

ANDREW M. CUOMO
GOVERNOR

DARRYL C. TOWNS
CEO/PRESIDENT/CHAIRMAN

Request for Proposals

for

Legal Counsel Services

August 24, 2012, as amended 9/10/2012



*New York State Housing Finance Agency
State of New York Mortgage Agency
New York State Affordable Housing Corporation
State of New York Municipal Bond Bank Agency
Tobacco Settlement Financing Corporation
641 Lexington Avenue
New York, NY 10022
www.nyshcr.org*

*New York State Housing Trust Fund Corporation
38-40 State Street
Albany, New York 12207
www.nyshcr.org*

**Proposals must be submitted no later than 3:00 p.m., Eastern Daylight Time
Friday, September 28, 2012**

**NEW YORK STATE HOUSING FINANCE AGENCY
STATE OF NEW YORK MORTGAGE AGENCY
NEW YORK STATE AFFORDABLE HOUSING CORPORATION
STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY
TOBACCO SETTLEMENT FINANCING CORPORATION
NEW YORK STATE HOUSING TRUST FUND CORPORATION**

**REQUEST FOR PROPOSALS
FOR LEGAL COUNSEL SERVICES
FROM
POTENTIAL OUTSIDE COUNSELS**

**The Lobbying Reform Law designated Contact Officer for this procurement is:
Remy Bernardo, Associate Counsel**

I. PURPOSE:

The New York State Housing Finance Agency (“HFA”), State of New York Mortgage Agency (“SONYMA”), New York State Affordable Housing Corporation (“AHC”), State of New York Municipal Bond Bank Agency (“MBBA”), Tobacco Settlement Financing Corporation (“TSFC”) and New York State Housing Trust Fund Corporation (“HTFC”) (individually, “Agency” and collectively, the “Agencies”) request proposals and statements of qualifications (“RFP”) from law firms providing legal services in New York State (“State” of “NYS”). The purpose of this solicitation is to pre-qualify counsel as eligible to represent the Agencies, from time to time, in a variety of legal matters. THIS SOLICITATION IS NOT FOR BOND COUNSEL SERVICES. Counsel will be eligible for retainer that may arise during the next 3- 5 years beginning on or about December 2012. This solicitation seeks to replace, not supplement, the Agencies’ prequalified counsel list(s) (excluding bond counsel lists). Accordingly, firms on any existing Agency counsel list (other than the Agencies’ bond counsel list) must, if they wish to continue to be pre-qualified, respond to this RFP.

II. SCOPE OF SERVICES:

The Agencies are seeking proposals from 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, land use, construction, and related lending; (2) environmental law issues, compliance and liability; (3) foreclosure (or renegotiation, restricting etc.) of the Agencies' mortgage loans, in cases where those loans are in default or in danger of default; (4) bankruptcy; (5) tax issues affecting real estate transactions along with various general tax issues; (6) fair housing law, federal housing and related subsidies; (7) State housing subsidies; (8) low income housing tax credits; (9) corporate governance; (10) insurance and related liability issues; (11) negotiation of contracts, leases, etc. on behalf of the Agencies, in circumstances where specialized legal services are required; (12) advertising, copyright, trade-marking and internal rights and responsibilities; (13) representation of the Agencies in any other litigation or legal proceedings (e.g., bond litigation, securities litigation, or other civil or criminal proceedings, class action proceedings) that may arise; (14) condemnation, and (15) labor matters.

The Agencies may also select additional counsel in the future for various specialized services not described herein.

The Agencies anticipate establishing a panel or panels consisting of firms with expertise in various (not necessarily all for each firm) of the above practice areas and with geographic locations across the State and, from time to time, to select firms from the panel for general retainers or specific assignments or tasks based on suitability, including, among other factors, appropriateness of the firm's identified expertise and cost. While specific expertise in the above areas will have intrinsic value, the ability to apply that expertise with knowledge of and in the context of government and public finance will likely often be considered to have additional value. Similarly, overlapping expertise in one or more of the above areas will also often be considered to be of value.

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

The Agencies strongly encourage firms that are certified by New York State as minority- and/or woman- owned business enterprise ("MWBES"), as well as firms that are not yet certified, but have applied for certification, to submit responses to this RFP.

