



***Erie County Industrial Development Agency  
and Affiliates***

**Request for Proposals  
For Professional Legal Services**

Issued: July 17, 2024  
Questions Due: July 26, 2024

Required Submission: Six (6) copies of completed response including Forms 1-4  
+ one (1) PDF copy of the complete response  
Proposals Due: August 23, 2024 by 12:00 pm (EDT)

## I. INTRODUCTION

The Erie County Industrial Development Agency and its affiliated corporations (“ECIDA”) are requesting proposals from law firms as the basis of selecting:

- 1) General Counsel
- 2) General Conflict Counsel<sup>1</sup>
- 3) Tax-Exempt Bond Counsel
- 4) Tax-Exempt Bond Conflict Counsel<sup>1</sup>
- 5) Loan Counsel
- 6) Loan Conflict Counsel<sup>1</sup>

Interested parties are invited to submit proposals for consideration for any one position, any combination, or all of the above positions and should indicate their interests by completing Form 1. Firms may be selected for more than one position (e.g. General Counsel & Tax-Exempt Bond Conflict Counsel). If law firms propose on more than one position, the ECIDA reserves the right to evaluate and select proposals independently. **Firms are prohibited from making contingent bids.** (e.g. Firm A may not accept the position of Loan Counsel contingent on being awarded General Counsel position.)

The successful bidder(s) will be required to execute a contract in a form acceptable to the ECIDA. The term of the contract will be for three years with two potential one-year extensions, but shall provide that the ECIDA, at its sole discretion, may terminate the contract at any time.

Submission of a response indicates acceptance by the firm of the conditions contained in this Request for Proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the ECIDA and the firm selected.

This RFP does not commit the ECIDA to negotiate a contract, nor does it obligate the ECIDA to pay for any costs incurred in preparation and submission of proposals or costs incurred prior to entering into a formal contract.

## II. BACKGROUND INFORMATION

The Erie County Industrial Development Agency is a public benefit corporation created in 1970 by an act of the New York State Legislature to promote and assist private sector industrial/business development thereby advancing job opportunities and economic well-being to the people of Erie County. The ECIDA may acquire, construct, reconstruct, lease, improve, maintain, equip or furnish and dispose of real property interests and industrial and commercial facilities. The ECIDA may exercise appropriate financing powers, including the issuance of bonds or other obligations and securing of such obligations by the granting of mortgages and indentures of mortgage. The Board of Directors of the ECIDA is set forth by the New York State Legislature to include senior representatives from the local political, business, minority, union and school communities. A schedule listing the ECIDA Board of Directors can be found on the ECIDA website at <http://www.ecidany.com/about-us-board-of-directors>.

The ECIDA has a related party relationship with two local development corporations, the Buffalo and Erie County Industrial Land Development Corporation (“ILDC”) and the Buffalo and Erie County Regional Development Corporation (“RDC”). The same personnel manage all three entities. The ECIDA and RDC share the same board of directors as their oversight body. The sole member of the ILDC is the County of Erie, acting by and through the Erie County Executive with a seven-member

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<sup>1</sup> Conflict counsel is utilized in the event the of a conflict of interest with the primary counsel or specific expertise is required that is not readily available to the primary counsel.

Board. These entities share the same mission, which is to provide the resources that encourage investment, innovation, workforce development and international trade resulting in a successful business climate focused on growth, economic stability, job creation and retention for businesses and individuals which improves the quality of life for the residents of the region.

Additional information about the ECIDA, RDC and ILDC can be found on the ECIDA's website at [www.ecidany.com](http://www.ecidany.com).

### **Current Counsel**

The above legal services are currently provided by:

- |                                     |                   |
|-------------------------------------|-------------------|
| 1. General Counsel                  | Harris Beach PLLC |
| 2. General Conflict Counsel         | Hurwitz Fine P.C. |
| 3. Tax-Exempt Bond Counsel          | Hodgson Russ LLP  |
| 4. Tax-Exempt Bond Conflict Counsel | Harris Beach PLLC |
| 5. Loan Counsel                     | Hurwitz Fine P.C. |
| 6. Loan Conflict Counsel            | Hodgson Russ LLP  |

### III. GENERAL COUNSEL

The General Counsel services that are anticipated to be required under this request for proposals are:

Company	Nature of Company	General Counsel Legal Services Required
1) ECIDA	Governmental organization (ECIDA is a public benefit corporation and a political subdivision of the State of New York). Provides and administers tax incentive products. Recipient of NYS Dept. of Transportation Passenger and Freight Rail Assistance Program (PFRAP), Erie County grants & others. Engages in infrastructure development projects. Manages former HUD – Urban Development Action Grant (UDAG) reflow funds. Administers Foreign Trade Zone program and two short-line railroads on behalf of Erie County.	1. IDA & other economic development tax incentives <sup>2</sup> 2. Corporate (Government) 3. Construction & Development 4. Employment/ Human Resources 5. Environmental 6. Real Estate 7. Defense Litigation 8. Insurance
2) RDC	Not-for-profit, local development corporation 501(c)(3). Revolving loan programs originally funded by Federal Economic Development Administration (EDA) grant funds.	1. Corporate (Not-for-profit, local development corp.) <sup>3</sup>
3) ILDC	Not-for-profit, local development corporation 501(c)(3). Portfolio includes Renaissance Commerce Park (Lackawanna, NY) and Angola Agribusiness Park. Acquires and develops industrial sites. Revolving loan fund comprised of an Erie County Business Development Fund (HUD-CDBG). Tax-Exempt Bond issuer on behalf of Erie County.	1. Corporate (Not-for-profit, local development corp.) <sup>2, 3</sup> 2. Real Estate 3. Construction & Development 4. Environmental

#### A. General Counsel - Specific Economic Development Legal Services:

In addition to the above, as an economic development entity, the ECIDA requires specialized legal services that may include the following:

1. Provide legal counsel and advice on compliance with the rules and regulations governing: IDA tax incentive products, SEQRA, EDA revolving loan funds, Federal & State grant programs, foreign trade zones, brownfield cleanup programs, UDAG reflow funds, local development corporations, venture capital investments, increment financing and other economic development partners and programs.

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<sup>2</sup> ECIDA/ILDC tax-exempt bond work performed by Tax Exempt Bond Counsel (see Section IV for services required in this area):

<sup>3</sup> RDC/ILDC Commercial Lending/Collections work performed by Loan Counsel (see Section V for services required in this area)

2. Provide counsel and support to the ECIDA staff when they consult with prospective IDA clients about possible deal structures, eligibility issues and other related matters.
3. Serve as ECIDA counsel in connection with the negotiation and documentation of ECIDA projects.
4. Minimize ECIDA's exposure when it provides tax incentives, loans & investments and acts as the pass-through recipient of grant funding.
5. Work with the Tax-Exempt Bond Counsel and Loan Counsel.

**B. General Counsel - Corporate Legal Services:**

In addition to the above, the following corporate-related legal services are required:

1. Proactively advise the ECIDA in all corporate matters with respect to case law, statutes and regulations pertinent to the Agency and its operations.
2. Proactively provide legal counsel and advice on compliance with various Federal and State laws and regulations, including the Public Authorities Accountability Act (PAAA) and related best practices.
3. Attend and document minutes of all Board and Committee meetings.
4. Preparation of necessary legal documents (e.g. Board resolutions, Agent & Financial Assistance agreements).
5. Assist with and/or advise regarding Freedom of Information Law (FOIL) requests.
6. If applicable, transition outstanding legal matters from the current General Counsel and/or conflict counsel.

**C. Billing:**

For General Counsel services billed directly to the ECIDA, bidders are to indicate on Form 1, section B1, their proposed billing rates for up to three key attorneys (designation of "key attorneys" is to be based on those attorneys with the highest expected billable hours). Rates may be increased by up to 3% per calendar year for the term of the agreement.

For tax incentive projects, General Counsel bidders must agree to charge ECIDA clients based on the following billing schedule for the term of the agreement (unless subsequently modified by the ECIDA/bidder):

Benefited Amount <sup>4</sup>	Sales-Tax Only Project Legal Fee <sup>5</sup>	Standard Legal Fee
<=\$500,000	\$2,000	
<=\$750,000		\$5,000

<sup>4</sup> Represents the portion of the project budget that receives ECIDA incentives (i.e. excludes production equipment, land/building acquisition and soft costs). However, if the project mortgage exceeds this amount, the mortgage balance is considered the benefited amount.

<sup>5</sup> Represents fees for projects which only receive a sale-tax incentive (no PILOT or mortgage recording tax incentive) AND project size is less than or equal to \$500,000. For sales-tax incentive projects larger than \$500,000, the standard legal fee applies.

>\$750,000 - \$1.5M		\$9,000
>\$1.5M - \$3M		\$13,000
>\$3M - \$5M		\$17,000
>\$5-\$10M		\$20,000
>\$10M		\$28,000

For review of tax-exempt projects with ECIDA bond counsel, the General Counsel is expected to bill clients on an hourly basis with a “Not-to-Exceed” quote to individual ECIDA/ILDC bond clients in advance of the specific bond issuance.

