



## OUTSIDE COUNSEL SERVICES Request for Proposals (RFP) 3300

Proposals Due: Wednesday July 27, 2016 by 5:00 PM Eastern Time\*

The New York State Energy Research and Development Authority (“NYSERDA”) invites proposals from law firms interested in providing outside legal services related to a wide array of legal issues, including: commercial real estate matters associated with the Saratoga Technology + Energy Park (STEP); Green Jobs Green New York On-Bill recovery program; energy regulatory matters; human resources matters; program and transactional related financing issues; environmental issues (including New York’s State Environmental Quality Review Act (SEQRA) and the National Environmental Policy Act (NEPA)); legal and regulatory compliance; intellectual property; federal and state taxation; litigation, whether NYSEDA is a party or third party; government procurement and contracting; insurance, and all matters related to NYSEDA’s ownership of the Western New York Nuclear Service Center at West Valley. The firm or firms selected will be expected to act as outside counsel for NYSEDA for an initial three-year contract period with two (2) 1-year options to renew at NYSEDA’s sole discretion. NYSEDA reserves the right to add additional time and funding. It is anticipated that the initial contract period will begin on or about September 1, 2016.

**Proposal Submission:** All proposals must be received by NYSEDA by 5 pm on July 27, 2016. Electronic submission is preferable. NYSEDA will also accept proposals by mail or hand-delivery as set forth below. If submitting electronically, proposers must submit the proposal in either PDF or MS Word format with a completed and signed Proposal Checklist and Disclosure of Prior Findings of Non-Responsibility, in PDF format. Proposal PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility, rather than scanning. For ease of identification, all electronic files must be named using the proposer’s entity name in the title of the document. Proposals may be submitted electronically by following the link for electronic submissions found on this RFP’s webpage, which is located in the “Current Opportunities” section of NYSEDA’s website (<http://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>). Instructions for submitting electronically are located in that section as Attachment D to this RFP.

If mailing or hand-delivering, proposers must submit (2) paper copies of their proposal with a completed and signed Proposal Checklist, along with a CD or DVD containing both a PDF or MS Word digital copy of the proposal, following the above guidelines. Mailed or hand-delivered proposals must be clearly labeled and submitted to:

**Venice Forbes, RFP 3300**  
**NYS Energy Research and Development Authority**  
**17 Columbia Circle**  
**Albany, NY 12203-6399**

If you have technical questions concerning this solicitation, contact Laura Rowe, Esq. at (518) 862-1090, ext. 3610 or [Laura.Rowe@nyserda.ny.gov](mailto:Laura.Rowe@nyserda.ny.gov). If Laura is not available, you may also contact Peter Keane, Esq. at (518) 862-1090 ext. 3366 or [Pete.Keane@nyserda.ny.gov](mailto:Pete.Keane@nyserda.ny.gov). If you have contractual questions concerning this solicitation, contact Elsyda Ahmed at (518) 862-1090, ext. 3232 or [Elsyda.Ahmed@nyserda.ny.gov](mailto:Elsyda.Ahmed@nyserda.ny.gov).

No communication intended to influence this procurement is permitted except by contacting the above identified Designated Contacts. Contacting anyone other than these Designated Contacts (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 will be returned. Incomplete proposals may be subject to disqualification. It is the bidder's responsibility to ensure that all pages have been included in the proposal. 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.ny.gov](http://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" or "Act"). NYSERDA offers objective information and analysis; innovative programs, including energy efficiency, renewable energy, and energy research and development; technical expertise; and funding to help New Yorkers increase energy efficiency, save money, use renewable energy, and reduce reliance on fossil fuels. In addition, it is responsible for 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 (STEP); and reducing costs of public utility and other energy facilities through tax-exempt or taxable non-recourse revenue bond financing.

## **II. Issues**

Additional background information on NYSERDA, including by-laws, is available on the NYSERDA website at [www.nyserda.ny.gov](http://www.nyserda.ny.gov).