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

III. KEY EVENTS/DATES:

Issuance of RFP:	Aug. 24, 2012
Deadline for RFP Questions:	Sept. 20, 2012, 12:00pm EST
Deadline for Responses to RFP Questions:	Sept. 24, 2012, 3:00pm EST
Proposal Due Date:	Sept. 28, 2012, 3:00pm EST
Interview, if necessary (Not earlier than):	Oct. 22, 2012
Anticipated Selection:	Dec. 13, 2012

The Agencies reserve the right to modify this schedule at their discretion. Notification of changes in connection with this RFP will be made available to all interested parties via the Agencies' webpages:

<http://www.nyshcr.org/AboutUs/Procurement/RFPsRFQs.htm> and
<http://www.nyshcr.org/AboutUs/Procurement/DHCRindex.htm> .

IV. REQUIRED INFORMATION:

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

A. Tab 1: Basic Information.

- 1.1. Indicate for which of the practice areas under "Section II., Scope of Services" that the firm is interested in serving as counsel to the Agencies.
- 1.2. For each practice area (other than labor counsel), provide a description of the firm's relevant experience in such area. Please include a brief description of representative transactions and specify the firm's role with respect to each such transaction. (It is not expected that any single firm will necessarily have expertise in all these areas.)

With respect to the following practice areas, and wherever else the respondent deems appropriate, make specific mention of any work involving properties which contained affordable housing units or which received governmental subsidies of any kind.

- (a) Representation of lenders in foreclosure actions or workouts involving multi-family properties;
- (b) Litigation involving lenders and developers, including bankruptcy cases;
- (c) General real estate matters, including co-operative and condominium issues;
- (d) Real estate construction, and related lending; and
- (e) Tax issues affecting real estate transactions.

1.3 For labor counsel, provide a brief history and description of the firm's experience that includes the following practice areas:

- (a) labor relations and negotiations;
- (b) collective bargaining;
- (c) handling of employee and/or employer grievances;
- (d) defense of employment claims in various venues;
- (e) defense of employment litigation in various venues including the administrative agencies, state court, and federal court;
- (f) affirmative litigation in the employment and/or labor area;
- (g) sexual harassment prevention (including possible labor counsel conduct of staff training in the area or, alternatively, coordinate with outside entities engaged to provide such training) and investigations;
- (h) discrimination prevention (including possible labor counsel conduct, staff of training in the area or, alternatively, coordinate with outside entities to provide such training) and investigations;
- (i) establishment and/or amendment of workplace policies;
- (j) time and attendance issues, including, but not limited to, FMLA practices;
- (k) establishment and/or amendment of benefit plans;
- (l) management of both management confidential employees and officers and staff within several collective bargaining units;
- (m) compensation and insurance issues, including, but not limited to, medical, workers' compensation and disability and Officer and Director liability;
- (n) internal and external investigations;

-
- (o) Americans with Disabilities Act; and
 - (p) New York State (“NYS” or State”) laws in the following areas;
 - i. State Civil Service Laws
 - ii. NYS Retirement System
 - iii. Ethics laws
 - iv. Public authority reform measures
 - v. Privacy laws
- 1.4 Indicate whether services have been provided previously to the Agencies, and, if so, describe.
2. Names of the principal partners and other attorneys who would be responsible for Agency matters, and a description of the relevant qualifications and experience of each attorney.
 3. Provide a brief description of any experience in the area of public finance. Such experience is preferred but not required.
 4. Provide a list of at least three representative clients including a description of the type of work performed for said client and the name of a contact person at the client who can evaluate the firm’s work.
 5. If the firm is a State-certified MWBE firm, please provide documentation evidencing registration. For firms that are not certified but applied for certification, please provide evidence of filing, including the filing date.
 6. A description of the instances, if any, in which the firm has worked with MWBE law firms on previous transactions by engaging in joint ventures or other partnering or subcontracting arrangements. Responses should include the nature of the engagement, how such arrangement was structured and a description of how the services and fees were allocated.
 7. A statement of the firm’s willingness, if any, to engage MWBE partnering or mentoring arrangements with either a law firm of your choosing, and if so, a list of co-counsel MWBE law firms which the law firm is prepared to partner with or with another firm selected by the Agencies. Such statement should include an explanation of how the firm would suggest structuring such an arrangement and allocating services and fees among the law firms participating or mentoring arrangement.

Please provide the information in the same order in which it is requested. Responses must be limited to fifteen (15) pages, at least 12 point type with standard margins printed on one-sided 8 ½ X 11 inch pages, marked “Tab 1.” In the event that a firm is applying for qualification in multiple practice areas and may require more than the 15 page limitation to effectively respond, the Agencies will accept up to no more than 30 pages under Tab 1.

