

Prequalification of Legal Counsel RFP  
Questions and Answers

**All questions were due to [legalprequalRFP@esd.ny.gov](mailto:legalprequalRFP@esd.ny.gov) by July 8, 2016.**

**Q1:**

If my law firm is listed on ESD's 2014 pre-qualified counsel list, must we submit our qualifications to remain on the pre-qualified list?

**A1:**

Yes. ESD is updating its prior list.

**Q2:**

If my law firm is listed on ESD's 2014 prequalified list in one area, must we submit our qualifications to provide legal services to ESD in other substantive areas?

**A2:**

Yes.

**Q3:**

Must a firm submit 7 copies of its response to the RFP for each area in which it wishes to be prequalified (i.e., a firm seeking to be prequalified in 3 areas must submit 21 copies of its response)?

**A3:**

No – each firm need only submit a total of 7 copies of a single response, regardless of the number of subject areas for which the firm desires to be prequalified.

**Q4:**

Please clarify if you are requesting seven (7) original copies of the materials and requested forms, or if one original copy with the executed forms and six copies are sufficient?

**A4:**

One original response with the executed forms, and six copies thereof, is sufficient.

**Q5:**

If we respond to multiple practice areas for this RFP, must the entire submission for Tab 1 still be 12 pages in its entirety? Or is the limit 12 pages for each practice area in which we submit?

**A5:**

The entire submission for Tab 1 should be 12 pages in its entirety, even if the respondent seeks pre-qualification in multiple practice areas.

**Q6:**

In Section VIII of the RFP, the fourth paragraph states that the designated contact person for this solicitation is Lauren G. Axelrod. However, in the second sentence it states, “Ms. Beckford” can be reached by email at [legalprequalrfp@esd.ny.gov](mailto:legalprequalrfp@esd.ny.gov).” Should Ms. Axelrod or Ms. Beckford be contacted?

**A6:**

Ms. Axelrod is the designated contact for this solicitation, and should be contacted at the email address listed, [legalprequalrfp@esd.ny.gov](mailto:legalprequalrfp@esd.ny.gov).

**Q7:**

Please clarify the format of the “bound” tabs. Should all tabs be separately bound? Is there a specific type of binding necessary?

**A7:**

Any method of binding is acceptable (velobound, spiral, 3-ring notebook, stapled, etc). Tabs should separate each required item and tabs should be bound within the same volume to the extent possible. If multiple volumes are necessary that is fine.

**Q8:**

Should a full copy of Schedule A be included in the RFP response?

**A8:**

No.

**Q9:**

Where do I obtain the “Contract Procurement Number” referenced on page 16 of Schedule A?

**A9:**

Respondents do not need to fill in that number, because ESD is not entering into a contract with any respondents at this time.

**Q10:**

Will you accept hand delivery to your offices on Third Avenue?

**A10:**

Yes, as long as the response is submitted by the deadline of 12 noon on July 22, 2016.

**Q11:**

On page 3, Section III, Scope of Work, the areas for which you are seeking proposals are outlined. Please provide specific details concerning the nature and extent of the anticipated work for each area. Are the services desired for matters in each of these areas in the context of disputes, i.e., litigation or other contested proceedings, or transactions or projects? Please provide details if possible.

**A11:**

ESD seeks the full range of services in the identified practice areas. In two areas, please consider the following details:

- Foreclosure: This work consists almost entirely of representing ESD in commercial foreclosures, when loans or grants fall into default. ESD could also conceivably have an individual guarantor on a loan or grant and seek to recover on the guaranty and mortgage by foreclosure. (See A12.)
- Taxation: The taxation work includes, but is not limited to: opining on and advising the corporation of all requirements related to the issuance of tax exempt bonds; compliance with ongoing tax requirements while the bonds are outstanding; procedures for disposing of properties acquired or improved with tax exempt bonds; and assistance in interpreting the breath of the tax exemption afforded to ESD by the UDC Act as applied to specific projects, including mortgage recording tax issues. (See A13.)

For every practice area, ESD seeks transactional representation and related litigation capabilities.

**Q12:**

Can you please clarify the type of foreclosure experience you are looking for? For example, is the agency looking for counsel with experience (i) advising in connection with bidding on and acquiring foreclosed property for development; (ii) representing the agency in commercial foreclosure actions; or (iii) representing the agency in residential foreclosure actions?

**A12:**

This work consists almost entirely of representing ESD in commercial foreclosures, when loans or grants fall into default. ESD could also conceivably have an individual guarantor on a loan or grant and seek to recover on the guaranty and mortgage by foreclosure.

**Q13:**

With respect to the Scope of Work articulated in Section III of the RFP, please provide additional information regarding the nature of the taxation work the successful pre-qualified law firm(s) will provide to ESD.

