



**Empire State
Development**

**REOPENING
OF
REQUEST FOR PROPOSALS FOR
PRE-QUALIFIED LAW FIRMS**

**(ORIGINALLY ADVERTISED ON
JUNE 27, 2016)**

**PROPOSAL DUE DATE AND TIME: On or before 12 noon on Wednesday, August 17, 2016
(Late proposals cannot be accepted)**

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I. INTRODUCTION

The New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) is the chief economic development agency of the State of New York (the “State”). The mission of ESD is to promote a vigorous and growing state economy; encourage business investment and job creation; and support diverse, prosperous local economies across the State through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance. ESD has broad statutory powers, including the power 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. Additional information about ESD may be found on ESD’s website at www.esd.ny.gov.

II. OVERVIEW

This is a re-opening of an RFP for pre-qualified law firms that was originally advertised in the NYS Contract Reporter on June 27, 2016 (“June RFP”). ESD will consider all proposals received in response to the June RFP in addition to any new responses to this RFP. IF YOU RESPONDED TO THE ORIGINAL RFP, YOU NEED NOT RESUBMIT YOUR PROPOSAL. However, Respondents to the June RFP are free to change or supplement their previous response or to provide a new response. PLEASE INDICATE ON THE COVER OF THE PROPOSAL WHETHER YOU ARE SUBMITTING (1) A NEW RESPONSE (no previous submission), (2) A SUPPLEMENT OR CHANGE TO A PREVIOUS RESPONSE, OR (3) A REPLACEMENT OF A PREVIOUS RESPONSE TO THE JUNE RFP. NO NEGATIVE INFERENCE WILL BE MADE WITH REGARD TO ANY RESPONDENT THAT CHOOSES NOT TO CHANGE, UPDATE OR SUPPLEMENT A PREVIOUS RESPONSE.

The purpose of this Request for Proposals (“RFP”) is to pre-qualify law firms and/or counsel (collectively, “law firms” or “firms”) as eligible to represent ESD, its subsidiaries and/or affiliates, from time to time, within ESD’s maximum rate policy, in connection with economic development projects and related activities across New York State involving various public and private sector parties. Law firms will be eligible for specific retention that may arise during the next three (3) years, beginning on or about October 2016.

This solicitation seeks to replace, not supplement, any and all pre-qualified counsel lists which will expire in October 2016; accordingly, law firms on any existing ESD counsel list must, if they wish to

continue to be pre-qualified, respond to this RFP.¹ Please note that existing retainer agreements will not be affected by the expiration of the pre-qualified list; however, any firm, including those currently providing services to ESD pursuant to a retainer agreement, must respond to this RFP if they wish to be pre-qualified to provide legal services to ESD under a future contract. Note also that in order to be selected for this purpose, respondents must agree to render services at rates not to exceed those set forth in the maximum compensation rate schedule in the “SELECTION CRITERIA” section of this RFP.

In the event that the principal partners and attorneys identified as being responsible for ESD’s matters (as required by Section IV(A)(3) of this RFP) or other key members of a pre-qualified firm’s team in a particular area of expertise, leave the prequalified law firm, the pre-qualification will “follow” these key law firm member(s). Similarly, if a pre-qualified firm combines with another firm and such principal partners and other attorneys remain with the newly combined firm, the newly combined firm will be considered to be pre-qualified in that area of expertise.

III. SCOPE OF WORK

ESD is seeking proposals from law firms, large and small, that have demonstrated 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) taxation; (7) bond financing; (8) foreclosure; (9) employment; (10) transactional direct and indirect investments; and (11) regulatory litigation. With respect to regulatory litigation, ESD is seeking firms that have significant experience representing New York State and municipal entities in Article 78 and regulatory proceedings. ESD reserves the right to assign firms with demonstrated expertise in one area of law to a legal matter that may cross over to subject matter areas typically covered by firms with expertise in other practice areas.

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

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

¹ ESD established a Pre-Qualified Investment Counsel List in August 2014. The Pre-Qualified Investment Counsel List will not be replaced; rather the firms on that List will be incorporated into the new list of Pre-Qualified Law Firms and the effectiveness of the Pre-Qualified Investment Counsel list will be extended until the expiration of the new list. If a firm is not currently on the Pre-Qualified Investment Counsel List, but would like to be on that list, they can respond to this RFP and indicate that they would like to be considered for the “transactional direct and indirect investments” practice area.