B. Tab 2: Background Information.

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

C. Tab 3: Fees and Costs.

In a separate “Tab 3,” provide information concerning fees, including:

1. The customary hourly rate of each person whose résumé is provided in Tab 2 of response, and the proposed hourly rate to be charged the Agencies in connection with those persons.
2. Costs of any anticipated clerical support.
3. A schedule of all disbursements which your firm anticipates will result in a charge to the Agencies and the rate for each.
4. Any reduced fees charged other NYS agencies or other public entities.
5. Any measures proposed by you to reduce the cost to the Agencies of retaining your firm.

Although proposed fees will be taken into account, the Agencies reserve the right to negotiate a lower or different fee structure with any firm selected.

D. Tab 4: Required Forms and Information.

In a separate “Tab 4” the following forms, either hyperlinked or attached to this RFP, should be fully completed and included in the submission in the same order as outlined below.

Firms responding to this RFP must submit the documentation described in the Agencies’ *Standard Requirements and Clauses for Solicitations* and the Agencies’ *Contractor Solicitation Requirements and Procedures for Business Participation Opportunities for NYS Certified MWBEs and Equal Employment Opportunities for Minority Group Members and Women*, both attached hereto as Exhibits A and B, respectively. Such requirements include, but are not limited to, submission of the following information and forms of the Agencies: (a) [Diversity Questionnaire, PROC-7](#), and other related Affirmative Action and Equal Employment Opportunity forms and information; (b) *Contractor and Vendor Information FORM*, attached hereto; (c) *Lobbying Reform Law FORMS 1 and 2, both attached hereto*; (d) [Non-Collusive Bidding Certification FORM](#); and (e) Conflict of Interest statement.

V. **SUBMISSION OF PROPOSALS:**

Prospective bidders shall submit completed proposals to the Agencies by e-mail to Proposal@nyshcr.org in PDF file format. The “Subject” line of the e-mail should state, “2012 Legal Services Proposal.”

Completed responses to this RFP must be received by the Agencies no later than 3:00 p.m., Eastern Daylight Time (“EDT”), **September 28, 2012**. **Proposals must be received by the bid submission deadline. Proposers are responsible for ensuring actual receipt of the proposal by the Agencies by the time designated above.**

VI. **PERMISSIBLE CONTACTS:**

Pursuant to State Finance Law (“SFL”) §§139-j and 139-k, this solicitation imposes certain restrictions on communications between the Agencies and a potential respondent during the procurement process. A respondent is restricted from making contacts that a reasonable person may infer were intended to influence the selection of counsel, from the date of publication of this RFP until approval by each Agency’s respective Boards of the new counsel list (the “Restricted Period”), with other than the designated staff member

named below, unless it is a contact that is included among certain statutory exceptions set forth in SFL§139-j(3)(a). Employees of the Agencies are also required to obtain certain information when contacted during the Restricted Period. The Agencies are required to make a determination of responsibility of the respondent under the SFL. Findings of non-responsibility can result in rejection for contract award and in the event of two (2) findings within four (4) years, the respondent is debarred from obtaining governmental contracts.

For more information, see

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/Faq.htm> .

The designated contact person for this solicitation at the Agencies is Remy Bernardo, Associate Counsel, 641 Lexington Avenue, New York, New York 10022. Mr. Bernardo can be reached by email at: RBernardo@nyshcr.org .

VII. MINORITY AND WOMEN-OWNED BUSINESS PROVISIONS:

New York State Law

Pursuant to New York State Executive Law Article 15-A (“Article -15-A”), the Agencies recognize their obligation to promote opportunities for maximum feasible participation of certified MWBEs, and the employment of minority group members and women in the performance of Agency contracts.

In 2006, the State 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 MWBE program. The recommendations from the Disparity Study culminated in the enactment and the implementation of Article 15-A, which requires, among other things, that the Agencies establish goals for maximum feasible participation of New York State certified MWBEs and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

The Agencies have established an overall goal of 20% for MWBE participation for the legal services performed under contracts awarded pursuant to this RFP: 12% for minority-owned business enterprise participation and 8% for women-owned business enterprise participation.

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

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

The directory of New York State Certified MWBEs can be viewed at: <http://www.empire.state.ny.us/MWBE/directorySearch.html>.

VIII. QUESTIONS ABOUT THIS RFP:

Any changes, additions or deletions to this RFP will also be posted on the Agencies' website (<http://www.nyshcr.org/AboutUs/Procurement/RFPsRFQs.htm> and <http://www.nyshcr.org/AboutUs/Procurement/DHCRindex.htm>), along with the electronic version of this RFP. Firms are urged to check the Agencies' website frequently for notices of any clarifications of or changes, additions or deletions to the RFP.