#### **D. General Counsel - Overall Size of Engagement**

The General Counsel role is split between:

- a) Legal services billed directly to the ECIDA (approx. 520 hours in 2023) +
- b) Legal services billed to ECIDA clients using the flat fee schedule described in Section C. above. Based on the fee schedule, 2023 fees billed were broken out as follows:

<b>Benefited Amount</b>	<b>Sales-Tax Only Project Legal Fee<sup>6</sup></b>	<b>Standard Legal Fee*</b>	<b># of 2023 Projects</b>	<b>Total 2023 ECIDA fees billed to clients</b>
<=\$500,000	\$2,000		0	\$-0-
<=\$750,000		\$5,000	0	\$-0-
>\$750,000 - \$1.5M		\$9,000	0	\$-0-
>\$1.5M - \$3M		\$13,000	0	\$-0-
>\$3M - \$5M		\$17,000	1	\$17,000
>\$5-\$10M		\$20,000	5	\$100,000
>\$10M		\$28,000	8	\$224,000
				<b>\$341,000</b>

\*Standard Legal Fee excludes disbursements.

+ Please note that the amount of legal assistance can fluctuate significantly on a yearly basis and may be impacted by a number of factors including number and complexity of projects, litigation, legislation, etc.

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<sup>6</sup> Represents fees for projects which only receive a sale-tax incentive (no PILOT or mortgage recording tax incentive) AND project size is less than or equal to \$500,000. For sales-tax incentive projects larger than \$500,000, the standard legal fee applies.

## **IV. TAX-EXEMPT BOND COUNSEL**

### **A. Tax-Exempt Bond Counsel – Scope of Services:**

All legal services generally rendered with respect to service as a Tax-Exempt Bond Counsel, including the following:

1. Draft documents and related materials for tax-exempt and taxable financing transactions.
2. Render opinion that bonds being issued are exempt from taxation.
3. Work with the General Counsel & ECIDA staff.
4. If applicable, transition outstanding legal matters from the current tax-exempt bond counsel and/or conflict tax-exempt bond counsel.

### **B. Billing:**

Bidders are to indicate on Form 1, section B2, their proposed billing rates for up to three key attorneys (designation of “key attorneys” is to be based on those attorneys with the highest expected billable hours). Rates may be increased by up to 3% per calendar year for the term of the agreement.

Although clients are billed hourly, Tax-Exempt Bond Counsel and Tax-Exempt Bond Conflict Counsel are expected to provide a “Not-to-Exceed” quote to individual ECIDA/ILDC bond clients in advance of the specific bond issuance.

### **C. Tax-Exempt Bond Counsel – Overall Size of Engagement:**

The following table illustrates the number of tax-exempt bond financings that were issued by the ECIDA/ILDC by year:

	<b>2023</b>	<b>2022</b>	<b>2021</b>	<b>2020</b>
New Issues	2	3	1	2
Refinancings	1	1	1	0

## **V. LOAN COUNSEL**

### **A. Loan Counsel – Scope of Services:**

Provide legal counsel and advice for various situations including loan closings and documentation, loan workouts, collections, borrower bankruptcy filings, and general legal matters. Serve in an advisory role for microloans (under \$100,000), as these loans are closed by RDC/ILDC staff using standard loan documents. For loans over \$100,000, counsel is expected to work with borrower and borrower's counsel to assist with securing necessary loan documentation.

### **B. Billing:**

- a) Bidders are to indicate on Form 1, section B3, their proposed billing rates for up to three (3) key attorneys (designation of "key attorneys" is to be based on those attorneys with the highest expected billable hours). Rates may be increased by up to 3% per calendar year for the term of the agreement.
- b) Bidders must also provide a proposed schedule of fees to be charged to borrowers/clients, based on loan size.

### **C. Loan Counsel – Overall Size of Engagement:**

The legal counsel role is split between:

- a) Legal services billed directly to the RDC/ILDC (approx. 100 hours in 2023)
- b) Legal services billed directly to RDC/ILDC loan clients related to loan closings. Loan fund activity for the most recent 4 years is outlined below. Note that the large increase in loans funded in 2021 was due to a pandemic-related grant received to establish a new revolving loan fund. The activity level is expected to remain similar to the other years shown.

		<b>2023</b>	<b>2022</b>	<b>2021</b>	<b>2020</b>
Loans Funded (#)	Under \$100k	0	0	4	4
	Over \$100k	9	6	28	6
Loans Funded (\$)	Under \$100k	\$0	\$0	\$225,000	\$200,000
	Over \$100k	\$5,080,000	\$4,125,000	\$8,405,000	\$3,000,000



## **VI. TIME REQUIREMENTS**

### **A. Calendar**

The following is a list of key dates up to and including the date proposals are due to be submitted.