## **III. Scope of Services**

NYSERDA requests proposals from law firms interested in providing outside legal services related to a wide array of legal issues, including: commercial real estate matters associated with the Saratoga Technology + Energy Park (STEP); Green Jobs Green New York On-Bill recovery program; energy regulatory matters; human resources matters; program and transactional related financing issues; environmental issues (including SEQRA and NEPA); legal and regulatory compliance; intellectual property; federal and state taxation; litigation, whether NYSERDA is a party or third party; government procurement and contracting; insurance, and all matters related to NYSERDA's ownership of the Western New York Nuclear Service Center at West Valley. With regards to commercial real estate matters related to STEP, NYSERDA will require the services of a firm local to the Albany New York region.

The firm or firms selected will be expected to act as outside counsel for NYSERDA for an initial three-year contract period with two (2) 1-year options to renew at NYSERDA's sole discretion. It is anticipated that initial contract periods will begin on or about September 1, 2016. NYSERDA reserves the right to add additional time and funding to the firm or firms selected.

Such services would be expected to include, but need not be limited to:

- (a) Negotiating, preparing, reviewing, and delivering any documents related to bilateral or multilateral agreements between NYSERDA and third parties, including but not limited to commercial lease agreements, participation agreements, memoranda of understanding, or other agreements.

- (b) Rendering an objective opinion with respect to matters of law that arise in the administration of NYSERDA's programs.
- (c) Preparing, reviewing, or advising NYSERDA with regard to resolutions, notices, and other documents or procedures required in connection with State and local laws and procedures.
- (d) Drafting, analyzing, advising, or commenting on federal and state legislation, regulations and rules, NYSERDA guidelines, and other matters.
- (e) Participating in meetings with NYSERDA counsel and staff, NYSERDA's Members (board of directors) and other parties, as necessary or appropriate.
- (f) Analysis of relevant federal and State environmental and other laws as they pertain to the decommissioning activities at the Western New York Nuclear Service Center at West Valley.
- (g) Providing any other legal services, advice, or opinions relating to NYSERDA's programs and administration, as requested.

#### **IV. Proposal Requirements**

1. Completed proposals must be either electronically submitted (see Attachment D), or proposers must mail or hand-deliver (2) paper copies of their proposal along with a CD or DVD containing both a PDF or MS Word digital copy of the proposal to the attention of Venice Forbes at the address on the front of this RFP. A completed and signed Proposal Checklist (Attachment A) must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals will be returned, and proposals lacking the appropriate completed and signed Proposal Checklist and Disclosure of Prior Findings of Nonresponsibility Form (Attachment B) 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.** 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.

Proposals must be submitted in two parts. Part I must consist of responses to the qualifications 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:

- a) Describe the law firms experience in general representation of public entities, including New York State public benefit corporations or public authorities.
- b) Describe any subjects related to the legal services requested in which you feel your law firm has special expertise and the nature of that special expertise.
- c) 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 or whether some services will be subcontracted. The description should emphasize particular services
- d) Be available to accommodate the legal needs of 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.
- e) Provide the names of the partners, associates, and paralegals who would be assigned to NYSERDA's account and their experience in performing services similar to the services requested in 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 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.)
- f) 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. 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.

- g) 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.
- h) Identify the employees discussed in (e) 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 attorneys working on this account have never been reprimanded, censured, or suspended by the Supreme Court for ethics violations.
- i) Indicate the address of the office through which NYSERDA's account will be primarily serviced, and any anticipated travel or other such costs.
- j) Provide any other information you believe would make your law firm's representation of NYSERDA superior to other firms' representation.
- k) Provide an explanation of any changes the Proposers would request to the Attachment C - Sample Letter Agreement
- l) Provide three client references, including name, address, e-mail and telephone number.
- m) If the Proposer is not MWBE-certified, describe your experience in subcontracting with such businesses. Explain your methodology for attracting and subcontracting with MWBE-certified businesses, and how you intend to meet NYSERDA's MWBE goals.
- n) If the Proposer is not a certified Service-Disabled Veteran-Owned Business (SDVOB), describe your experience in subcontracting with such businesses. Explain your methodology for attracting and subcontracting with certified SDVOB businesses, and how you intend to meet NYSERDA's SDVOB goals.
- o) 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.