The Agencies will provide responses to questions submitted by firms to the Agencies' contact person, Ms. Lisa G, Pagnozzi. All questions must be submitted in writing via email to Ms. Pagnozzi at LPagnozzi@nyshcr.org and received no later than September ~~1220~~, 2012, 12:00 p.m., ~~ESTEDT~~. The "Subject" line of the email should say, "2012 Legal Questions." Questions submitted after the deadline will not

receive a response. Responses will be posted to the Agencies' website no later than September 24, 2012, 3:00 p.m. **ESTEDT**.

To view these responses on or after September 24, 2012, please click on the following links:

<http://www.nyshcr.org/AboutUs/Procurement/Questions&Answers.htm> and
<http://www.nyshcr.org/AboutUs/Procurement/DHCRindex.htm> .

Proposers should note that all clarifications and exceptions are to be resolved prior to submission of the proposal.

- A. For all Lobbying Law Contacts (as described in Section VI herein), please contact :

Remy Bernardo, Esq.
Associate Counsel of the Agencies
641 Lexington Avenue, 4th Floor, New York, NY 10022
(212) 872-0369
RBernardo@nyshcr.org

- B. If you have inquiries regarding this RFP or would like to contact the Agencies regarding issues not relating to Lobbying Law Contacts, please contact:

Ms. Lisa G. Pagnozzi
Contract Administrator

HFA, HTFC, AHC, SONYMA, MBBA and TSFC
641 Lexington Avenue
New York, New York 10022
LPagnozzi@nyshcr.org
212-872-0364

Other than the contact persons identified herein, prospective proposers shall not approach the Agencies' employees during the Restricted Period of this RFP process about any matters related to the RFP or any proposal(s) submitted pursuant thereto.

IX. CRITERIA FOR SELECTION:

In evaluating proposals submitted pursuant to this RFP, the Agencies place high value on the following factors, not necessarily in order of importance:

1. Relevant experience;
2. Innovative or outstanding lawyering described in the firm's proposal, which demonstrates the firm's unique qualifications as the Agencies' counsel;
3. Demonstrated commitment of time, resources and ideas to the Agencies;
4. The general qualifications and experience of the staff proposed to be assigned to the Agencies' engagement;
5. Diversity and commitment to equal opportunity programs and firm's status as a MWBE.
6. Anticipated cost of services and willingness to work with the Agencies to minimize costs; and
7. Overall organization, completeness, and quality of proposal, including cohesiveness, clarity of response and demonstrated understanding of the Agencies.

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DARRYL C. TOWNS
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Exhibit A

Standard Clauses and Requirements for Solicitations



*New York State Housing Finance Agency
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*New York State Housing Trust Fund
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Albany, New York 12207
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August 2012

I. AGENCY AND STATE-MANDATED REQUIREMENTS

1.1 Affirmative Action/Equal Opportunity and Related Topics

- a. It is the goal of the New York State Housing Finance Agency (“HFA”), State of New York Mortgage Agency (“SONYMA”), New York State Affordable Housing Corporation (“AHC”), State of New York Municipal Bond Bank Agency (“MBBA”), Tobacco Settlement Financing Corporation (“TSFC”) and New York State Housing Trust Fund Corporation (“HTFC”) (individually, “Agency” and collectively, “Agencies”) to award contracts to contractors and vendors that evidence compliance with the laws of the State of New York (“State”) prohibiting discrimination in employment.
 - All Respondents (“Firms” or “Proposers”) with fifty (50) or more employees must submit to the Agency or Agencies a copy of an officially adopted Affirmative Action Plan (the “Plan”) in effect for the entity, or explain why the entity is not covered by a Plan.
 - All Respondents with fewer than fifty (50) employees must submit to the Agency or Agencies a statement of commitment to affirmative action and equal employment opportunity executed by an appropriate officer or principal.

All Respondents are required to submit a minority and women-owned business enterprise – equal employment opportunity policy statement (MWBE-EEO Statement). Please click here to download [Form PROC-4, a model of a MWBE-EEO Statement](#).

- b. In accordance with Section 2879-a of the New York State Public Authorities Law, Article 15-A of the New York State Executive Law, and the Agencies’ MWBE Goal Plans, it is the goal of the Agencies to promote and assist the participation of Firms that are classified as minority-owned business enterprises (“MBEs”) and/or women-owned business enterprises (“WBEs”) (and collectively, “MWBEs”) and Small Businesses in competition for contracts, and where possible, to award a fair share of contracts to MWBEs.

Certified MWBEs must be registered as such with New York State Empire State’s Development¹.