**A13:**

The taxation work includes, but is not limited to: opining on and advising the corporation of all requirements related to the issuance of tax exempt bonds; compliance with ongoing tax requirements while the bonds are outstanding; procedures for disposing of properties acquired or improved with tax exempt bonds; and assistance in interpreting the breath of the tax

exemption afforded to ESD by the UDC Act as applied to specific projects, including mortgage recording tax issues.

**Q14:**

What type of work is anticipated to be needed by ESD for “transactional direct and indirect investments”?

**A14:**

The RFP that ESD issued to prequalify investment counsel can be viewed here:

[http://esd.ny.gov/corporateinformation/Data/RFPs/04182014\\_RFP\\_2014\\_Equity\\_Invstmnt\\_Counsel.pdf](http://esd.ny.gov/corporateinformation/Data/RFPs/04182014_RFP_2014_Equity_Invstmnt_Counsel.pdf).

The associated Q&A for that RFP can be viewed here:

[http://esd.ny.gov/corporateinformation/Data/RFPs/04222014\\_PrequalificationofLegalCounselRFP\\_Q&Aa.pdf](http://esd.ny.gov/corporateinformation/Data/RFPs/04222014_PrequalificationofLegalCounselRFP_Q&Aa.pdf).

As described in the investment counsel RFP, ESD administers various investment programs using different investment strategies depending on the program. ESD can directly invest in commercial enterprises, provide grants to investment entities to make such investments, or engage in a combination of strategies.

**Q15:**

We would like to submit a proposal to serve as procurement counsel and/or P3 (public private partnership) counsel. Under which of the practice areas set forth in the SCOPE OF WORK section of the RFP would these practices fall?

**A15:**

ESD is not seeking proposals from law firms in the area of procurement. However, to the extent a respondent has expertise in government procurement, respondent should include such expertise in its response to the RFP. P3 work most likely falls under the areas of real estate and land use and/or bond financing.

**Q16:**

Does the need for “employment” related legal services include workers’ compensation issues?

**A16:**

Yes.

**Q17:**

Page 5 of the RFP lists the order in which Required Forms are to be submitted. Beginning on Page 8, a different order is requested. Which one is correct?

**A17:**

Page 5 of the RFP lists the correct order for required forms.

**Q18:**

Page 6 of the RFP states that a criterion for proposal evaluation is “Anticipated cost of services and willingness to work with ESD to minimize cost.” Aside from agreeing not to exceed the rates set forth in the maximum compensation rate schedule, are we to include any other information regarding hourly rates or fee structures?

**A18:**

Firms should include any pertinent information regarding rates or fee structures, such as willingness to blend rates for associates and partners, to charge less than ESD’s maximum rate schedule, or to offer special rates for particular types of services (e.g., a flat rate package for incorporation services).

**Q19:**

Section IV.A.2 of the RFP states “include a brief description of representative transactions...”. Please indicate the minimum and/or maximum amount of representative transactions that should be described by the responding firms.

**A19:**

There is no minimum or maximum number of representative transactions. Respondents should include sufficient relevant examples to demonstrate eligibility for prequalification.

**Q20:**

In Section IV.B of the RFP, ESD requests the telephone number and email address of the primary staff personnel anticipated to provide services to ESD. Please clarify “primary staff personnel” -- does this include the non-equity attorneys, paralegals, secretaries, file clerks, etc.?

**A20:**

Respondents need only provide contact information for partners (equity and non-equity) who are anticipated to provide services to ESD.

**Q20:**

On page 6, Section VI, please clarify if “governmental clients” is referring to the firm’s New York clients or *any* governmental clients?

**A20:**

The RFP seeks information about work performed for any governmental clients, but encourages respondents to emphasize work performed for the State of New York and its agencies and public authorities.

**Q21:**

Question A.3 asks firms to list and describe “any and all” work performed for ESD, any of its subsidiaries or affiliates, or any other New York State, local or federal entities. Our firm has done extensive work for ESD and other public entities in New York. Would ESD object to our providing a selected list of representative matters we have handled for these entities?

**A21:**

No objection.

**Q22:**

Would ESD object to our combining our responses to Questions A.2 and A.3, as there may be substantial overlap between our firm’s relevant experience in a given practice area and matters that we have handled for ESD and/or other New York public entities?

**A22:**

No objection.

**Q23:**

Are we required to provide each of the items of background information listed under Tab 2, or are these items offered as examples only?

**A23:**

These items are offered as examples. Each respondent may exercise discretion about what background information to provide.

**Q24:**

Section VI of the RFP states that eligible law firms must have a New York State office. At this time, Respondent does not have, but is actively considering opening, an office in New York State. If Respondent submits a Proposal in response to the RFP, will that Proposal be considered, or rejected because Respondent does not currently have an office in New York State?

**A24:**

You must have an office in New York at the time you submit your application.