Firms already listed on the Pre-Qualified Investment Counsel list do not need to resubmit a proposal for that category, but do need to submit a proposal if they wish to be considered for pre-qualification in any other practice area.

Note that inclusion on the pre-qualified legal 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 legal counsel arises. The purpose of the pre-qualified list is to procure legal counsel available for engagement on short notice.

IV. REQUIRED INFORMATION

Below is the list of information and documentation required of each respondent. A proposal may be rejected if it does not include the required information and documents.

A. Tab 1: Basic Information

- 1) Clearly indicate which one or more of the practice areas listed above in the “SCOPE OF WORK” section of this RFP that the firm is interested in serving as ESD counsel.
- 2) For the practice areas identified, provide a description of the law firm’s relevant experience. Include a brief description of representative transactions and specify the law firm’s role for each.
- 3) Indicate whether services have been provided previously to ESD or any of its subsidiaries or affiliates, or any other New York State, local or federal entities. If so, list and describe any and all work performed including (a) the date(s) such work was performed, (b) the entity for which such work was performed, and (c) the area of expertise for the work performed. Please be sure to also list and describe any experience in representing such entities in Article 78 proceedings and similar actions related to their powers and duties.
- 4) 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.
- 5) Identify and provide contact information for the person(s) in the firm who will be ESD’s primary point(s) of contact.
- 6) If the law firm is a State-certified MWBE or SDVOB firm, provide documentation evidencing certification. Law firms that are not certified, but have applied for certification, should provide evidence of filing, including the filing date.
- 7) A description of the instances, if any, in which the law firm has worked with MWBE or SDVOB 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.

- 8) A statement of the law firm's willingness, if any, to engage in future MWBE and SDVOB partnering or mentoring arrangements with either a law firm selected by ESD or one of your choosing and if the latter, a list of co-counsel MWBE and SDVOB law firms with which the law firm is prepared to partner. Such statement should include an explanation of how the law firm would suggest structuring such an arrangement and allocating services and fees between the participating law firms.
- 9) A statement that the law firm will agree to bill at rates not to exceed those set forth in the maximum compensation rate schedule as set forth in the "SELECTION CRITERIA" section of this RFP.

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

B. Tab 2: Background Information

Background information, such as number of attorneys in the law 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 should be included in the same order as listed below:

- 1) The forms listed below (and further described in the "PROCUREMENT FORMS & REQUIREMENTS" section of this RFP), which can be found as attachments to Schedule A: Conditions Applicable to the Corporation's Law Firms and Other Special Consultants, available at http://esd.ny.gov/corporateinformation/Data/RFPs/03272014_SCHEDULEAforLegalFirms_March2014.pdf should be completed, executed, and included in the submission.
- 2) The following representation (regarding the Iran Disinvestment Act) must be submitted on firm letterhead and signed by the respondent firm:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state finance law."

- 3) The Vendor Responsibility Questionnaire For-Profit Business Entity (Non-Construction) form, discussed below in the PROCUREMENT REQUIREMENTS section of this RFP, available at <http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3290s.pdf>, completed, executed, and sworn before a notary public.

V. SCHEDULE OF DATES

Release of RFP	August 2, 2016
Deadline for Submission of Questions	August 8, 2016
Deadline for ESD to Respond to Questions	August 11, 2016
Submission of Proposals	August 17, 2016 at 12 noon
Interviews (if necessary)	August 26, 2016 – September 30, 2016
Announcement of Successful Bidders	October/November 2016

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 at <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

VI. 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 taken into account, 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 ²	\$550.00 per hour
Mid-level Associate ³	\$500.00 per hour
Junior Associate ⁴	\$425.00 per hour
Law Clerk ⁵	\$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.

² Senior associates have at least four years of experience.

³ Mid-level associates have three or four years of experience.

⁴ Junior associates have passed the bar exam but have less than three years of experience.

⁵ Law clerks are law student interns or first year associates who have yet to pass the bar exam.

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:

- 1) Relevant firm experience in each category for which prequalification is sought and the qualifications and experience of the staff proposed to be assigned to the ESD engagement (50%).
- 2) Demonstrated commitment of time and resources to ESD or other New York State agencies or other public entities (10%).
- 3) Anticipated cost of services and willingness to work with ESD to minimize costs (20%).
- 4) Overall organization, completeness, and quality of proposal, including cohesiveness, clarity of response and demonstrated understanding of ESD, its mission and activities (20%).

