



**OUTSIDE COUNSEL SERVICES
Request for Proposals (RFP) 3776**

NYSERDA reserves the right to extend and/or add funding to the Solicitation should other program funding sources become available.

Proposals Due: Wednesday, January 24, 2018 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (“NYSERDA”) invites proposals from law firms interested in providing outside legal services to support the administration of NYSEDA’s programs. NYSEDA seeks firms within and outside of New York State with demonstrated experience in specific areas of law and/or policy. Firms must be prepared to demonstrate that they are a certified, in the process of being certified, or if not certified, willing to subcontract with a Minority and Women-Owned Business Enterprise (MWBE) in the event the firm’s contract with NYSEDA exceeds \$25,000. Firms may submit a proposal to provide services for one or more of the following categories:

1. Energy regulatory matters, both federal and New York State, specifically relating to clean energy market conditions, standards, business models, and financing structures as they may arise at both the state and federal levels at the Federal Energy Regulatory Commission and in other fora;
2. General New York State public authority legal and regulatory compliance;
3. Intellectual property, particularly as it relates to enforcement of contractual recoupment or royalty provisions in NYSEDA’s contracts, data management and compliance, and software licensing agreements;
4. Taxation and tax policy, specifically relating to both federal and State production and investment tax credits, and the impacts of state and federal tax reform on energy law and policy, including energy storage implementation;
5. E-discovery, including Freedom of Information Law request fulfillment and document review;
6. Uniform code, energy code, and stretch code development, including drafting, analyzing, reviewing, advising on, and/or commenting on proposed amendments to building, energy, or stretch codes;
7. Matters involving the New York Green Bank, specifically, the raising of private sector funds to be invested alongside public funds at the portfolio level, which may include advice and analysis relating to potential legal structures, state and federal regulatory issues, investor term sheets, issuance of an offering

memorandum or equivalent, drafting and negotiating of investor documentation, and compliance and/or governance processes and procedures (see separately issued request for proposals for advisory services at <https://portal.greenbank.ny.gov/servlet/servlet.FileDownload?file=00Pt0000004DYwyEAG>); and,

8. Federal and state legal matters relating to the decommissioning of nuclear energy generating facilities.

The firm or firms selected will be expected to act as outside counsel for NYSERDA for a contract period ending October 1, 2019, renewable for up to two (2) years at NYSERDA's sole discretion. NYSERDA reserves the right to add additional time and funding. ***Firms that have contracts with NYSERDA covering one of the above categories should not propose into that category in this RFP but may propose into other categories.***

Proposal Submission: Online submission is preferable. Proposers may submit Word, Excel, or PDF files (file formats include: csv, doc, docx, gif, jpeg, jpg, pdf, png, ppt, pptx, pps, ppsx, tif, txt, xls, xlsx, and zip). Individual files should be 100MB or less in file size. Proposal PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility. Files should not be scanned. For ease of identification, all electronic files must be named using the proposer's entity name in the title of the document. NYSERDA will also accept proposals by mail or hand-delivery if online submission is not possible. For detailed instructions on how to submit a proposal (online or paper submission), click the link "[Application Instructions and Portal Training Guide \[PDF\]](#)" located in the "Current Opportunities" section of NYSERDA's website (<https://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>).

No communication intended to influence this procurement is permitted except by Sarah Main at (518) 862-1090, ext. 3906 or Sarah.Main@nyserda.ny.gov, or Laura Rowe, Esq. at (518) 862-1090, ext. 3610 or Laura.Rowe@nyserda.ny.gov (for technical questions). If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507 or Venice.Forbes@nyserda.ny.gov or Ann Trivison at (518) 862-1090, ext. 3401 Ann.Trivison@nyserda.ny.gov. Contacting anyone other than the Designated Contacts (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offeror, and (2) may result in the proposer not being awarded a contract.

*** All proposals must be received by 5pm Eastern Time on the date noted above. Late, faxed, or emailed proposals will not be accepted.** Incomplete proposals may be subject to disqualification. It is the proposer's responsibility to ensure that all pages have been included in the proposal. Please note: for online submission, there are required questions that you will have to answer in addition to uploading attachments and you should allot at least 60 minutes to enter/submit proposals. The online proposal system closes promptly at 5pm Eastern Time. Files in process or attempted edits or submission after 5pm Eastern Time on the date above, will not be accepted. If changes are made to this solicitation, notification will be posted on the "Current Opportunities" section of NYSERDA's website (<https://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>).

