



Outside Legal Counsel Services for the New York State Green Bank
Request for Proposal (RFP) 2880

Proposals Due: December 2, 2013, 2013 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (“NYSEERDA”) invites proposals from firms interested in serving as outside legal counsel in connection with the establishment and operation of the New York Green Bank as well as potentially other NYSEERDA financing-related legal work. Services may include, but will not necessarily be limited to: (1) assisting in the creation of Green Bank financial products, potentially including credit enhancement, loan loss reserves, insurance, loan warehousing and securitization, participation loans, subordinated debt, tax equity structures, direct lending and others; (2) regulatory compliance; (3) business issues involving the structure and operation of the Green Bank; (4) preparation of Green Bank documents and contracts; (5) other NYSEERDA financing-related legal work, as necessary.

Proposal Submission: Proposers must submit five (5) copies and one (1) CD of the proposal with a completed and signed Proposal Checklist and Disclosure of Prior Findings of Non-Responsibility Form 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 2880
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Peter Costello at (518) 862-1090, ext. 3527, or pjc@nyserda.ny.gov. If you have contractual questions concerning this solicitation, contact Doreen Knudsen at (518) 862-1090, ext. 3216, or djk@nyserda.ny.gov.

Any changes to, and questions and answers concerning, this RFP will be posted to NYSEERDA’s website at <http://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx> under RFP 2880.

No communication intended to influence this procurement is permitted except by contacting Peter Costello (Designated Contact) at (518) 862-1090, ext. 3527, or pjc@nyserda.ny.gov. 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 and Disclosure of Prior Findings of Non-Responsibility Form will be returned. Faxed or e-mailed proposals will not be accepted. Proposals will not be accepted at any NYSEERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSEERDA’s web site at www.nyserda.ny.gov.

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.

In his January 2013 State of the State address, Governor Andrew Cuomo announced the formation of a \$1 billion New York Green Bank (Green Bank) within NYSERDA to alleviate financial market barriers that currently impede the flow of private capital to clean energy projects.¹ NYSERDA has submitted a petition to the Public Service Commission seeking \$165.5 Million in ratepayer funding and indicating that NYSERDA will allocate an additional \$44.7 Million in funding as the first tranche of funding for the Green Bank. The petition further indicates that the financial offerings of the Green Bank may include credit enhancement, loan loss reserves, subordinated debt funding, warehousing and securitization, tax equity funding, direct loans and/or other mechanisms.

Additional background information on NYSERDA and its programs is available on the NYSERDA website at <http://www.nyserda.ny.gov/>. A link to the petition and supporting documentation may be found on the Governor's website at www.governor.ny.gov/nygreenbank.

II. Scope of Services

NYSERDA requests proposals from law firms experienced in a broad variety of banking and financing issues. The selected firm or firms are expected to provide legal advice, counsel and representation for NYSERDA with respect to the services listed below, as requested, for a 5-year period. Tasks will be assigned on an as-needed basis.

Services are expected to include, but need not be limited to, providing advice and counsel regarding:

1. The development, launching and closing of Green Bank financial offerings, potentially including credit enhancement, loan loss reserves, insurance, loan warehousing and securitization, participation loans, subordinated debt, tax equity structures, direct lending and others;
2. Green Bank compliance with all federal, state and local regulatory requirements;
3. Business issues involving the development, structure and operation of the Green Bank;
4. Creation of standard Green Bank documents and contracts; preparation and negotiation of transactional documentation;

¹ See <http://www.governor.ny.gov/sites/default/themes/governor/sos2013/2013SOSBook.pdf>, pp. 26 et seq.

5. Advice related to Green Bank organizational matters; and
6. Such other assistance relating to banking or financing matters as may be requested by NYSERDA.

III. Proposal Submission Requirements

1. **Required forms and number of copies.** Proposers must submit five (5) copies and one (1) CD 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 and Disclosure of Prior Findings of Non-Responsibility Form 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 and Disclosure of Prior Findings of Non-Responsibility Form 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) and the proposed retainer agreement (Section 6. Agreement, below). Each part must be complete, so that it can be evaluated independently.

4. **Description of Qualifications.**

Proposers should:

- (i) Describe experience in:
 - a. representing banks and other financial institutions, with an emphasis on experience with public sector banks;

- b. developing financial offerings of the types listed in Section II(1) above;
- c. structuring and closing clean energy energy financing transactions; and
- d. representing various entities regarding organizational and compliance matters.

(ii) Be available to accommodate the legal needs of the Green Bank and NYSERDA. Proposers must demonstrate that primary and reasonably qualified backup and support attorneys are 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 who 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 this 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 percentage of the firm's time commitment to this account that each person would be anticipated to provide. Describe the availability of the lead person(s) for consultation with Green Bank and/or NYSERDA, including but not limited to his or her ability to meet with Green Bank staff in New York, and additional NYSERDA staff in Albany, New York. (Resumes may be included as an appendix.)

(iv) Discuss fully any conflicts of interest, actual or perceived, that 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(s) selected will be expected to represent the Green Bank (as a division of NYSERDA) and/or NYSERDA in all transactions falling under this RFP; representation of any other party to these Green Bank transactions 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 this account have never been reprimanded, censured, or suspended by the Supreme Court for ethics infractions.

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

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

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

(x) 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 2013-2014, *i.e.*, Date of Award to March 31, 2014, and for NYSERDA fiscal years 2014-15, 2015-16, 2016-17, and 2017-2018 (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 the fiscal year ending March 31, 2014. 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) A statement of the basis on which any other firm expenses related to services provided to NYSERDA would be billed, if other than cost.

(iii) A statement of 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.

6. Agreement. Proposers should provide the retainer agreement their firm proposes to use if selected by NYSERDA under this RFP. The awarded proposer's retainer agreement will serve as the basis for negotiations between the parties and, when finalized, will be included as Exhibit A to the final agreement (see Sample Agreement, attached hereto as Attachment C).

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 banking-related issues on behalf of entities like the Green Bank.

(b) Quality and depth of the firm's expertise and its prior capability in providing services similar to those identified in Section II(1-5), and in clean energy financing transactions. 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 this account, and amenability to, and facility for, working with NYSERDA attorneys and staff in various capacities.

(e) For top-ranked firms, information provided by client references.

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

2. Selection Process. A Technical Evaluation Panel (TEP), comprised of internal NYSERDA staff and outside reviewers, 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 <http://nyserda.ny.gov/~media/Files/About/Contact/NYSERDARegulations.ashx>. 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.ny.gov/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.ny.gov/pdf/current_forms/st/st220td_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.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

Contract Award - NYSERDA anticipates making one or more award(s) under this solicitation. 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 review the retainer agreement provided by the proposer. 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 may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

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