

## **SOLICITATION FOR PRE-QUALIFIED LEGAL COUNSEL**

### **BACKGROUND:**

The New York State Urban Development Corporation d/b/a the Empire State Development (“ESD”) is New York’s chief economic development agency. The mission of Empire State Development is to provide a vigorous and growing economy, encourage the creation of new job and economic opportunities, increase revenues to the State and its municipalities, and achieve stable and diversified local economies. The State Legislature has provided ESD with broad statutory powers, including the powers to acquire real property by eminent domain, invest in property at below-market interest rates, issue tax-exempt bonds, offer tax benefits to developers, and override compliance, where appropriate, with local codes and laws. In addition to the use of these extraordinary powers, ESD provides assistance to economic development projects through the use of loans, grants, tax credits and other forms of financial assistance. ESD strives to enhance private business investment and growth to spur job creation and support prosperous communities across New York State. Additional information about ESD may be found on ESD’s website at [www.esd.ny.gov](http://www.esd.ny.gov).

### **PURPOSE:**

The purpose of this solicitation is to pre-qualify counsel as eligible to represent ESD, its subsidiaries and/or affiliates, from time to time, in connection with economic development projects and related activities across New York State involving various public and private sector parties. Counsel will be eligible for retainer that may arise during the next 3-4 years beginning on or about September 2012. This solicitation seeks to replace, not supplement, any and all pre-qualified counsel lists, which will expire in October 2012. Accordingly, firms on any existing ESD counsel list should, if they wish to continue to be pre-qualified, respond to this RFP. Note also that counsel selected for this purpose must agree to render services at pre-set hourly rates as set forth in this RFP.

### **SCOPE OF SERVICES:**

ESD is seeking proposals from firms, large and small, that have demonstrable expertise in one or more of the following areas of law (including in each instance, litigation capabilities): (1) real estate and land use; (2) construction; (3) environmental; (4) condemnation; (5) bankruptcy; (6) labor; (7) taxation; (8) bond counsel; and (9) foreclosure.

ESD is committed to pre-qualifying a diverse group of New York-based firms that will provide high-quality services and that are dedicated to diversity and to containing legal costs.

ESD strongly encourages firms that are certified by New York State as minority- and women-owned business enterprises (“MWBE”), as well as firms that are not yet certified, but have applied for certification, to submit responses to this RFP.

Note that inclusion on the pre-qualified counsel list does not mean or imply that any firm will in fact be selected or engaged to provide legal services to ESD, its subsidiaries or affiliates. Such selection and engagement will take place only when a need for outside counsel arises. The purpose of the pre-qualified list is to procure counsel available for engagement on short notice.

**Have these goods or services been purchased from an out-of-state/foreign vendor within the past 3 years? No**

**KEY EVENTS/DATES:**

Issuance of RFP:	April 23, 2012
Deadline for RFP Questions:	May 7, 2012
Deadline for Responses to RFP Questions:	May 10, 2012
Proposal Due Date:	<b>Noon, May 17, 2012</b>
Interviews, if necessary (Not earlier than):	June/July 2012
Anticipated Selection:	September 2012

ESD reserves the right to modify this schedule at its discretion. Notification of changes in connection with this RFP will be made available to all interested parties via ESD’s website: [www.esd.ny.gov](http://www.esd.ny.gov).

**REQUIRED INFORMATION:**

Following is a listing of the information and completed documentation required to be provided by each proposer. A proposal that does not include all the required information and the forms and documents described below may be subject to rejection.

A. Tab 1: Basic Information

1. a. Indicate for which of the practice areas under “Scope of Services” that the firm is interested in serving as ESD counsel.  
b. For each such practice area, provide a description of the firm’s relevant experience in such area. Please include a brief description of representative transactions and specify the firm’s role with respect to each such transaction.  
c. Indicate whether services have been provided previously to ESD or any of its subsidiaries or affiliates, and, if so, describe.
2. The names of the principal partners and other attorneys who would be responsible for ESD’s matters, and a description of the relevant qualifications and experience of each attorney.
3. Evidence of public sector experience. Such experience is preferred but not required.
4. If the firm is a State-certified MWBE firm, please provide documentation evidencing registration. For firms that are not certified but have applied for certification, please provide evidence of filing, including the filing date.