I. Introduction

NYSERDA is a public benefit corporation of the State of New York created and operating under the provisions of Public Authorities Law, §§1850 *et. seq.* (the "New York State Energy Research and Development Authority Act" or "Act"). NYSERDA offers objective information and analysis; innovative programs, including energy efficiency, renewable energy, and energy research and development; technical expertise; and funding to help New Yorkers increase energy efficiency, save money, use renewable energy, and reduce reliance on fossil fuels. In addition, NYSERDA is responsible for managing radioactive wastes and facilities at the Western New York Nuclear Service Center in West Valley, New York; managing certain premises and facilities in Malta, New York, known as the Saratoga Technology + Energy Park (STEP); and reducing costs of public utility and other energy facilities through tax-exempt or taxable non-recourse revenue bond financing.

Additional background information on NYSERDA, including by-laws, is available on the NYSERDA website at www.nyserda.ny.gov.

NYSERDA requests proposals from law firms interested in providing outside legal services related to a wide array of legal issues.

II. Scope of Services

Proposal Categories

The following categories comprise the scope of requested legal services:

1. Energy regulatory matters;
2. New York State public authority legal and regulatory compliance;
3. Intellectual property;
4. Taxation and tax policy;
5. E-discovery;
6. Uniform code, energy code, and stretch code development;
7. New York Green Bank matters; and
8. Matters pertaining to nuclear energy generating facilities.

Firms may respond to one or more category of requested legal services (outlined in greater detail below). Firms that have contracts with NYSERDA covering one of the above categories should not propose into that category in this RFP but may propose into other categories. If responding to more than one category, firms should submit separate proposals in Salesforce (see "Proposal Submission" above) for each category in which the firm wishes to be considered and evaluated. Each separate submission must conform to the Submission Requirements outlined below.

Some of NYSERDA's legal needs will require services of firms that are local to the

Albany New York region. For state-level matters, NYSERDA will require that firms have a New York practice. For federal matters and those not directly implicating New York State law or regulation, firms need not necessarily be located within New York State.

The firm or firms selected will be expected to act as outside counsel for NYSERDA, on an as-needed basis, for a contract period ending October 1, 2019 renewable for up to two (2) years at NYSERDA's sole discretion. NYSERDA reserves the right to add additional time and funding to the selected contracts.

Specific Legal Services

1. Energy Regulatory Matters
 - a. Rendering objective opinions with respect to matters of state and federal law (including matters before the Federal Energy Regulatory Commission and in other fora) that arise in the administration of NYSERDA's programs and implementation of state energy policies, including aspects of program design related to clean energy market conditions, standards, business models, financing structures, and policy development.
2. New York State Public Authority Legal and Regulatory Compliance
 - a. Preparing, reviewing, and/or advising NYSERDA with regard to resolutions, notices, and other documents or procedures required in connection with State and local laws, regulations, policies, and/or procedures.
 - b. Drafting, analyzing, advising, or commenting on federal and state legislation, statutes, regulations and rules, NYSERDA guidelines, and other matters.
3. Intellectual Property
 - a. The enforcement of contractual recoupment or royalty provisions in NYSERDA and third-party contracts, data management and compliance, and software licensing agreements.
 - b. Providing advice with respect to, and potentially representing NYSERDA in, dispute resolution and litigation matters, particularly, matters that involve intellectual property, bankruptcy or other commercial issues.
4. Taxation and Tax Policy
 - a. Issues relating to both federal and State production and investment tax credits, or other local, state and federal tax matters that may directly or indirectly impact clean energy markets and development.
5. E-Discovery
 - a. Fulfillment of Freedom of Information Law requests and assisting NYSERDA with document review in the context of responses to requests for public documents or responding to other requests for documents from public or private entities.
6. Uniform Code, Energy Code, and Stretch Code Development
 - a. Drafting, analyzing, reviewing, advising on, and/or commenting on proposed

amendments to building, energy, or stretch codes (stretch codes are voluntary, more stringent model energy codes that can be adopted by municipalities, utilities, or other entities to achieve greater levels of energy efficiency). This may include drafting model codes and/or model implementation resolutions for local governments, advising on how to assist local governments in implementing or enacting the codes, and/or providing objective opinions related to NYSERDA programmatic activities that support or intersect with the Uniform Code, Energy Code, or Stretch Codes.