Requests for Proposals issued	July 17, 2024
Due date for Questions	July 26, 2024
Responses to Questions	August 2, 2024
Due date for response to RFP	August 23, 2024 (12:00 pm)

### **B. Questions**

Any questions related to this RFP must be submitted in writing via email to Mollie Profic ([mprofic@ecidany.com](mailto:mprofic@ecidany.com)) no later than the close of business on Friday, July 26, 2024. All questions will be answered in writing and copies of the questions and answers will be posted on ECIDA's website on the 'Requests for Proposals' page by August 2, 2024. No questions will be accepted via telephone.

### **C. Notification Dates (approximate)**

Short list of firms notified & additional information requested (interviews scheduled)	September 2024
Interviews/References checked (if any)	September – October 2024
Award Date for General Counsel, Loan Counsel & Tax-Exempt Bond Counsel and related Conflict Counsel	October 23, 2024
New Contracts finalized with selected legal counsel	November 30, 2024

## **VII. PROPOSAL REQUIREMENTS**

Each proposal should be no more than twelve (12) pages plus a cover page and exhibits (such as biographies, client listings, references & completed Forms 1-4) and include the following:

### **1. Qualifications and experience of the key attorneys to be assigned to the engagement**

#### **General Counsel Bidders:**

- Using Form 1, section B1, identify up to three (3) attorneys who would be considered “key” to the engagement based on their expected billable hours. Attach biographies of these key attorneys which identify (as applicable): 1) the individual’s experience with the rules and regulations governing: IDA tax incentive products, SEQRA, Federal & State grant programs, foreign trade zones, brownfield cleanup program, UDAG reflow funds, local development corporations, and other economic development partners and programs 2) the key attorney’s clients that are similar to the ECIDA and its affiliates, 3) the key attorney’s area(s) of expertise and 4) the key attorney’s experience with litigation/insurance, General Municipal Law, PAAA & corporate governance.

#### **Tax-Exempt Bond Counsel Bidders:**

- Using Form 1, section B2, identify up to three (3) attorneys who would be considered “key” to the engagement based on their expected billable hours. Attach biographies of these key attorneys which identify (as applicable): 1) the individual’s experience with the rules and regulations governing tax-exempt and taxable bond issuances 2) the key attorney’s clients that are similar to the ECIDA and its affiliated economic development corporations and 3) the key attorney’s area(s) of expertise.

#### **Loan Counsel Bidders:**

- Using Form 1, section B3, identify up to three (3) attorneys who would be considered “key” to the engagement based on their expected billable hours. Attach biographies of these key attorneys which identify (as applicable): 1) the individual’s experience with the rules and regulations governing Economic Development Administration (EDA) revolving loan programs 2) the key attorney’s clients that are similar to the ECIDA and its affiliated economic development corporations, 3) the key attorney’s area(s) of expertise, 4) the key attorney’s experience with loan collections.

### **2. Fees (All Bidders)**

As noted above, complete Form 1, Sections B1, B2 and/or B3 (as applicable) with the proposed hourly billing rates for the applicable attorney(s). Note: Tax incentive project fees are to be billed using the billing schedule specified in Section III (C) while loan closing fees are to be billed using the billing schedule proposed in Section V (B).

### 3. Qualifications and Experience of the Firm

**For each area bidding on (General Counsel, Tax-Exempt Bond Counsel, Loan Counsel) please provide the following:**

- Firm's Similar Clients/Client Service - List the firm's most significant clients served within the last five (5) years that are similar to the ECIDA and its affiliated economic development corporations. Indicate the primary office and personnel that served these clients. Also, describe if the firm has any programs, policies or measures in place to ensure timely responses and client satisfaction.
- Firm's Structure: Describe the firm's main office location and the number and size of its local/regional office(s) and length of time in business.
- Firm's Bench Strength: Indicate the breadth and depth of the firm's specialized resources to handle legal matters related to areas such as human resources, defense litigation, and insurance. Identify the firm's alliances or affiliations with other firms or organizations to share knowledge and resources. Firms may attach biographies of up to five (5) attorneys not identified in 1 above.
- Conflict of Interest: Provide a description of (i) any material arrangements, relationships or other employment that the firm or any firm employee has with any persons or entities that may create a conflict of interest or the appearance of a conflict of interest in acting on behalf of the ECIDA, (ii) any family relationship that any employee of the firm has with any ECIDA public servant that may create a conflict of interest or the appearance of a conflict of interest in acting on behalf of the ECIDA, and (iii) any other matter that the firm believes may create a conflict of interest or the appearance of a conflict of interest in acting on behalf of the ECIDA. Please describe any procedures the firm has, or would adopt, to assure the ECIDA that a conflict of interest would either not exist or not be a significant problem for the firm or ECIDA.