To view a listing of certified MWBEs in the State, click on the following link <http://www.nylovesmwbe.ny.gov/cf/search.cfm>.

¹ For further information and assistance on becoming certified in the State as a minority and/or women-owned business, please email the Agencies’ OFHEO at OFHEO1@nyschr.org.

Subcontracting Provisions

The Agencies encourage the use of State subcontractors and suppliers. Information concerning the availability of State subcontractors and suppliers is also available by emailing the Agencies' Office of Fair Housing & Equal Opportunity ("OFHEO") at OFHEO1@nyshcr.org.

Respondents must submit and complete the following Agency form by clicking on the subsequent link: [Diversity Questionnaire, Form PROC-7](#). Proposers must also complete the Agencies' **Contractor or Vendor Information FORM**, attached hereto.

- c. It is the goal of the Agencies to ensure compliance with the federal Equal Employment Opportunity Act of 1972, as amended. Respondents with fifteen (15) or more employees responding to this request for proposal ("RFP"), must submit a statement disclosing whether the Respondent is currently operating under or negotiating, or has at some time in the last five (5) years operated under or negotiated, a conciliation agreement with the Equal Employment Opportunity Commission ("EEOC"); has been, at some time in the last five (5) years, or is currently the subject of a civil action brought against it by the EEOC; has been, at some time in the last five (5) years, or is currently the subject of an action brought against it by the EEOC for permanent, temporary or preliminary relief; has operated, at some time in the last five (5) years, or is currently operating under an order of a court to take affirmative action as a result of a civil action brought against it by EEOC.

Please answer the above question either in the affirmative or negative. Note, an affirmative response requires an explanation.

- d. It is the goal of the Agencies to promote the participation of New York State Business Enterprises and New York State Residents in contracts. For potential bidders located in foreign countries, the Agencies may assign or otherwise transfer offset credits created by contracts, directly or indirectly, to third parties located in the State, in accordance with the written directions of the Commissioner of Economic Development. The Agencies cooperate with the Department of Economic Development in efforts to get foreign countries to recognize offset credits assigned or transferred to third parties located in the State created by contracts.

1.2. Lobbying Reform Law

All Offerers² are required to make a statement in the format prescribed in **Lobbying Reform Law Form 1**, attached hereto, affirming that they understand and will abide by provisions of the New York State Finance Law (“SFL”) related to whom may be contacted during the RFP process. Pursuant to SFL §139-j and §139-k³, this RFP includes and imposes certain restrictions on communications between the Agencies and an Offerer/Proposer/Respondent during the RFP process. From the earliest determination of a need of professional services by any Agency to any potential contractor or vendor, including, but not limited to, the issuance of this RFP and any other oral or written communication, notice, or advertisement through final award and approval of the contract (the “Restricted Period”), an Offerer/Proposer/Respondent is restricted from making Contacts⁴ (i.e., any oral, written or electronic communication from a contractor or vendor, or their representatives, under circumstances where a reasonable person would infer that the communication was intended to influence an Agency RFP Process) to anyone other than the Agencies’ designated Contact Officer, unless such communication is included among certain statutory exceptions set forth in SFL §139-j(3)(a). These Permissible Subject Matter Communications are described in the Lobbying Reform Law Policies⁵ of HFA, SONYMA, AHC, MBBA and TSFC. Click here to download a copy of HTFC’s [Policy on Reporting and Maintaining Records on Lobbying Contacts](#).

Employees of the Agencies are also required to obtain certain information when a Contact is received from an Offerer/Proposer/Respondent during the Restricted Period and to make a Determination of Responsibility of the Offerer/Proposer/Respondent pursuant to SFL §139-j and §139-k. Certain findings of non-responsibility can result in rejection of a contract award, and in the event of two (2) findings within a four (4) year period, the Offerer/Proposer/Respondent is debarred from obtaining governmental contracts. This RFP requires Offerers/Proposers/Respondents to disclose prior findings

² “Offerer/Proposer/Respondent” shall mean, for purposes of applying the Lobbying Reform Law in relation to any Agency RFP process with actual or anticipated annualized expenditures in excess of \$15,000, an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts a Governmental Entity about a Governmental RFP process during the Restricted Period of such Governmental solicitation process.

³ Please click on the following link to view the statutes
<http://ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html> .

⁴ “Contact” shall mean, for purposes of applying the Lobbying Reform Law in relation to any Agency RFP process with actual or anticipated annualized expenditures in excess of \$15,000, any oral, written or electronic communication from a contractor or vendor, or their representative(s), under circumstances where a reasonable person would infer that the communication was intended to influence any Agency RFP process.