VII. SUBMISSION OF PROPOSALS

Proposal submissions must be received by ESD on or before 12 noon on August 17, 2016. The submission should be labeled "Prequalified Legal Counsel RFP Response" and mailed to the following address:

Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017
Attn: Edgar Camacho, ESD Procurement Unit
Re: Prequalified Legal Counsel RFP Response

The submission should include seven (7) copies of the information and other items required by this RFP, and one additional copy on disk or flash drive (pdf format preferred). Electronic submissions will not be accepted.

VIII. QUESTIONS

ESD will accept written questions via email from prospective respondents regarding the RFP. Please submit questions to Lauren G. Axelrod at legalprequalrfp@esd.ny.gov. **A document containing all questions and answers from the June RFP is available at http://esd.ny.gov/corporateinformation/Data/RFPs/06272016_PreQualCounselQandA.pdf. Please review this document before submitting a question.**

Written questions must include the requestor's name, e-mail address and the respondent represented and should be received by 11:59 PM EDT on August 8, 2016. Responses to all timely

and appropriate questions relating to this RFP will be provided in writing on ESD's website at: <http://www.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. Law Firms should note that any necessary clarification must be sought by the deadline for questions set forth in the "SCHEDULE OF DATES" section of this RFP. Law firms are urged to check ESD's web site frequently for notices of any clarification of or changes, additions or deletions to the RFP.

The designated contact person for this solicitation is Lauren G. Axelrod, Senior Counsel, Empire State Development, 633 Third Avenue, New York, NY 10017. Ms. Axelrod can be reached by email at: legalprequalrfp@esd.ny.gov. OTHER THAN THROUGH THE CONTACT PERSON IDENTIFIED HEREIN, PROSPECTIVE PROPOSERS SHALL NOT APPROACH ESD'S EMPLOYEES OR COMMUNICATE WITH ESD DURING THE RESTRICTED PERIOD OF THIS RFP PROCESS ABOUT ANY MATTERS RELATED TO THIS RFP OR ANY PROPOSALS SUBMITTED PURSUANT THERETO. **Please read Section X.1 below and State Finance Law §§139-j and 139-k carefully in this regard. Violation may result in the proposal being rejected without consideration, as well as other consequences.**

IX. GENERAL PROVISIONS

The issuance of this RFP and the submission of a response by a law firm or the acceptance of such a response by ESD does not obligate ESD in any manner. ESD reserves the right to:

- 1) amend, modify or withdraw this RFP;
- 2) revise any requirement of this RFP;
- 3) waive any requirements of this RFP that are not material;
- 4) seek clarifications and revisions of responses to this RFP;
- 5) require supplemental statements or information from any responsible party;
- 6) accept or reject any or all responses to this RFP;
- 7) extend the deadline for submission of responses to this RFP or otherwise modify the schedule set forth in this RFP;
- 8) negotiate potential contract terms with any respondent to this RFP;
- 9) engage in discussions with any respondent to this RFP to correct and/or clarify responses;

10) require clarification at any time during the procurement process and/or require correction of responses for the purpose of assuring a full and complete understanding of a respondent's proposal and/or determine a respondent's compliance with the requirements of the solicitation; and

11) cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so.

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

All information submitted in response to this RFP is subject to the Freedom of Information Law, 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, all responses may be discussed at meetings of the ESD Directors, which are subject to the Open Meetings Law.

X. PROCUREMENT FORMS AND REQUIREMENTS

Additional requirements for this RFP are described below. Relevant forms, where required to be submitted, must be executed and included in the submission in the same order as listed below:

1. State Finance Law Sections 139-j and 139-k forms

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact listed below; the completion by respondents of the "Offerer Disclosure of Prior Non-Responsibility Determinations" and the "Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law § 139-j(3) and §139-j(6)(b);" and periodic updating of such forms during the term of any contract resulting from this RFP.

Respondents must submit the "Offerer Disclosure of Prior Non-Responsibility Determinations" and the "Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law § 139-j(3) and §139-j(6)(b)" as part of their submittal. Copies of these forms are available at:

http://www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf.

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by prospective respondents during the Restricted Period, make a determination of the responsibility of respondents and make all such information publicly available in accordance with applicable law. If a prospective respondent is found to have knowingly and willfully violated the State Finance Law provisions, that prospective respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible respondent and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact person for this solicitation is Lauren G. Axelrod, who can be reached at legalprequalrfp@esd.ny.gov.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at: http://www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf. All potential respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants must each complete the forms required above.