### 4. Minority/Women-Owned Business Enterprises (M/WBE) (All Bidders)

- Workforce: Bidders should describe the firm's Diversity Equity & Inclusion (DEI) efforts along with any programs or actions they undertake to attract, recruit, train, retain and promote minority and female employees, partners & associates. As applicable, indicate the firm's minority or women ownership, leadership and/or employees.
- Community Involvement: Bidders should describe any programs or arrangements they sponsor or support (including pro bono legal services) that further the development of women or minority-owned business enterprises in Erie County and the region.
- Vendor Policies: Bidders should describe any procurement policies or practices they have adopted that support local and M/WBE suppliers or services.

### 5. References

Provide the names and contact information of client references. Ideally, these references should be clients similar to the ECIDA and have worked with some or all of the key attorneys identified on Form 1.

- General Counsel bidders: Provide up to three (3) references
- Tax-Exempt Bond Counsel bidders: Provide up to three (3) references
- Loan Counsel bidders: Provide up to three (3) references

## **6. Compliance with Federal, State or local laws and regulations (All Bidders)**

Firms should indicate whether they are duly authorized to do business in New York and are subject to the jurisdiction of the courts of the State of New York.

Firms should indicate whether the firm, or any of its partners, associates or employees, or anyone acting on its behalf in the last five (5) years, has:

1. Ever been convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether any of the firm's partners, associates, employees, or persons exercising substantial policy discretion has ever been convicted of any crime or offense involving financial misconduct or fraud, and, if so, a detailed description of any such convictions and surrounding circumstances.
2. Ever been indicted or otherwise charged in connection with any criminal matter arising directly or indirectly from the conduct of the firm's business, and, if so, please describe any such indictments, charges, dispositions and surrounding circumstances in detail.
3. Ever been subject to any disciplinary proceeding arising directly or indirectly from the conduct of the firm's business and, if so, please describe any such charges, dispositions and surrounding circumstances in detail.
4. Ever received an adverse determination with respect to actions, proceedings, claims or complaints concerning violations of Federal, State or local equal employment opportunity or pay equity laws or regulations, and, if so, please describe any such adverse determinations in detail.

## **7. Identification of Anticipated Problems:**

The response should identify and describe any anticipated problems the firm may encounter in acting as Counsel, and the firm's approach to resolving these problems.

## **8. Insurance:**

The bidder agrees to procure and maintain, for the term of the Contract, insurance of the types and in the amounts hereafter required, with insurance companies authorized to do business in New York State, covering all operations under the Contract whether performed by it or its sub-contractors. The insurance companies affording coverage must be deemed acceptable to the ECIDA throughout the term of the Contract. If any insurance company is deemed unacceptable to the ECIDA the bidder agrees to procure and maintain at its expense coverage with an acceptable insurer as soon as notified by the ECIDA. The policies shall provide for a 30-day notice to the ECIDA prior to termination, cancellation or change.

Prior to the execution of the Contract, the bidder shall supply the ECIDA with a certificate(s) of insurance providing evidence of insurance coverage for the bidder for the following coverage:

- General Liability Insurance in a comprehensive form including coverage for property damage, bodily injury, personal injury and completed operations with a single limit of at least \$1,000,000 per occurrence with a \$2,000,000 aggregate. The certificate shall name the ECIDA as an additional insured.
- If any motor vehicle is used in regard to services on behalf of ECIDA or its affiliates, Auto Liability Insurance covering bodily injury and property damage with minimum combined single limit of \$1,000,000.

- Workers' Compensation and Employer's Liability in accordance with the applicable laws of the State of New York.
- Professional Liability Insurance, in the amount of \$2,000,000.

Each insurance policy shall be kept in force until the receipt of final payment to the bidder except for professional liability insurance, which shall be kept in force until at least one year after final payment to bidder.

The ECIDA and the bidder agree to waive all rights against each other for damages to the extent covered by the insurance, except for such rights they may have to the proceeds of such insurance held by the ECIDA as trustee. The bidder shall require similar reciprocal waivers by all sub-consultants. This policy shall recognize such waivers of recovery by an appropriate Waiver of Subrogation Clause Endorsement, excluding any subrogation rights granted under New York Law to the contrary notwithstanding. Above needed insurance coverage should be provided on a primary and non-contributory basis.

Copies of any required policies shall be provided to the ECIDA upon request.