⁵ Please click on the following link to view the Agencies’ Lobbying Reform Law Policies:
<http://www.nyhomes.org/assets/documents/4672.pdf> .

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of non-responsibility to the Agency or Agencies in the format prescribed in **Lobbying Reform Law Form 2**, attached hereto.

1.3 **Non-Collusive Bidding Certification**

This RFP requires Offerers/Proposers/Respondents to affirm, under penalty of perjury, that the prices in its proposal/response were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, or as to any matter relating to such prices with any other Contractor or with any competitor, in the format prescribed in the Agencies' **Non-Collusive Bidding Certification Form**.

1.4 **Conflict of Interest**

A statement must be provided indicating whether performing services for the Agency or Agencies would create any potential conflict of interest, or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Agency or Agencies. Indicate what procedures will be followed to detect, notify the Agency or Agencies of, and resolve any such conflicts.

All Respondents must disclose whether its entity, or any of its members discussed in the above paragraph, has been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

Please answer the above question either in the affirmative or negative. Note, an affirmative response requires an explanation.

1.5 **Freedom of Information Law**

All information and materials provided in response to this RFP shall be subject to disclosure pursuant to the Freedom of Information Law.

1.6 **Miscellaneous Conditions:**

- a. The issuance of this RFP, the submission of a proposal/response by any Respondent, and/or the acceptance of such proposal/response by any Agency, does not obligate the Agency or Agencies in any manner whatsoever. Legal obligations will only arise upon execution of a formal contract by the Agency or Agencies and the Respondent selected by the Agency or Agencies.
- b. The Agencies reserve the right to: (i) amend, modify, or withdraw this RFP; (ii) revise any requirements of this RFP; (iii) require supplemental statements or information from any responding party; (iv) accept or reject any or all proposals/responses hereto; (v) extend the deadline for submission of

proposals/responses hereto; (vi) negotiate or hold discussions with any Respondent/Firm and to correct deficient proposals/responses which do not completely conform to the instructions contained herein; (vii) cancel or reissue this RFP, in whole or in part, if any Agency deems it in its best interest to do so; (viii) hold a pre-bid conference, at the option of any Agency, with all bidders, to answer questions and provide applicable information as necessary; and (ix) interview a Respondent(s)/Firm(s) prior to selection. The Agencies may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in the preparation of proposal(s)/response(s), hereto or otherwise, subject to any legal restrictions applicable to the Agency or Agencies. Responses hereto will be prepared at the sole cost and expense of the responding party.

- c. This RFP and any agreement which may result from it are subject to all applicable laws, rules, and regulations promulgated by any federal, state, or local authority having jurisdiction over the subject matter hereof, as the same may be amended from time to time.
- d. The Agency or Agencies shall be the sole judge of whether a proposal/response complies with the requirements of this RFP and the merits of such proposal/response. This RFP does not commit the Agencies to select a Firm, to pay the cost incurred in preparation of any response hereto, including the costs associated with an oral presentation, or to procure or contract for the services described herein.
- e. Nothing stated at any time by any representative of the Agency or Agencies will effect a change in or constitute an addition to this RFP unless confirmed in writing by the Agency or Agencies.
- f. Respondents/Firms responding hereto must agree to keep confidential their responses and any information received from the Agency or Agencies.
- g. Any Respondent/Firm selected as a result hereof will be required to execute a contract prescribed by the Agency or Agencies, and to abide by all relevant laws and policies of the Agency or Agencies with regard to, among other things, conflicts of interest, ethics, lobbying law policies, affirmative action and equal employment opportunity programs, etc.
- h. The Agencies believe the information set forth in this RFP is accurate. However, the Agencies, their Directors and/or Members, Officers, agents and employees assume no responsibility for errors and omissions contained therein.

- i. Under no circumstances (including withdrawal of this RFP before or after bids are received) will any proposed Respondent/Firm have any recourse against the State of New York or any Agency, their Directors, Members, Officers, agents or employees for any expenses incurred or damages sustained as a result of this RFP process.
- j. The Agencies' Committee, designated to review and recommend proposals/responses, reserves the right to select qualified proposal(s)/response(s) for further review and negotiation. Further negotiation may include, but shall not be limited to, bid amounts for contract award on the basis of a formal evaluation of the characteristics, quality and cost of such proposals.
- k. The Agencies reserve the right to select a list of Respondents/Firms based on the proposals/responses that the Agencies deem best in their sole discretion.
- l. Upon selection of the successful proposer(s)/Firm(s) and contract execution(s), public announcements or news releases pertaining to the selection shall not be made without prior written consent of the Agencies.
- m. The contract(s) will be awarded after approval by the Agencies' respective Boards.