**Q25:**

The fee schedule listed in Section VI – Selection Criteria is different from the fee schedule contained in Attachment 6 to Schedule A. Which one is accurate?

**A25:**

The schedule listed under Section VI – Selection Criteria reflects the current maximum ESD rates. Attachment 6 to Schedule A will be updated to reflect the current fee schedule when Schedule A is next revised.

**Q26:**

In Section X of the RF (“Procurement Forms and Requirements”), at page 13, item #7 contains the following header: “Certification under State Tax Law Section 5-a (*for review only-no submission requirement*).” However, the paragraph following the heading reads: “To comply with STL 5-a, all respondents to this solicitation must include in their proposals a properly completed Form ST-220-CA or an affidavit that the respondent is not required to be registered with the State Department of Taxation and Finance. Is the form required to be included with the RFP response or not?”

**A26:**

A firm does not have to submit a Form ST-220-CA or affidavit in its response to the RFP. If a pre-qualified firm is selected for a future engagement, ESD will require submission of the appropriate form.

**Q27:**

Our company is not a law firm, but does support internal legal teams and outside counsel with data management on legal matters. Will there be a related RFP for e-discovery services?

**A27:**

At this time ESD is not anticipating issuance of an RFP for e-discovery services.

**Q28:**

Can solo practitioners respond to this RFP?

**A28:**

Yes.

**Q29:**

Is each non-MWBE proposing law firm required to designate specific MWBE partner(s) or sub-consultant(s) as part of its RFP response, or is it sufficient for a non-MWBE proposing law firm to certify in its RFP response that it will comply with applicable MBWE requirements? If specific MWBE partner(s) or sub-consultant(s) are designated in a non-MWBE proposing firm’s RFP response, will the non-MWBE proposing firm be at liberty to subsequently engage other MWBE partner(s) or sub-consultant(s) in addition to those designated in its RFP response?

**A29:**

It is sufficient for a non-MWBE respondent to represent in its RFP response that it will comply with all applicable MWBE requirements. Successful non-MWBE respondents who are subsequently selected for an ESD engagement are free to partner with MWBE firms other than those identified in the respondent’s proposal.

**Q30:**

Where can I find the lists of State-certified MWBE and SDVOB firms?

**A30:**

State-certified MWBE law firms can be viewed by entering “legal” in the “Business Description” field of this database:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=6478>

The State-certified SDVOB list is available here – currently it only includes only one law firm, Tully Rinckey PLLC, and one legal support services firm, Extreme Process Service LLC.

[http://ogs.ny.gov/core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/core/docs/CertifiedNYS_SDVOB.pdf)

**Q31:**

I have a question on Required Form, Minority and Women-Owned Business Enterprises- Equal Employment Opportunity Policy Statement. The goals listed in Attachment 7 are 23% for MWBE, 13% MBE and 10% WBE participation. Are these the figures that need to be included in the M/WBE Contract Goals? Are there EEO Contract Goals? I do not see any listed in Attachment 7. What should be listed for these goals? These contract goals are also asked for on form OCSD-1.

**A31:**

Respondents need not fill in the M/WBE contract goals on the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity Policy Statement form (aka form OCSD-1). The goals listed in Attachment 7 to Schedule A are not necessarily applicable to any future engagement with a law firm selected from the pre-qualified list. In general, the State strives for a 30% participation goal for M/WBE firms on all State contracts. If and when a law firm is selected to provide services to ESD, ESD will assign M/WBE goals to that particular engagement. Such goals are commonly fulfilled via sub-consultant arrangements. Section 7 of Schedule A 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.

**Q32:**

Attachment 7 (within Schedule A) states that the Contractor (law firm) “agree[s] to adopt” the policies described in the “M/WBE and EEO Policy Statement.” Must a proposing law firm formally adopt the “M/WBE and EEO Policy Statement” before submitting its RFP response, or is it sufficient for the proposing law firm to formally adopt the “M/WBE and EEO Policy Statement” at a later time before executing its formal contract with ESD? May the policy be adopted only for application to this particular engagement, as the firm already has a generally consistent but differently-worded policy, and the RFP requires exact language? Also, should the “M/WBE and EEO Policy Statement” and M/WBE and EEO Contract Goals (i.e., the last two pages of Attachment 7) be signed and completed by the proposing firm at the time of submitting its RFP response?



**A32:**

As per the RFP, Respondents should complete and sign the MWBE and EEO Policy Statement. As indicated in the answer to Question #12, respondents need not complete the MWBE and EEO contract goals in their responses, as such goals will be assigned if and when ESD chooses to retain a pre-qualified law firm.

**Q33:**

Will MWBE compliance by individual law firms be verified on an annual basis, a monthly basis, or in some other way?

**A33:**

MWBE goals are established for each individual engagement, and are monitored periodically during the engagement.