



NEW YORK
STATE OF
OPPORTUNITY™

**Empire State
Development**

REQUEST FOR QUALIFICATIONS FOR PRE-QUALIFIED LEGAL COUNSEL

ADDENDUM II – SECTION V

Issued: October 8, 2021

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: Section IX – Letter i).

Designated Contacts for this Procurement:

Primary Contact: Ralph Volcy
Secondary Contact: John Discolo

All contacts/inquiries shall be made by email to the following address:

LegalPreQualifiedRFQ@esd.ny.gov

This RFQ is posted on the Empire State Development website:

<https://esd.ny.gov/doing-business-ny/requests-proposals>

SUBMISSION DUE DATE & TIME: NOVEMBER 12, 2021 BY 2:00 PM

V. SELECTION CRITERIA

Eligible law 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 considered, ESD reserves the right to negotiate a lower or different fee structure with any law firm(s) selected. The billing rate to be paid for any engagement of legal services will be as set forth in a retainer agreement.

Please be advised that, at present, the maximum rates paid by ESD are the lesser of the following hourly rates or the firm’s billing rates normally charged to its governmental clients:

Partner/Of Counsel	\$600.00 per hour
Senior Associate ¹	\$550.00 per hour
Mid-level Associate ²	\$500.00 per hour
Junior Associate ³	\$425.00 per hour
Law Clerk ⁴	\$325.00 per hour
Legal Assistant/Paralegal	\$150.00 per hour

~~This maximum rate structure is subject to change from time to time by action of the ESD Directors.~~ ESD is currently in the process of reviewing its adopted maximum rate structure to more accurately reflect current hourly rates paid by governmental entities. Any firm selected as pre-qualified for this offering will be eligible to adjust its maximum rates charged to ESD to the new maximum rates once they are adopted by ESD’s Directors.

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

In evaluating proposals submitted pursuant to this request, ESD will consider the following factors:

Each proposal will be evaluated on a 100-point scale and the Evaluation Committee will consider the following factors:

POINTS	CRITERIA
20	General qualifications and experience of the Firm as evidenced by the responses to the information requested in Section VI (“Submission of Proposals”) of this RFQ, including without limitation client reference checks.
30	Relevant firm experience for each applicable area of law for which prequalification is sought and the qualifications and experience of the staff proposed to be assigned to an ESD engagement.

¹ Senior associates have at least four years of experience.

² Mid-level associates have three or four years of experience.

³ Junior associates have passed the bar exam but have less than three years of experience.

⁴ Law clerks are law student interns for first year associates who have yet to pass the bar exam.

10	Demonstrated experience and success working with ESD or other New York State agencies or other public entities.
10	Anticipated cost of services and willingness to work with ESD to minimize costs
15	<p>ESD will award points to respondents that are certified Minority or Women-owned Business Enterprises (MWBEs) as defined in section three hundred ten of the New York State Executive Law or Service-Disabled Veteran-owned Business Enterprises (SDVOBs) as defined in section three hundred sixty-nine-h of the New York State Executive Law.</p> <p>In order to be awarded points pursuant to the Quantitative Factor, the respondent must (1) identify itself as an MWBE or SDVOB in and (2) be registered with the NYS Department of State as an entity authorized to conduct business in New York State. Respondents identifying themselves as MWBEs must be listed in the directory of New York State-certified MWBEs (“MWBE Directory”) as of the closing of the period for responses to this RFQ. The MWBE Directory is available at: https://ny.newnycontracts.com/. Respondents identifying themselves as SDVOBs must be listed in the directory of New York State-certified SDVOBs (“SDVOB Directory”) as of the closing of the period for responses to this RFQ. The SDVOB Directory is available https://online.ogs.ny.gov/SDVOB/search.</p>
15	Overall organization, completeness and quality of the response and the Firm’s demonstration of a clear understanding of ESD’s mission and activities.

- i. ndent;
- ii. communicate with any Respondent to correct and/or clarify responses that do not conform to the instructions contained herein;
- iii. cancel, or reissue in whole or in part, this RFQ, if ESD determines in its sole discretion that it is its best interest to do so; and
- iv. extend the term of any agreement on terms consistent with this RFQ.

ESD may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFQ will be at the sole cost and expense of the Respondent.

All information submitted in response to this RFQ is subject to the Freedom of Information Law (“FOIL”), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, Proposals may be discussed at meetings of the ESD Directors, which meetings are subject to the Open Meetings Law.

ESD reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the “Response Information”) for any purpose. By submitting a Proposal, each Respondent waives any and all claims against ESD relating to ESD’s retention or use of the Response Information.

Required Approvals

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall ESD have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

Performance

The Contractor's performance will be assessed by ESD according to the achievement of The Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting Contract. ESD will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

Contractor warrants that its services shall be performed in accordance with applicable professional standards and that the Contractor shall correct, at no charge to ESD, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

Contractor Staff

Any changes in staffing from those presented in the Proposal shall be subject to approval by ESD. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify ESD of any proposed changes in staff immediately. ESD has an absolute right and discretion to approve or disapprove any proposed changes in staff. ESD, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

The Agreement resulting from this RFQ is intended to secure the professional services of the Contractor because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the Contractor.

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Manager. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the

Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFQ shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.