Contractor or Vendor Information FORM

NEW YORK STATE HOUSING FINANCE AGENCY (“HFA”) / STATE OF NEW YORK MORTGAGE AGENCY (“SONYM”) / NEW YORK STATE AFFORDABLE HOUSING CORPORATION (“AHC”) / STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY (“MBBA”) / TOBACCO SETTLEMENT FINANCING CORPORATION (“TSFC”) / NEW YORK STATE HOUSING TRUST FUND CORPORATION (“HTFC”)

(individually, the “Agencies” and collectively, “Agencies”)

Contractor or Vendor Information

Name of Contractor or Vendor: _____

Address: _____

Telephone Number (include area code): _____

Fax Number (include area code): _____

Email Address: _____

Name and Title of Authorized Signatory of Contractor or Vendor: _____

Provide Contractor or Vendor Federal Employee Identification Number.

Federal Employer Identification Number: _____

Is your business a New York State business enterprise as defined below pursuant to Section 2879 of the Public Authorities Law?

(Please circle) Yes No

“New York State Business Enterprise” shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the corporation and which are substantially manufactured, produced or assembled in New York State, or services, other than construction services, which are sought by the corporation and which are substantially performed within New York State. For purposes of construction services, a New York State business enterprise shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which has its principal place of business in New York State.”

Is your company a Minority-Owned Business Enterprise as defined below pursuant to Section 2879 of the Public Authorities Law?

(Please circle) Yes No

If yes, has your company been certified as a Minority-Owned Business Enterprise?

(Please circle) Yes No

“Minority Owned Business Enterprise” shall mean any business enterprise, including a sole proprietorship, partnership or corporation that is:

- (i) at least fifty-one percent owned by one or more minority group members or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned by one or more minority group members;
- (ii) an enterprise in which the minority ownership is real, substantial and continuing;
- (iii) an enterprise in which the minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
- (iv) an enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.

“Minority Group Member” means a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

- (i) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

- (iii) Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or
- (iv) Native American persons having origins in any of the original peoples of North America.”

Is your company a Women-Owned business enterprise as defined below pursuant to Section 2879 of the Public Authorities Law?

(Please circle) Yes No

If yes, has your company been certified as a Women-Owned business enterprise?

(Please circle) Yes No

“Women-Owned Business Enterprise” means a business enterprise, including a sole proprietorship, partnership or corporation which is:

- (i) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;
- (ii) an enterprise in which the ownership interest of women is real, substantial and continuing;
- (iii) an enterprise in which the women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
- (iv) an enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.”

Name of Contractor or Vendor: _____

Authorized Signature: _____

(Print Name and Title): _____

Date: _____

Lobbying Reform Law Form 1

**New York State Housing Finance Agency (“HFA”)
State of New York Mortgage Agency (“SONYMA”)
New York State Affordable Housing Corporation (“AHC”)
State of New York Municipal Bond Bank Agency (“MBBA”)
Tobacco Settlement Financing Corporation (“TSFC”)
New York State Housing Trust Fund Corporation (“HTFC”)
*(individually, the “Agency” and collectively, the “Agencies”)***

AFFIRMATION OF UNDERSTANDING OF AND AGREEMENT

pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

The proposer affirms that it has received the (i) Lobbying Reform Law Policies of HFA, SONYMA, AHC, MBBA and TSFC and the (ii) Policy on Reporting and Maintaining Records on Lobbying Contracts of HTFC (collectively, the “Policies”) and affirms that it understands and agrees to comply with the procedures of the Agencies relative to permissible Lobbying Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b) and the Agencies’ Policies. The proposer also acknowledges that it has been informed of the name of the Agencies’ Lobbying Reform Law Contact Officer for this Procurement in the Agencies’ solicitation notice.

By: _____ Date: _____
Signature of Authorized Individual the Proposer

Name: _____
Name of Authorized Individual for Proposer (please print name)

Title: _____
Title of Authorized Individual for Proposer (please print)

Contractor or Vendor Name: _____

Contractor or Vendor Address: _____

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of non-responsibility: _____

Basis of Finding of non-responsibility: _____

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement of a Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

(Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Potential Contractor or Vendor certifies that all information provided to the Agencies with respect to State Finance Law §139-j is complete, true and accurate.