## **9. Submission of Proposal:**

- 1) Six (6) copies of the completed proposal, including Forms 1-4, must be received at the following address before 12:00 pm on August 23, 2024 in order to be considered:

Erie County Industrial Development Agency  
Attn: Mollie Profic  
95 Perry Street, Suite# 403, Buffalo, New York 14203

- 2) In addition, a PDF copy of the completed response should be emailed to [mprofic@ecidany.com](mailto:mprofic@ecidany.com) or included on a USB flash drive and received before 12:00 pm on August 23, 2024. ECIDA's email server has a limit of 10MB, attachments larger than 10MB can be received via Dropbox or ShareFile.

ECIDA is not responsible for ensuring receipt of your proposal, please call or email Mollie Profic at [mprofic@ecidany.com](mailto:mprofic@ecidany.com) to confirm receipt.

During the evaluation process, the Selection Committee reserves the right, where it may serve the ECIDA's best interest, to request additional information or clarifications from firms, or to allow corrections of errors or omissions.

## **VIII. EVALUATION PROCEDURES**

### **A. Initial Review of Proposals**

A Selection Committee comprised of ECIDA staff members will initially evaluate each firm's proposal. Proposals that do not meet the following minimum requirements and those which are not responsive or not responsible (which includes, but is not limited to, the bidder's qualifications, financial stability, legal authority, integrity and performance) will not be given further consideration.

#### **Minimum Requirements:**

1. Submission of complete response by due date/time.
2. Completion of Forms 1-4.
3. Firm authorized to do business in New York State.
4. References provided.

The Selection Committee will then select the proposals which are most advantageous to the ECIDA, based on the sample scoring using the evaluation sheets presented in Appendix 1. The ECIDA reserves the right to modify the scoring criteria and weighing at its discretion.

### **B. Interviews / Reference Checks**

Based on the results of the initial review, the Selection Committee, at their discretion, may request a short list of firms to attend interviews and/or contact firm references. Presentations will provide firms with an opportunity to answer any questions that the Selection Committee may have on a firm's proposal. When discussions and negotiations are concluded, the ECIDA may request revised proposals and/or best and final offers from the short-list of firms.

### **C. Final Review of Proposals**

The Selection Committee will then re-evaluate and may re-score the short list of firms.

### **D. Final Selection**

The Selection Committee will recommend that the firm(s) with the highest overall scores be awarded the applicable contracts. The recommendations must be approved by the ECIDA Governance Committee and Board of Directors prior to the execution of a contract. It is anticipated that the successful law firms will be selected and notified by October 23, 2024.

### **E. Right to Reject Proposals**

The ECIDA reserves the right without prejudice to reject any or all proposals and to waive any informalities therein or in the selection process.

## **IX. NEW YORK STATE FINANCE LAW REQUIREMENTS**

### **Designated Individual - Procurement Lobbying Law**

Mollie Profic, Chief Financial Officer

Phone: 716-362-8380; Email: [mprofic@ecidany.com](mailto:mprofic@ecidany.com)

### **Permissible Contacts**

Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal includes and imposes certain restrictions on communications between ECIDA members (including employees and Board members) and a bidder during the procurement process. A bidder is restricted from making contacts from the earliest notice of intent to solicit Request for Proposals through final award and approval of the procurement contract by the ECIDA (“restricted period”) to other than the above Designated Individuals unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). ECIDA members (including employees and Board members) are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period; the bidder is debarred from obtaining governmental procurement contracts, and reported to the Authorities Budget Office (ABO), the ECIDA’s regulatory authority. Further information about these requirements can be found at

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

Bidders are required to complete Form 3 regarding their understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible contacts in the restricted period in accordance with State Finance Law §§139-j and 139-k.

### **Offerer/Bidder Certification of Compliance with State Finance Law §139-k(5)**

New York State Finance Law §139-k (5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-j or 139-k shall contain a certification by the Offerer/Bidder that all information provided to the ECIDA with respect to State Finance Law §139-k is complete, true, and accurate. It is recommended that the certification be provided to the ECIDA as early as possible in the process, such as when an Offerer/Bidder submits its proposal, bid or other form of offer. Form 4 may be used to satisfy this requirement.

### **Offerer/Bidder Disclosure of Prior Non-Responsibility Determinations**

New York State Finance Law §139-k (2) obligates the ECIDA to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer/Bidder must disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law §139-k (1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions.)

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer/bidder fails to timely disclose accurate or complete information regarding the above

non-responsibility determination. In accordance with the law, no Procurement Contract shall be awarded to any Offerer/bidder that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer/bidder is necessary to protect public property or public health safety, and that the Offerer/bidder is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §139-j (10)(b) and §139-k(3).

The ECIDA must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. Form 4 entitled “Offerer Disclosure of Prior Non-Responsibility Determinations” must be completed by the Offerer/Bidder and submitted to the ECIDA.

