

Proposals Due: September 13, 2010 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (“NYSERDA”) invites proposals from firms interested in serving as outside legal counsel in connection with various employment-related issues. Services may include, but will not necessarily be limited to, advising on procedures leading to lay off or termination of employees; advising on employment matters that may have the potential to lead to litigation (e.g. discrimination, compensation, equal pay for equal work, poor performance, harassment, safety and security, etc.); reviewing NYSERDA’s Personnel Handbook and making recommendations for changes, including in such areas as sexual harassment prevention and discipline policies, facilitating performance improvement processes, and general employment policies and practices; participating in certain trainings such as sexual harassment prevention training; and advising on foreign student internships, cooperative student programs, and work permissions and authorizations.

NYSERDA has offices in Albany, Buffalo, and New York City and the firm may be asked to provide services with respect to employees at any of these locations.

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 2151
NYS Energy Research and Development NYSERDA
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Jacquelyn L. Jerry at (518) 862-1090, ext. 3284, or jlj@nyszerda.org. If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507, or ywf@nyszerda.org.

Any changes to, and questions and answers concerning, this RFP will be posted to NYSERDA’s website.

No communication intended to influence this procurement is permitted except by contacting Jacquelyn L. Jerry (Designated Contact) at (518) 862-1090, ext. 3284, or jlj@nyszerda.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 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.nyszerda.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 ("Act"). The purposes and powers of NYSERDA include, among others, 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; and 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.

In addition, NYSERDA issues bonds and notes to finance energy-related facilities qualifying under the Internal Revenue Code for tax-exempt financing.

NYSERDA works closely with energy-related organizations, holding meetings on-site, sponsoring and attending seminars, and working with representatives from the public and private sectors.

Currently, NYSERDA has approximately 330 full-time employees, including interns who are matriculated college students.

Additional background information on NYSERDA and its programs is available on the NYSERDA website at www.nyserda.org. Please contact Jacquelyn L. Jerry at (518) 862-1090, ext. 3223, for more information.

II. Scope of Services

NYSERDA requests proposals from law firms experienced in a broad variety of employment issues. The selected firm is expected to perform the tasks listed below, as requested, for a 2 year period, with 3 possible 1-year renewal options at NYSERDA's sole discretion. Tasks will be assigned on an as needed basis.

Services are expected to include, but need not be limited to:

1. Provide legal advice and counsel on all aspects of employment law and human resource matters and related internal and external administrative proceedings.
2. Research and provide legal opinions on employment-related issues and subjects including advice on potential liabilities associated with hiring.
3. Provide legal advice and matters involving discrimination, harassment, wrongful discharge, equal employment opportunity claims, employment insurance benefit claims, and on issues relating to foreign student internships. Other employee claims may involve various Federal,

State and local laws including Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Older Americans Act, the New York Human Rights Act, Civil Rights, constitutional torts and other laws under which individual employment rights may be asserted.

4. Advise and represent NYSERDA in matters relating to compliance with Federal employment law, rules and regulations, and State laws, rules, and regulation as they may relate to employment law issues.
5. Provide legal advice on human resource practices and policies; and propose changes in policies and policy manuals in accordance with revisions in law.
6. Provide legal advice on cafeteria benefit plan and proposed changes.
7. Advise NYSERDA of changes in applicable State and Federal law affecting human resources.
8. Provide such other assistance relating to employment matters as may be requested by NYSERDA.

III. Proposal Submission Requirements

1. **Required forms and number of copies.** 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 the proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist may be returned.** Faxed or e-mailed copies will not be accepted.

2. **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.

3. **Format.** A proposal should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Proposals should be limited to not more than 15 pages, plus attachments. 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.

Proposals must be submitted in two parts. Part I must consist of responses to the qualification items (Section 4. Description of Qualifications, below). Part II must consist of complete contract cost and pricing information (Section 5. Cost, below). Each part must be complete, so that it can be evaluated independently.

4. **Description of Qualifications.**

Proposers should describe:

(i) Experience in representing public authorities, State officials, and other government employers and Human Resources staff on employment related matters and litigation. As a minimum qualification, proposers must have 3 years active experience in providing counsel and representation to public authorities, State officials, and other government employers and Human Resources personnel on employment related matters, including administrative proceedings, compliance activities, and litigation. Both general experience in employment related matters and specific expertise in advising on employment matters that may have the potential to lead to litigation (e.g. discrimination, compensation, equal pay for equal work, poor performance, harassment, safety and security, etc.); sexual harassment prevention and discipline policies, facilitating performance improvement processes, and general employment policies and practices; advising on procedures leading to lay off or termination of employees; and participating in certain trainings such as sexual harassment prevention training; and advising on foreign student internships, cooperative student programs, and work permissions and authorizations are required. Proposers must be admitted to the practice of law in New York State.