7. NY Green Bank Matters
 - a. Assisting NYSERDA with legal, regulatory, structural and other advice related to the planned future operations and functions of the New York Green Bank, a division of NYSERDA, with respect to the raising of private sector funds to be invested alongside public funds at the portfolio level, which may include advice and analysis relating to potential legal structures, state and federal regulatory issues, investor term sheets, issuance of an offering memorandum or equivalent, drafting and negotiating of investor documentation, and compliance and/or governance processes and procedures (see separately issued request for proposals for advisory services at <https://portal.greenbank.ny.gov/servlet/servlet.FileDownload?file=00Pt0000004DYwyEAG>).

8. Nuclear Energy Generating Facilities
 - a. Federal and state legal matters relating to the decommissioning of nuclear energy generating facilities including considerations such as transportation, waste disposal, unrestricted use, and environmental issues.

Regardless of the category of services provided, firms may be required to participate in meetings with NYSERDA counsel and staff, NYSERDA's Members (board of directors) and other parties, as necessary or appropriate.

III. Proposal Requirements

1. **Submission Requirements.** Proposing firms are required to submit all Proposal Requirements for each category of legal services (see Specific Legal Services above) for which the firm wishes to be considered for qualification. Firms are not required to propose for every category and are encouraged to propose for those areas in which they have experience and expertise. Firms will only be considered for qualification in categories for which all Proposal Requirements have been submitted. Firms must clearly identify which of the categories are included in their proposals. Submissions should conform to the following standardized file name: Firm Name_Category of Legal Service (i.e. Law Firm_Nuclear Energy Generating Facilities).

To meet the evaluation criteria listed below, firms must provide adequate information to effectively demonstrate the capability to perform the legal services required. Completed proposals must be electronically submitted in accordance with the Proposal Submission instructions outlined above. NYSERDA will also accept proposals by mail or hand-delivery if online submission is not possible. For detailed instructions on how to submit a proposal (online or paper submission), click the link “[PDF]” located in the “Current Opportunities” section of NYSERDA’s website (<https://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>). **Late proposals will not be evaluated, and proposals lacking the Submission Requirements may be excluded from evaluation.** Faxed or e-mailed copies will not be accepted.

2. **Procurement Lobbying Requirements - State Finance Law sections 139-j and 139-k.** In compliance with §139-j and §139-k of the State Finance Law (see Section V, General Conditions below for additional information), proposers will be required to answer questions during proposal submission, which will include making required certification under the State Finance Law and to disclose any Prior Findings of Non-Responsibility.
3. **Format.** The proposal must be in the following format: Proposals should be uploaded in Salesforce as either Word documents, PDFs, or, where applicable, as Excel documents. Each proposal should consist of one Word, PDF, or Excel document containing the following two Sections: Section I must consist of responses to the qualifications items (Section 4. Description of Qualifications, below). Section II must consist of complete contract cost and pricing information (Section 5. Cost, below). As a separate Word or PDF document, upload the resumes of attorneys who will work on the account under the category of legal service you propose to provide. Additionally, as a separate document, upload the proposed retainer agreement (Section 6. Agreement, below). Each section must be complete, so that it can be evaluated independently. Each document uploaded in response to the category of legal services you propose to provide should conform to the file name convention described above under Submission Requirements.

There is no page limit, font size, or style requirements for submissions. Please use best judgment as to how many pages are required to adequately address Section 4

(Description of Qualifications) and Section 5 (Cost) below. Proposals should not be excessively long or submitted in an elaborate format. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, the RFP number, and the page number.