### **Public Disclosure**

Proposals submitted under this request for proposal are subject to public disclosure under the New York State Freedom of Information Law. If bidders do not want certain data disclosed for any purpose other than for evaluating the proposal, the bidder must identify the reason for the restriction and the pages of the proposal which they wish to have restricted, if allowed by law.

### **Contract Termination Provision**

New York State Finance Law §139-k (5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-j and 139-k contain a provision authorizing the ECIDA to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. This statutory contract language authorizes, but does not mandate, termination. “Governmental Entity” and “procurement contract” are defined in State Finance Law §139-k (1). If a contract is terminated in accordance with State Finance Law §139-k (5), the ECIDA is required to include a statement in the procurement record describing the basis for any action taken under the termination provision.

#### **ECIDA Termination Provision**

Pursuant to New York State Finance Law §139-k (5), the ECIDA reserves the right to terminate any contract in the event it is found that the certification filed by the bidder in accordance with New York State Finance Law §139k was intentionally false or intentionally incomplete. Upon such finding, the ECIDA may exercise its termination rights by providing written notification to the bidder in accordance with the written notification terms of this contract.



## General Counsel - Evaluation Form

Evaluation Criteria	Max Points	Points Rec'd	Comments
<b>A) Qualifications and experience of the Partners and Associates to be assigned to the engagement. (40 points)</b>  1. <u>Economic Development Programs</u> : Assigned Partners and Associates experience with the rules and regulations governing: IDA tax incentive products, SEQRA, Federal & State grant programs, foreign trade zones, brownfield cleanup programs, UDAG reflow funds, local development corporations, increment financing and other economic development partners and programs.  2. <u>Similar Clients</u> : Assigned Partners and Associates most significant clients that are similar to the ECIDA and its affiliated economic development corporations.  3. <u>Specialized Knowledge</u> : Assigned Partners and Associates experience in their respective areas of expertise.  4. <u>Other Legal Matters</u> : Assigned Partners and Associates experience with litigation/insurance, General Municipal Law, PAAA & corporate governance.	15          5          10          10		
<b>B) Fees (25 points)</b>	25		
<b>C) Qualifications and experience of the Firm (25 points):</b>  1. <u>Firm's Similar Clients/Client Service</u> : Firm's most significant clients that are similar to ECIDA and its affiliated economic development corporations. Client Satisfaction programs / measures.  2. <u>Firm's Structure</u> : Location of key attorneys, head office, number and size of local/regional office(s) and length of time in business.  3. <u>Firm's Bench Strength</u> : Breadth and depth of the firm's specialized resources to handle unique legal matters. Firm's alliances or affiliations with other firms or organizations to share knowledge and resources.  4. Absence of Conflict of Interest	10          6          6          3		
<b>D) M/WBE Development (10 points):</b> 1. <u>Workforce</u> : DEI efforts of the firm. Development of Women & Minority employees, Partners & Associates. M/WBE firm ownership, leadership and/or employees.  2. <u>Community Involvement</u> : Support of M/WBE initiatives in the local community.  3. <u>Vendor Policies</u> : Buying policies that support local & M/WBEs.	6          2          2		

## Tax-Exempt Bond Counsel - Evaluation Form

Evaluation Criteria	Max Points	Points Rec'd	Comments
<b>A) Qualifications and experience of the Partners and Associates to be assigned to the engagement. (40 points)</b>  1. <u>Economic Development Programs</u> : Assigned Partners and Associates experience with the tax-exempt & taxable bond issuances.  2. <u>Similar Clients</u> : Assigned Partners and Associates most significant clients that are similar to the ECIDA and its affiliated economic development corporations.  3. <u>Specialized Knowledge</u> : Assigned Partners and Associates experience in their respective areas of expertise.	20   5   15		
<b>B) Fees (25 points)</b>	25		
<b>C) Qualifications and experience of the Firm (25 points):</b>  1. <u>Firm's Similar Clients / Client Service</u> : Firm's most significant clients that are similar to the ECIDA and its affiliated economic development corporations. Client Satisfaction programs / measures.  2. <u>Firm's Structure</u> : Location of key attorneys, head office, number and size of local/regional office(s) and length of time in business.  3. <u>Firm's Bench Strength</u> : Breadth and depth of the firm's specialized resources to handle unique legal matters. Firm's alliances or affiliations with other firms or organizations to share knowledge and resources.  4. Absence of Conflict of Interest	10   6   6   3		
<b>D) M/WBE Development (10 points):</b>  1. <u>Workforce</u> : DEI efforts of the firm. Development of Women & Minority employees, Partners & Associates. M/WBE firm ownership, leadership and/or employees.  2. <u>Community Involvement</u> : Support of M/WBE initiatives in the local community.  3. <u>Vendor Policies</u> : Buying policies that favor local & M/WBEs.	6   2   2		