By: _____ Date: _____

Authorized Signature of Individual Submitting Form

Name: _____

Title: _____

ANDREW M. CUOMO
GOVERNOR

DARRYL C. TOWNS

CEO/PRESIDENT/CHAIRMAN

Exhibit B

CONTRACTOR SOLICITATION 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 Housing Finance Agency
State of New York Mortgage Agency
New York State Affordable Housing Corporation
State of New York Municipal Bond Bank Agency
Tobacco Settlement Financing Corporation
641 Lexington Avenue
New York, NY 10022
212-688-4000
www.nyshcr.org*

*New York State Housing Trust Fund
Corporation
38-40 State Street
Albany, New York 12207
www.nyshcr.org*

August 2012

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A (“Article 15-A”), the New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency, Tobacco Settlement Financing Corporation and New York State Housing Trust Fund Corporation (individually, “Agency” and collectively, the “Agencies”) recognize their obligation under the law to promote opportunities for maximum feasible participation of certified minority-and/or women-owned business enterprises (“MWBE”) and the employment of minority group members and women in the performance of Agency contracts.

In 2006, the State of New York (“State”) 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" (the “Disparity Study”). The Disparity Study 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 Article 15-A, which requires, among other things, that the Agencies establish goals for maximum feasible participation of State certified MWBEs and the employment of minority group members and women in the performance of State contracts.

Business Participation Opportunities for MWBEs

A Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of Agency contracts and the Contractor agrees that the Agency may withhold payment pending receipt of the required MWBE documentation. The directory of State certified MWBEs can be viewed at: <http://www.esd.ny.gov/MWBE.html>.

For guidance on how the Agency will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Bidder/Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and the Agency may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the

contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, Bidder/Contractor agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a [MWBE Utilization Plan on Form PROC-2](#) with their bid or proposal. Any modifications or changes to the *MWBE Utilization Plan* after the Contract Award and during the term of the Contract must be reported on a revised *MWBE Utilization Plan* and submitted to the Agency.
- B. The Agency will review the submitted *MWBE Utilization Plan* and advise the Bidder of the Agency's acceptance or issue a notice of deficiency within thirty (30) days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting a written remedy in response to the notice of deficiency to the Office of Fair Housing and Equal Opportunity at OFHEO1@nyschr.org. If the written remedy that is submitted is not timely or is found by the Agency to be inadequate, the Agency shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a [partial or total waiver of MWBE participation goals on Form PROC-3](#). Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. The Agency may disqualify a Bidder as being non-responsive under the following circumstances:
 - a) If a Bidder fails to submit a *MWBE Utilization Plan*;
 - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - c) If a Bidder fails to submit a request for waiver; or
 - d) If the Agency determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any minority owned business enterprise ("MBE") or women-owned business enterprise ("WBE") identified within its *MWBE Utilization Plan*, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to the Agency, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a [Contractor's Quarterly Compliance & Payment Report on Form PROC-6](#) via email at OFHEO1@nyschr.org, by the 10th day following each end of quarter (i.e., March 31st, June 30th, September 30th, and December 31st) over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract identified in the Solicitation document and Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this Solicitation, the Bidder/Contractor agrees with all of the terms and conditions of the *Equal Employment Opportunities for Minorities and Women* Agency Contract clause, attached hereto. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to this Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a [staffing plan \(Form PROC-1\)](#) identifying the anticipated work force to be utilized on the Contract and if awarded a contract, will, upon request, submit a [Contractor's Quarterly Workforce Employment Utilization report on Form PROC-5](#) via email at OFHEO1@nyshcr.org, by the 10th day following each end of quarter (i.e., March 31st, June 30th, September 30th, and December 31st) over the term of the Contract, to report the actual work force utilized in the performance of the Contract broken down by the specified categories.

Further, pursuant to Article 15 (the "Human Rights Law") and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors 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.

EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby the Agency or Agencies, is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Agency or Agencies, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) the Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Agency or Agencies' contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the Agency or Agencies, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of 'a', 'b', and 'c' above, in every subcontract. Section 312 does not apply to: (i) work, goods or services unrelated to this Contract; or (ii) employment outside New York State. The Agency or Agencies shall consider compliance by a Contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The Agency or Agencies shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the Agency or Agencies shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

(d) If the procurement of the goods or services provided herein is subject to minority and women-owned participation requirements pursuant to Article 15-A of the Executive Law, the Contractor shall be liable to the Agency or Agencies for liquidated or other appropriate damages and shall provide for other appropriate remedies on account of such breach in the event it is found that the Contractor willfully and intentionally failed to comply with the minority and women-owned participation requirements set-forth in Article 15-A of the Executive Law.