5. **Cost.**

- a) State the rates at which the services of assigned personnel would be provided to NYSERDA beginning in fiscal year 2016-2017 *i.e.* Date of Award to March 31 2017 and

for NYSERDA fiscal years 2017-18; 2018-19; 2019-20; 2020-21 (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, 2017. Include:

- i) For each person whose resume is provided in response to 4(e) above, your normal hourly rate and the hourly rate you propose to charge NYSERDA.
  - ii) 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.
  - iii) Any reduced rates or fees charged other State or local governments in New York for these types of services (including blended rates).
  - iv) A statement of the basis on which any other firm expenses related to services provided to NYSERDA would be billed, if other than cost.
  - v) 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.
  - vi) A statement whether you would be willing to agree to caps on fees on an issue by issue basis.
6. **Agreement.** Proposers should provide the retainer agreement their firm proposed 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 Letter Agreement, attached hereto as Attachment C).

## **V. Proposal Evaluation and Selection Process**

1. **Proposal Evaluation.** Proposals meeting the RFP requirements will be evaluated using the following Evaluation Criteria.
  - a) Experience in general representation of public entities, including New York State public benefit corporations or public authorities (15 points)
  - b) Quality and depth of the firm's expertise and its prior capability in providing service in the areas identified in the Scope of Services Section. For those firms who have worked in any capacity with NYSERDA, the quality of work on those transactions will be considered. (30 points)
  - c) Anticipated cost of services and willingness to work with NYSERDA to minimize cost. (25 points)
  - d) Commitment of time and resources to this account, and amenability to, and facility for,

working with NYSERDA attorneys and staff in various capacities. (15 points)

- e) Information provided by client references (5 points)
- f) Overall organization and quality of proposal, including cohesiveness, conciseness, and clarity of response. (5 points)
- g) The proposer is a NYS-certified minority-owned or women-owned business. (5 points)

2. **Selection Process.** A Scoring Committee, comprised of internal NYSERDA staff will review and evaluate proposals. Top-ranked firms may also be invited to make oral presentations to the Scoring Committee or other NYSERDA staff as part of the final selection process

## 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 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://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.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  
625 Broadway  
Albany, NY 12207



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

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

Empire State Development  
Minority and Women's Business Development Division  
625 Broadway  
Albany, NY 12207

A directory of certified service-disabled veteran-owned business enterprises is available from:

<http://www.ogs.ny.gov/Core/SDVOBA.asp>

New York State Office of General Services  
Division of Service-Disabled Veterans' Business Development

**New York Executive Law Article 15-A** - NYSERDA is required under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of NYSERDA contracts. The MWBE participation goals and obligations of the selected Contractor are set forth in Attachment E.

**New York Executive Law Article 17-B** – NYSERDA is required under the law to promote opportunities for maximum feasible participation of certified Service-Disabled Veteran-Owned Businesses (SDVOBs). The SDVOB participation goals and obligations of the selected Contractor are set forth in Attachment F.

**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 (Attachment A) 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 (Attachment B) 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](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 prospective contractor prior to contacting and filed with NYSERDA. *See*, ST-220-CA (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](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 awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. 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 Letter Agreement (Attachment C) to contract successful proposals. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Letter Agreement to those specifically identified in the submitted proposal (see Attachment A - Proposal Checklist). Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. 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. NYSERDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Letter Agreement.

**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.

## **VII. Attachments**

Attachment A: Proposal Checklist

Attachment B: Disclosure of Prior Findings of Non- Responsibility

Attachment C: Sample Letter Agreement

Attachment D: Electronic Proposal Submission Instructions

Attachment E: Article 15-A (MWBE) Provisions

Attachment F: Article 17-B (SDVOB) Provisions