5. A description of the instances, if any, in which the firm has worked with MWBE law firms on previous transactions by engaging in joint ventures or other partnering or subcontracting arrangements. Responses should include the nature of the engagement, how such arrangement was structured and a description of how the services and fees were allocated.
6. A statement of the firm's willingness, if any, to engage in future MWBE partnering or mentoring arrangements with either a law firm of your choosing, and if so, a list of co-counsel MWBE law firms which the law firm is prepared to partner with or with another firm selected by ESD. Such statement should include an explanation of how the firm would suggest structuring such an arrangement and allocating services and fees among the law firms participating in the partnering or mentoring arrangement.
7. A statement that the law firm will agree to bill at ESD's pre-set maximum hourly rates. For more information regarding ESD's pre-set rates, see Eligibility and Qualifications below.

Please provide the information in the same order in which it is requested. Responses must be limited to 12 pages, at least 12 point type with standard margins printed on one-sided 8 ½ X 11 inch pages, bound and marked "Tab 1."

B. Tab 2: Background Information

Background information such as: number of attorneys in the firm, location of all offices, telephone number and e-mail address of the primary staff personnel who are anticipated to provide services to ESD, firm descriptions/brochures, resumes and organizational charts should be included in a separate "Tab 2";. There is no page limit on Tab 2, but brevity is strongly encouraged.

C. Tab 3: Required Forms

In a separate "Tab 3" the following forms, which can be found in Schedule A of this RFP, should be executed and included in the submission in the same order as listed below:

1. Certification under State Tax Law § 5-a; or
2. Affidavit of Non-Applicability of State Tax Law § 5-a;
3. Forms required under SFL §§139-j and 139-k; and
4. New York State Vendor Responsibility Questionnaire For-Profit Business Entity.

**Written proposals should be sent to Ms. Natalie Dennery, Senior Counsel, Empire State Development, 633 Third Avenue, New York, NY 10017-8109 and must be received by ESD by 12 noon on May 17, 2012. Electronic submissions will not be accepted. Include 5 copies of the required submissions, and one on disk (pdf format preferred).**

## **ELIGIBILITY AND QUALIFICATIONS:**

Eligible firms must have a New York State office and will be subject to ESD contracting requirements including, among other things, limitations on hourly fees.

Although proposed fees will be taken into account, ESD reserves the right to negotiate a lower or different fee structure with any firm(s) selected. Please be advised that, at present, the maximum rates paid by ESD are the lesser of the following or firm's actual billing rates:

- \$400 per hour for partners
- \$375 per hour for senior associates (5<sup>th</sup> year and up)
- \$350 per hour for mid-level associates (3<sup>rd</sup> – 4<sup>th</sup> year)
- \$300 per hour for junior associates (passed bar exam – 2<sup>nd</sup> year)
- \$220 per hour for law clerks (law student interns; first year associates until bar exam passed)
- \$90 per hour for legal assistants

This maximum rate structure is subject to change from time to time by action of the ESD Directors.

In certain cases where private third parties have agreed to reimburse ESD's legal fees, retained firms may be compensated at higher rates than set forth above.

## **PERMISSIBLE CONTACTS:**

Pursuant to State Finance Law ("SFL") §§139-j and 139-k, this solicitation imposes certain restrictions on communications between ESD and a potential respondent during the procurement process. A respondent is restricted from making contacts that a reasonable person may infer were intended to influence the selection of counsel, from the date of publication of this RFP until ESD Board approval of the new counsel list (the "Restricted Period"), with other than the designated staff-member(s) named below, unless it is a contact that is included among certain statutory exceptions set forth in SFL §139-j(3)(a). ESD employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the respondent under the SFL. Findings of non-responsibility can result in rejection for contract award and in the event of 2 findings within 4 years, the respondent is debarred from obtaining governmental contracts. For more information, see <https://www3.ogs.state.ny.us/legal/lobbyinglawfaq/default.asp>.

**The designated contact person for this solicitation is Natalie Dennery, Senior Counsel, ESD, 633 Third Avenue, New York, NY 10017-8109. Ms. Dennery can be reached by email at: [CounselRFP@esd.ny.gov](mailto:CounselRFP@esd.ny.gov).**

## **MINORITY AND WOMEN-OWNED BUSINESS PROVISIONS:**

### New York State Law

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation 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 ESD contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the MWBE program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that ESD establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises and the employment of minority groups members and women in the performance of New York State contracts.