2. Vendor Responsibility Questionnaire

All respondents to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the respondent, if any, shall include clauses providing that the respondent remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any respondent to this RFP.

To assist in the determination of responsibility, ESD requires that all respondents to this RFP register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Respondents are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State

Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company's trade industry. Per the website, respondents are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

3. Iran Divestment Act

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. For further information and to view this list please go to: <http://www.ogs.ny.gov/about/regs/ida.asp>.

4. Non-Discrimination and Contractor and Supplier Diversity Requirements

Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§140-145, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified MWBEs 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 MWBEs 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 MWBEs in State procurement contracting versus the number of MWBEs 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 statewide certified 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 MWBEs and the employment of minority group members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For contracts resulting from this solicitation, ESD will establish a goal for MWBE participation. Such contracts will set forth additional requirements that will encourage business participation opportunities for MWBEs.

ESD encourages MWBE law firms to respond to this solicitation and to provide such documentation necessary to establish their status as such. ESD also encourages law firms that may be eligible for MWBE certification to respond to this solicitation. ESD will strongly consider qualifying proposals from MWBE law firms in response to this solicitation.

Law firms responding to this solicitation that are not MWBE-certified are strongly encouraged to consider partnering, or other joint venture arrangements, with other certified MWBE law firms in order to give MWBE law firms the opportunity to participate in the legal services performed under contracts to be awarded to pre-qualified legal counsel by ESD.

General inquiries or questions relating to the aforementioned policies, MWBE participation, and the goals specified herein may be addressed to the Office of Contractor and Supplier Diversity ("OCSD") at OCSD@esd.ny.gov.

Equal Employment Opportunity Requirements

Respondents will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, Form OCSD-1 (available at http://www.esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEEOPolicyStatement.pdf), to ESD with their bid or proposal.

If awarded a contract with ESD, a firm will be required to meet the MWBE requirements as set forth in New York State Executive Law Article 15-A and 5 NYCRR §§140-145.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, firms retained by ESD will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the

requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

5. Service-Disabled Veteran-Owned Businesses

Article 17-B of the Executive Law, enacted in 2014, acknowledges that SDVOBs strongly contributed to the economies of the State and nation. In recognition of their economic activity in doing business in New York State, ESD is committed to the State's policy of encouraging the development of SDVOB firms. ESD employs applicable measures and procedures provided by the Director of the Division of Service-Disabled Veterans' Business Development in the Office of General Services to ensure that SDVOBs are afforded the opportunity for meaningful participation in the performance of ESD's contracts.

SDVOBs can be readily identified on the directory of certified businesses at:
http://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

ESD encourages SDVOB law firms to respond to this solicitation and to provide such documentation necessary to establish their status as such. ESD also encourages law firms that may be eligible for SDVOB certification to apply for certification to the Division. ESD will strongly consider qualifying proposals from SDVOB law firms in response to this solicitation.

Law firms responding to this solicitation that are not SDVOB-certified are strongly encouraged to consider partnering, or other joint venture arrangements, with other certified SDVOB law firms in order to give SDVOB law firms the opportunity to participate in the legal services performed under contracts to be awarded to pre-qualified legal counsel by ESD.

General inquiries or questions relating to the aforementioned policies, SDVOB participation, and the goals specified herein may be addressed to OCSD at OCSD@esd.ny.gov.

6. Encouraging the Use of NYS Businesses in Contract Performance Form

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here:

<http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

7. Certification under State Tax Law Section 5-a *(for review only – no submission requirement)*

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all respondents to this solicitation must include in their Proposals a properly completed Form ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit (http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

8. Schedule A

Following final selection of a respondent, ESD will prepare a contract defining all project terms and conditions and the respondent’s responsibilities in conformance with “Schedule A,” which can be found at:

http://www.esd.ny.gov/CorporateInformation/Data/RFPs/03272014_SCHEDULEAforLegalFirms_March2014.pdf.

Please note respondents do not need to complete the entire Schedule A with the submission of their Proposal. However, respondents should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as respondents will need to accept these terms as a condition to contract execution.

9. Project Sunlight *(for review only – no submission requirement)*

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, “appearances” (broadly defined as any substantive in-person meetings or video conferences that are meant to have an impact on the decision-making process of a State entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract for real property (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.