

Prequalification of Legal Counsel RFP  
Questions and Answers

**All questions were due to [CounselRFP@esd.ny.gov](mailto:CounselRFP@esd.ny.gov) by April 25, 2014.**

**Q1:**

Are respondents to the RFP required to submit an M/WBE utilization plan?

**A1:**

No. Submission of an M/WBE utilization plan is not necessary to become prequalified to provide legal counsel to ESD. However, Section 7 of Schedule A (Conditions Applicable to the Corporation's Law Firms and Other Special Consultants) provides that a consultant, which includes a prequalified law firm, must submit a satisfactory M/WBE utilization plan at or before execution of a contract to provide services to ESD.

As noted in the RFP, Schedule A is available at

[http://esd.ny.gov/CorporateInformation/Data/RFPs/03272014\\_SCHEDULEAforLegalFirms\\_Marc h2014.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/03272014_SCHEDULEAforLegalFirms_Marc h2014.pdf).

**Q2:**

Can you please provide clarification as to acceptable methods of submission "on disk" – would a USB drive or CD be preferred?

**A2:**

Either USB or CD is acceptable.

**Q3:**

Can you please provide more detail on what constitutes relevant "public sector experience"?

**A3:**

"Public sector experience" means representing, negotiating with, appearing before, or preparing documentation for compliance with a governmental entity (*e.g.*, United States Treasury, Securities and Exchange Commission, Federal Reserve, state public authorities and agencies, municipal entities, *etc.*).

**Q4:**

Can a MWBE that is eligible for re-certification apply for this RFP even if the re-certification has not been completed yet?

**A4:**

Yes. For the fifth item under Tab 1 of the submission materials, please provide documentation that the firm was certified as an M/WBE in the past.

**Q5:**

Does this RFP require all forms and attachments associated with *Schedule A -- Conditions Applicable to the Corporation's Law Firms and Other Special Consultants* to be filed with this RFP including a completed New York State Vendor Responsibility Questionnaire For-Profit Business Entity?

**A5:**

The submission requirements for prequalification are listed on pages 4-6 of the RFP, and the NYS Vendor Responsibility Questionnaire for a For-Profit Business Entity is listed on page 6 as one of the required items to be completed and submitted. Schedule A applies to firms that enter into a contract with the Corporation.

**Q6:**

Can a MWBE apply for this RFP on a standalone basis or must it be a subcontractor?

**A6:**

Yes, an M/WBE can apply for prequalification.

**Q7:**

I was unable to identify any information about the Innovation Venture Capital Fund (a new \$50 million venture capital fund for seed, early, and venture stage investments intended to incentivize new business formation and facilitate the transition of ideas and research into marketable products) mentioned in the RFP. Is this fund already in existence? If so, is information about its investment criteria, operations, etc. available? Similarly, there is little information about Innovate NY Fund and Small Business Technology and Investment Fund. Are detailed investment criteria and more specific operational data available?

**A7:**

The Innovation Venture Capital Fund was created by Part JJ of Chapter 59 of the Laws of 2013. ESD is in the process of promulgating the regulations for implementation of the Fund. The regulations are currently available for public review and comment and can be found in the April 2, 2014 issue of the New York State Register, available at <http://docs.dos.ny.gov/info/register/2014/april2/toc.html>.

For more information about the Innovate NY Fund and the Small Business Technology Investment Fund, please visit <http://esd.ny.gov/InnovateNY.html> and <http://www.esd.ny.gov/smallbusiness/sbtif.asp>.

**Q8:**

Please identify the investment advisers or other financial/business persons that will be responsible for the Innovate NY Fund, Small Business Technology and Investment Fund and Innovation Venture Capital Fund's investment and financing activities and any related fiduciary duties.

**A8:**

The process for investment review and advice is presently being structured.

**Q9:**

Please identify any other related entities/persons that might likely be considered in a conflicts of interest review undertaken by a law firm pre-qualified through this RFP.

**A9:**

ESD cannot identify such entities or persons at this time. The conflict of interest review will occur if a pre-qualified firm is considered for a specific transaction or assignment.

**Q10:**

What methodology does ESD plan to utilize to select for particular assignments firms that successfully respond to this pre-qualification RFP?

**A10:**

ESD may refer to the pre-qualified list in order to select firms to represent ESD on particular transactions or assignments in this area.

**Q11:**

Would ESD please provide representative examples (i.e., transaction or activity type with descriptions of staffing and fees paid) of legal work completed for or related to Innovate NY Fund, Small Business Technology and Investment Fund and Innovation Venture Capital Fund (if any)? If ESD anticipates that these examples are not representative of future work covered by this RFP, please explain what differences and changes are anticipated.

**A11:**

Please refer to the information in the RFP.

**Q12:**

The RFP indicates that areas of relevant experience with respect to pre-qualification under this RFP "include securities, tax, corporate (including limited liability companies and partnerships), product and intellectual property licensing, and structuring royalties." Will law firms pre-qualified under this RFP only be allowed to staff matters or sub-matters outside these areas of expertise (e.g., ERISA, health law, technology law, franchise law, government contracts, etc.)?

**A12:**

ESD may retain law firms that are pre-qualified to provide counsel in the particular subject area(s) for those matters, and sub-matters related to those matters, for which ESD requires representation.

**Q13:**

What is the anticipated remaining lifecycle of each of the Innovate NY Fund, Small Business Technology and Investment Fund and Innovation Venture Capital Fund? Specifically, how many additional major transactions (initial investment, subsequent investment, investment exit, etc.) are planned or anticipated for each fund and over what timeframe?

**A13:**

It is anticipated that these funds will continue as long as funding and investment return proceeds are available for investment.

**Q14:**

The RFP does not indicate that there will be a future need for any pre-qualified firms to re-qualify. Does ESD anticipate rebidding the work covered by this RFP at any future date? If so, then how far in the future will ESD require requalification?

**A14:**

ESD reserves its rights to issue such an RFP at any time.

**Q15:**

The RFP states that the "maximum [legal fee] rate structure is subject to change from time to time by action of the ESD Directors . . ." There is no indication as to how often that might occur or what factors might precipitate such change. Are there specific factors the ESD Directors will consider in making such a change? Do the ESD Directors anticipate reviewing the rate structure on a calendar or event driven schedule (e.g., "every two years" or "depending on publicly available data indicating material price inflation pertinent to law firms")?

**A15:**

There are no set factors and no schedule for updating the maximum rate structure. ESD reviews the structure on an as-needed basis.

**Q16:**

Neither the RFP nor its Schedule A (Attachment 6) describe whether, on what basis or how often the reimbursement fee schedule will be updated. Please provide this information.

**A16:**

Attachment 6 to Schedule A is updated when ESD determines that it is appropriate.

**Q17:**

RFP Schedule A provides some invoicing information but does not indicate how often invoices are to be submitted, what invoicing method is to be used (e.g., hard copy via mail, electronic invoicing, etc.) nor any payment information (e.g., "net 30 days" via electronic funds transfer, etc.). Please provide this information.

**A17:**

Invoicing and payment details are agreed upon with individual law firms that are selected to represent ESD.