### Business Participation Opportunities for MWBEs

ESD has established an overall goal of 20% for MWBE participation for the legal services performed under contracts awarded pursuant to this RFP: 12% for Minority-Owned Business Enterprises ("MBE") participation and 8% for Women-Owned Business Enterprises ("WBE"). See Attachment 7 of Schedule A for more information.

Firms that are not MWBEs responding to this RFP are strongly encouraged to consider partnering, or other joint venture arrangements, with other certified MWBE law firms to achieve the prescribed goals and to give MWBE law firms the opportunity to participate in the legal services performed under contracts to be awarded to pre-qualified counsel by ESD. ESD also reserves the right to require firms selected as pre-qualified counsel to work as co-counsel on specific transactions or matters with other firms and allocate work in a manner that ensures that MWBE law firms are assigned to substantive tasks and receive appropriate credit and compensation for the services they provide.

Note that, under Executive Law Article 15-A, Law firms must document good faith efforts to provide meaningful participation by MWBE law firms as co-counsel in the legal services performed. Willful and/or intentional violation of this obligation may result in the imposition of liquidated damages or other appropriate sanctions, including, without limitation, suspension of any future contracts with ESD and monetary payments based on the MWBE goal shortfall.

The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

Further, the ESD Affirmative Action Unit (AAU) is available to assist respondents in identifying New York State certified MWBEs that can provide legal services in connection with this RFP. If you require MWBE listings, please call the AAU at (212) 803-3225. Such a call will not be considered a prohibited lobbying contact.

## **QUESTIONS ABOUT THIS RFP**

Responses to all questions of a substantive nature relating to this RFP will be provided in writing, via ESD's website (<http://esd.ny.gov/CorporateInformation/RFPs.html>). In addition, any changes, additions or deletions to this RFP will also be posted on ESD's website, along with the electronic version of this RFP. Firms should note that any necessary clarification must be sought by the deadline for questions set forth in the "Key Events/Dates" section of this RFP. Firms are urged to check ESD's web site frequently for notices of any clarification of or changes, additions or deletions to the RFP.

OTHER THAN THE CONTACT PERSON IDENTIFIED HEREIN, PROSPECTIVE PROPOSERS SHALL NOT APPROACH ESD'S EMPLOYEES DURING THE RESTRICTED PERIOD OF THIS RFP PROCESS ABOUT ANY MATTERS RELATED TO THIS RFP OR ANY PROPOSALS SUBMITTED PURSUANT THERETO.

## **CRITERIA FOR SELECTION:**

In evaluating proposals submitted pursuant to this request, ESD places high value on the following factors, not necessarily in order of importance:

1. Relevant experience.
2. Demonstrated commitment of time and resources to ESD or other New York State agencies or other public entities.
3. The general qualifications and experience of the staff proposed to be assigned to the ESD engagement.
4. Diversity and commitment to equal opportunity programs and firm's status as a MWBE.
5. Anticipated cost of services and willingness to work with ESD to minimize costs.
6. Overall organization, completeness, and quality of proposal, including cohesiveness, clarity of response and demonstrated understanding of ESD.

## **INTERVIEWS**

ESD reserves the right to determine whether interviews will be necessary. It is anticipated that, if ESD deems interviews necessary, they will be held in June/July 2012. The proposed lead

partner, who would be responsible for ESD's relationship with the firm, as well as other key personnel proposed to provide the services, must be present and participate in the interview. The purpose of the interview is to further document the proposer's ability to provide the required services, and to impart to the committee conducting the interview an understanding of how specific services will be furnished.

**GENERAL PROVISIONS:**

ESD reserves the right to reject any or all proposals submitted if such election is deemed to be in the best interest of ESD. ESD assumes no obligation, no responsibility and no liability for costs incurred by the responding firms prior to the issuance of a contract. Any contract issued to a pre-qualified firm will include the provisions of the attached Schedule A: Conditions Applicable to the Corporation's Law Firms and Other Special Consultants.

**Exemption:** None