4. **Description of Qualifications.** For each of the categories of legal services you propose to provide, you should:
 - a) Describe the law firms experience in general representation of public entities, including New York State public benefit corporations or public authorities.
 - b) Provide a description for each of the services you propose to provide to NYSERDA. Clearly indicate which of the categories in the enumerated Specific Legal Services list in Section II you wish to be considered for and evaluated on. Each category should be addressed separately, so it can be evaluated independently. Indicate whether your firm is prepared to render the services enumerated using its own resources or whether some services will be subcontracted. The description should emphasize particular services, and indicate whether your firm has special expertise in rendering those services. If applicable, describe the nature of that special expertise. Proposers may propose into any number of the enumerated service categories.
 - c) Be available to accommodate the legal needs of NYSERDA. Proposers must demonstrate that primary and reasonably qualified backup and support attorneys are available as needed, and that the proposer has staff capabilities to perform the work on a timely basis. Proposers must be supported by a firm with sufficient professional/support staff to adequately provide the required services.
 - d) Provide the names of the partners, associates, and paralegals who would be assigned to NYSERDA's account and their experience in performing the services requested in this RFP.
 - e) Include resumes for all employees proposed to be involved on this account. Include a description of each employee's function in the firm, title, office address, and number of years of service with the firm and other relevant past experience. Attorney resumes should clearly coincide with the category of legal services the attorney proposes to provide in item 4(b).
 - f) Describe the percentage of the firm's time commitment to this account that each person proposed to be involved on this account would be anticipated to provide.
 - g) Describe the availability of the lead person(s) for consultation with NYSERDA, including but not limited to his or her ability to meet with NYSERDA staff in Albany, New York.

- h) Discuss fully any conflicts of interest, actual or perceived, that might arise in connection with your firm's involvement with NYSERDA. If conflicts do or might exist, describe how your firm would resolve them. State whether your firm represents any New York State energy public utility, public authority, or any independent power producer. If so, state the name of each such client and the nature of your representation.
- i) Identify any litigation or administrative proceedings to which you are a party and which would either materially impair your ability to perform the services enumerated herein and for which this RFP was issued or, if decided in an adverse manner, materially adversely affect the financial condition of your firm.
- j) Identify the employees discussed in (d) that have been the subject of any investigation or disciplinary action by the New York State Ethics Commission, the Commission on Public Integrity, the Temporary State Commission on Lobbying, or the State. Describe briefly how any matter was resolved or whether it remains unresolved. Proposers must certify that attorneys working on this account have never been reprimanded, censured, or suspended by the Supreme Court for ethics violations.
- k) Indicate the address of the office through which NYSERDA's account will be primarily serviced, and any anticipated travel or other such costs.
- l) Provide any other information you believe would make your law firm's representation of NYSERDA superior to other firms' representation.
- m) Provide an explanation of any changes you would request to the Attachment A - Sample Letter Agreement.
- n) Provide three client references, including name, address, e-mail and telephone number.
- o) If your firm is not MWBE-certified, describe your experience in subcontracting with such businesses. Explain your methodology for attracting and subcontracting with MWBE-certified businesses, and how you intend to meet NYSERDA's MWBE goals.
- p) Furnish information on the number and percentages of minorities and women among the partners and other attorneys of the firm, as well as para-professional and support staff; a copy of the firm's affirmative action or equal opportunity plan or other commitment to affirmative action and equal employment opportunity or its status as a minority or women-owned business; and an explanation of how your firm, if selected, would help NYSERDA further its policy of promoting participation of minorities and women in the provision of services to it.

5. **Cost.**

- a) State the rates at which the services of assigned personnel would be provided to NYSERDA beginning in fiscal year 2018-2019 *i.e.* Date of Award to October 1, 2019 and for NYSERDA fiscal years 2018-19; 2019-20 (April 1 through March 30), and how services would be billed. Increases, if any, for those years may be stated in terms of percentages above the rates for the fiscal year ending March 31, 2019. Include:
 - i) For each person whose resume is provided in response to 4(e) above, your normal hourly rate and the hourly rate you propose to charge NYSERDA.
 - ii) For each applicable category of support staff or other assigned staff, the normal hourly rate and the hourly rate you propose to charge NYSERDA, if billed separately.
 - iii) Any reduced rates or fees charged to other State or local governments in New York for these types of services (including blended rates).
 - iv) A statement of the basis on which any other firm expenses related to services provided to NYSERDA would be billed, if other than cost.
 - v) A statement of any special considerations with respect to billing or payment of fees and expenses that your firm offers and that you believe would differentiate you from other proposers and make your firm's services more cost effective for NYSERDA.
 - vi) A statement whether you would be willing to agree to caps on fees on an issue by issue basis.