(ii) Proposers should be available to accommodate the legal needs of NYSERDA. Proposers must demonstrate that at least one primary and reasonably qualified backup attorney is available as needed, and that the proposer has staff capabilities to perform the work on a timely basis. Proposers must be supported by a firm with sufficient professional/support staff to adequately provide the required services.

(iii) Provide the names of personnel in the firm that will be assigned to NYSERDA's account and their experience in performing services similar to the services requested by this RFP. Include resumes for all employees proposed to be involved on NYSERDA's account. Include a description of each employee's function in the firm, title, office address, and number of years of service with the firm and other relevant past experience. Describe the availability of the lead person(s) for consultation with NYSERDA, including but not limited to his or her ability to meet with NYSERDA staff in Albany, New York. (Resumes may be included as an appendix.)

(iv) 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 falling under this RFP; representation of any other party to these transaction involving NYSERDA would be prohibited without the express written approval of NYSERDA, which would be unlikely.

(v) 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.

(vi) Identify the employees discussed in Section III(4)(iii) that have been the subject of any investigation or disciplinary action by the New York State Ethics Commission, the Commission on Public Integrity, the Temporary State Commission on Lobbying, or the State. Describe briefly how any matter was resolved or whether it remains unresolved. Proposers must certify that the attorneys working on the NYSERDA account have never been reprimanded, censured, or suspended by the Supreme Court for ethics infractions.

(vii) Furnish information on the number and percentages of minorities and women among the employees of the firm; 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. Subcontracting of legal services is **not** allowed; subcontracting for printing, duplication, and other such services is allowed.

(viii) Indicate the address of the office through which NYSERDA's account will be primarily serviced, and any anticipated travel or other such costs.

(ix) Provide any other information you believe would make your firm's representation of NYSERDA superior to other firms' representation.

(x) Provide an explanation of any changes the Proposers would request to the Sample Agreement.

(xi) Provide two references, including name, address, and telephone number.

5. Cost.

(i) State the rates at which the services of assigned personnel would be provided to NYSERDA beginning in fiscal year 2010-2011, *i.e.*, Date of Award to March 31, 2011, and for NYSERDA fiscal years 2011-12, 2012-13, 2013-14, and 2014-2015 (April 1 through March 30), and how services would be billed. Increases, if any, for those years may be stated in terms of percentages above the rates for April 1, 2010 through March 31, 2011. Include:

(A) For each person whose resume is provided in response to III(4)(iii) above, your normal hourly rate and the hourly rate you propose to charge NYSERDA.

(B) For each applicable category of support staff or other assigned staff, the normal hourly rate and the hourly rate you propose to charge NYSERDA, if billed separately.

(C) Any reduced rates or fees charged other State or local governments in New York for these types of services.

(ii) State the basis on which any other firm expenses related to services provided to NYSERDA would be billed, if other than cost.

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

IV. Proposal Evaluation and Selection Process

1. Proposal Evaluation. Proposals meeting the RFP requirements will be evaluated using the following Evaluation Factors.

(a) Experience in general on employment related issues on behalf of entities like NYSERDA.

(b) Quality and depth of the firm's expertise and its prior capability in providing similar services, including, but not limited to, subject matter areas likely to be of interest to Human Resources. These subject matter areas include sexual harassment prevention and discipline policies, performance improvement plans, and general employment policies and practices; advising on procedures leading to lay off or termination of employees; advising on employment matters that may have the potential to lead to a lawsuit (e.g. discrimination, compensation, equal pay for equal work, poor performance, harassment, safety and security, etc.); and participating in certain trainings such as sexual harassment prevention training; and advising on foreign student internships, cooperative student programs, and work permissions and authorizations. For those firms who have worked in any capacity with NYSERDA, the quality of work on those transactions will be considered.

(c) Anticipated cost of services and willingness to work with NYSERDA to minimize costs.

(d) Commitment of time and resources to NYSERDA and availability to and facility for working with NYSERDA attorneys and Human Resources staff.

(e) Information provided by client references.

(f) Overall organization and quality of proposal, including cohesiveness, conciseness, and clarity of response.

B. Selection Process. A Technical Evaluation Panel (TEP), comprised of internal NYSERDA staff, will review and evaluate proposals. Top ranked firms may also be invited to make oral presentations to the TEP or other NYSERDA staff as part of the final selection process.

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/about/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 contracting and filed with NYSERDA. *See*, ST-220-CA (available at 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.

Contract Award - NYSERDA anticipates making one award under this solicitation, but is not precluded from selecting a second firm if it is in the best interest of NYSERDA to do so. It may award a contract based on initial applications without discussion, or following limited discussion, negotiations, or interviews. 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.

NYSERDA also reserves the right to correct any arithmetic errors, to accept or reject any of the firm's employees assigned to provide services on this project and to require their replacement at any time, and to reject any proposal containing false or misleading statements or that provides references that do not support an attribute or a condition claimed by the proposer.

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 similar 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.

Attachments:

Attachment A - Proposal Checklist

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

Attachment C - Sample Agreement