fees (for example, hourly rate or a percentage) for each of the issues included in the answers for A (1)(a) and (b) above.

The issues should be separately categorized by the legal function performed, *i.e.*, bond counsel, co-bond counsel, underwriters counsel, underwriters co-counsel, tax counsel, or special counsel; public utility, special energy project, and appropriation-backed service contract revenue bond issuances should be separately grouped. The dollar volume of each category should be stated, with issues totaling \$100 million or more separately identified, and the nature of any special counsel function should be described. The method by which your firm was selected to provide such services (for example, sole source, request for proposals, etc.) should also be listed.

2. State the names of the partners and associates in the public finance group in the firm and in the tax subgroup therein.
3. State the names of the partners, associates, and paralegals who would be assigned to NYSERDA's account, provide their resumes, the location of their primary office, and describe their anticipated commitments to other clients during the next 12 months.
4. Describe the experience of the firm in obtaining rulings from the Internal Revenue Service on bond related matters.
5. Describe the experience and familiarity of the firm with Internal Revenue Code provisions specific to New York State utilities.
6. Describe any subjects related to bond counsel services in which you feel your law firm has special expertise and the nature of that special expertise.
7. Provide a brief description of services you expect to provide to NYSERDA. Indicate whether your firm is prepared to render the services enumerated in this RFP using its own resources. (NYSERDA will not permit any bond counsel services to be subcontracted or assigned to third parties.) The description should emphasize particular services to be provided with respect to public finance and tax work as it relates to the issuance of federal, State, and local, or State and local, tax-exempt obligations by NYSERDA as a governmental issuer.
8. Describe your firm's experience and expertise with general representation of public entities, including particularly New York State public benefit corporations or public authorities.
9. Provide three client references, including names of contacts and telephone numbers.
10. Identify the nature of any potential conflict of interest your firm might have in providing bond counsel services to NYSERDA:
 - (a) State whether your firm represents any New York State energy public utility, public authority, or any independent power producer. If so, state the name of each such client and the nature of your representation.
 - (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 the firm selected will be expected to represent NYSERDA in all transactions within its financing program; representation of any other party to a transaction involving NYSERDA would be prohibited without the express written approval of NYSERDA, which would be unlikely.
11. 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.

12. Furnish information on the number and percentages of minorities and women among the partners and other attorneys of the firm, as well as para-professional and support staff; a copy of the firm's affirmative action or equal opportunity plan or other commitment to affirmative action and equal employment opportunity or its status as a minority or women-owned business; and an explanation of how your firm, if selected, would help NYSERDA further its policy of promoting participation of minorities and women in the provision of services to it, including services in support of its financing program.
13. Indicate whether the address of the office through which NYSERDA's account will be primarily serviced, and any anticipated travel or other such costs.
14. 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 periods January 1, 2010 to March 31, 2010, NYSERDA fiscal years (April 1st through March 31st) 2011-12, 2012-13, 2013-14, and 2014-2015, and the period April 1, 2015 - December 31, 2015, which partners and associates are expected to perform which services, to the extent reasonably projectable, and how these services would be billed. (Indicate whether the firm will commit now to rates for fiscal years 2010-11, or 2011-12, or 2012-13, or 2013-14, or 2014-15. Increases, if any, for those years may be stated in terms of percentages above the rates for January 1 through March 31, 2010.) Include:
 - (a) For each attorney whose resume is provided in response to IV(A)(3) 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 IV(A)(3) 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.
 - (f) Any reduced rates or fees charged other State or local public finance issuers in New York.
 - (g) A statement whether you would be willing to agree to caps on fees on an issue by issue basis.

In responding to this item IV(B)(1), provide one or more of the following, in respondent's order of preference: (i) a single hourly rate for all partners and a separate single 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 the specific maximum overall dollar limit which the firm would accept on fees and expenses for each of two hypothetical individual bond issues: one a new money issue and the other a refunding issue, each in the principal amount of \$100 million. Indicate the projected number of hours of involvement by partners, associates, etc. Indicate if either dollar limit would differ if the principal amount of the bond issue were to be higher or lower and, if so, how. For purposes of developing these dollar limits, assume: (a) each bond issue would be sold at a fixed interest rate, with no variable rate or derivative features, (b) normal arbitrage and rebate matters would be addressed, and (c) the bond issue would not involve any unusual or complex matters. Each dollar limit must include all costs of operations the proposer would expect to recover, including secretarial, office equipment, fringe benefits, indirect cost rates, etc.
4. 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 bond counsel or co-bond counsel more cost effective for NYSERDA.

IV. Proposal Evaluation

Proposals that meet Proposal requirements will be reviewed by a Technical Evaluation Panel (TEP) using the Evaluation Criteria below.

A. Evaluation Factors. In evaluating proposals submitted in response to this RFP, NYSERDA will consider the following factors.

1. 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 different fee structures than proposed). (25 points)
2. Quality and depth of the firm's expertise and its prior capability in providing similar services, including, but not limited to, past performances on projects and programs in New York of magnitude or complexity comparable to or greater than NYSERDA's or specific to New York utilities. For those firms who have worked as counsel in any capacity with NYSERDA, the quality of work on those transactions will be considered. (20 points)
3. Experience in general and, in particular, as bond counsel on behalf of issuers like NYSERDA, especially in transactions similar to the types NYSERDA has entered into and obligations of the types NYSERDA has issued. The firm selected for bond counsel must be nationally recognized bond counsel experienced in the subject areas of public finance and tax laws and regulations. (20 points)
4. Commitment of time, resources, and ideas to NYSERDA and availability to and facility for working with NYSERDA attorneys and financing program staff. (15 points)
5. Information provided by client references. (10 points)
6. Involvement of the proposing firm in financings with innovative legal issues, which demonstrates any unique qualifications as bond counsel. (5 points)
7. Overall organization and quality of proposal, including cohesiveness, conciseness, and clarity of response. (5 points)

B. Selection Process. A selection committee consisting of NYSERDA staff will review and evaluate proposals and develop a short list for further consideration. Firms so selected may be requested to submit sample financing documents that they have prepared. Firms so selected may also be invited to make oral presentations to NYSERDA staff and any members of the Audit and Finance Committee of NYSERDA who wish to participate. The staff will then make a recommendation to the Audit and Finance Committee, which will make a recommendation to the Members of NYSERDA.

The Members will make the final selection, subject to the provisions of Section 1853 of the Public Authorities Law. It is anticipated that proposers will be notified by September 30, 2009 of the results of the RFP process. Winning proposers will be assigned to work on proposed transactions by NYSERDA on a case-by-case basis.

V. 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 except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 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 - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA 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). Prior to contracting with

NYSERDA, the prospective contractor must also certify to NYSERDA 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 NYSERDA. See, ST-220-CA (available at http://www.tax.state.ny.us/pdf/2006/killin/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.

Contract Award - NYSERDA anticipates making one or more awards 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. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA 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 NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA 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 NYSERDA'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 NYSERDA after the award of a contract, NYSERDA 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.

VI. Attachments:

Attachment A - Proposal Checklist

Attachment B - Disclosure of Prior Findings of Non-responsibility form

Attachment C - Sample Letter Agreement