6. **Agreement.** Proposers should provide the retainer agreement their firm proposes to use if selected by NYSERDA under this RFP. The awarded proposer's retainer agreement will serve as the basis for negotiations between the parties and, when finalized, will be included as Exhibit A to the final agreement (see Sample Letter Agreement, attached hereto as Attachment A).

V. **Proposal Evaluation and Selection Process**

1. **Proposal Evaluation.** Proposals will be evaluated categorically. For each category of legal services in Section II. Scope of Services for which you wish to be considered, proposals meeting the RFP requirements will be evaluated using the following Evaluation Criteria.
 - a) Experience in general representation of public entities, including representation of

New York State public benefit corporations or public authorities.

- b) Quality and depth of the firm's expertise and its prior capability in providing the legal services in Section II. Scope of Services it proposes to render for NYSERDA. For those firms who have worked in any capacity with NYSERDA, the quality of work on those transactions will be considered.
 - c) Anticipated cost of services and willingness to work with NYSERDA to minimize cost.
 - d) Commitment of time and resources to this account, and amenability to, and facility for, working with NYSERDA attorneys and staff in various capacities.
 - e) Information provided by client references.
 - f) Overall organization and quality of proposal, including cohesiveness, conciseness, and clarity of response.
 - g) The proposer is a NYS-certified Minority and Women-Owned Business.
 - h) The proposer does not have a conflict of interest in providing the particular legal service it proposes to provide, nor in the representation of NYSERDA as a state entity.
2. **Selection Process.** A Scoring Committee comprised of internal NYSERDA staff will review and evaluate proposals. At NYSERDA's discretion, proposers may be requested to interview with all or part of the Scoring Committee to address any potential questions or clarifications outlined in the proposals. Proposers will be notified if they are requested to attend an interview.

VI. GENERAL CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501

<https://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx>.
However, NYSERDA cannot guarantee the confidentiality of any information submitted.

Omnibus Procurement Act of 1992 - It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises, as bidders, subcontractors, and suppliers on its procurement Agreements.

Information on the availability of New York subcontractors and suppliers is available from:

Empire State Development
Division for Small Business
625 Broadway
Albany, NY 12207

A directory of certified Minority- and Women-Owned Business Enterprises is available from:

Empire State Development
Minority and Women's Business Development Division
625 Broadway
Albany, NY 12207

State Finance Law sections 139-j and 139-k - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at <https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx> . Proposers are required to answer questions during proposal submission, which will include making required certification under the State Finance Law and to disclose any Prior Findings of Non-Responsibility (this includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years).

Tax Law Section 5-a - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department.

The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. See, ST-220-CA (available at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf> .

Contract Award - NYSERDA anticipates making one or more award(s) under this solicitation. NYSERDA anticipates contracts will have an end date of October 1, 2019, renewable for up to two years, unless NYSERDA management determines a different structure is more efficient based upon proposals received. A contract may be awarded based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each proposal should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA may at its discretion elect to extend and/or add funds to any project funded through this solicitation. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the checklist questions. Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. NYSERDA expects to notify proposers in approximately 9 weeks from the proposal due date whether their proposal has been selected to receive an award. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

NYSERDA also reserves the right to correct any arithmetic errors, to accept or reject any of the firm's employees assigned to provide services on this project and to require their replacement at any time, and to reject any proposal containing false or misleading statements or that provides references that do not support an attribute or a condition claimed by the proposer.

Limitation - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest. NYSERDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Letter Agreement. NYSERDA reserves the right to disqualify proposers based upon the results of a background check into publicly available information and the presence of a material possibility of any reputational or legal risk in making of the award.

Disclosure Requirement - The proposer shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSERDA after the award of a contract, NYSERDA may exercise its stop-work right pending further investigation, or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances. Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

VII. Attachments

Attachment A: Sample Letter Agreement

Attachment B: Article 15-A (MWBE) Provisions