## Loan Counsel - Evaluation Form

Evaluation Criteria	Max Points	Points Rec'd	Comments
<b>A) Qualifications and experience of the Partners and Associates to be assigned to the engagement. (40 points)</b>  1. <u>Economic Development Programs</u> : Assigned Partners and Associates experience with EDA/HUD revolving loan programs.  2. <u>Similar Clients</u> : Assigned Partners and Associates most significant clients that are similar to the ECIDA and its affiliated economic development corporations.  3. <u>Specialized Knowledge</u> : Assigned Partners and Associates experience in their respective areas of expertise.  4. <u>Other Legal Matters</u> : Assigned Partners and Associates experience with loan collections.	15   5   10   10		
<b>B) Fees (25 points)</b>	25		
<b>C) Qualifications and experience of the Firm (25 points):</b>  1. <u>Firm's Similar Clients / Client Service</u> : Firm's most significant clients that are similar to the ECIDA and its affiliated economic development corporations. Client Satisfaction Programs/Measures.  2. <u>Firm's Structure</u> : Location of key attorneys, head office, number and size of local/regional office(s) and length of time in business.  3. <u>Firm's Bench Strength</u> : Breadth and depth of the firm's specialized resources to handle unique legal matters. Firm's alliances or affiliations with other firms or organizations to share knowledge and resources.  4. Absence of Conflict of Interest	10   6   6   3		
<b>D) M/WBE Development (10 points):</b>  1. <u>Workforce</u> : DEI efforts of the firm. Development of Women & Minority employees, Partners & Associates. M/WBE firm ownership, leadership and/or employees.  2. <u>Community Involvement</u> : Support of M/WBE initiatives in the local community.  3. <u>Vendor Policies</u> : Buying policies that favor local & M/WBEs.	6   2   2		

## Form 1: Firm Data Sheet

**A. Indicate positions bidder is willing to be considered for** (Check ‘√’ applicable section(s))

1.	General Counsel	<input type="checkbox"/>
2.	General Conflict Counsel	<input type="checkbox"/>
3.	Tax-Exempt Bond Counsel	<input type="checkbox"/>
4.	Tax-Exempt Bond Conflict Counsel	<input type="checkbox"/>
5.	Loan Counsel	<input type="checkbox"/>
6.	Loan Conflict Counsel	<input type="checkbox"/>

**B. Indicate key attorney(s) for positions checked in Section A above:**

**1. General Counsel/Conflict General Counsel Bidders:**

**Please identify up to three (3) key attorneys who will be assigned to the account<sup>7</sup>**

	Assigned Attorney	Primary Office Location	Est'd percentage of Total Billing <sup>8</sup>	Hourly Billing Rate <sup>9</sup>
1				
2				
3				

**2. Tax-Exempt Bond Counsel/Tax-Exempt Bond Conflict Counsel Bidders:**

**Please identify up to three (3) key attorneys who will be assigned to the account<sup>9</sup>**

	Assigned Attorney	Primary Office Location	Est'd percentage of Total Billing <sup>10</sup>	Hourly Billing Rate
1				
2				
3				

**3. Loan Counsel/Loan Conflict Counsel Bidders:**

**Please identify up to three (3) key attorneys who will be assigned to the account<sup>9</sup>**

	Assigned Attorney	Primary Office Location	Est'd percentage of Total Billing <sup>10</sup>	Hourly Billing Rate <sup>10</sup>
1				
2				
3				

<sup>7</sup> Designation of “key attorneys” is to be based on those attorneys with the highest expected billable hours

<sup>8</sup> Please indicate the percentage of the account each attorney is expected to bill. For example, if attorney#1 is expected to bill 200 hours and the total General Counsel account is estimated at 1,000 hours, please indicate “20%” in this column (200/1,000 hours). Percentages for the key attorneys do not have to add to 100% if additional attorneys that are not listed as “key” are also expected to work on the account.

<sup>9</sup> Tax incentive project fees are to be billed at the flat rates specified in Section III (D). This hourly rate is for all non-tax incentive project legal work.

<sup>10</sup> Loan closing fees are to be billed at the rates proposed in Section V (B). This hourly rate is for all non-loan closing legal work.

## Form 2: Non-Collusive Proposal Certification

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By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

- a) The prices in this proposal have been arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor,
- b) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor, and
- c) No attempt has been made or will be made by the bidder to induce any other person, Partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

### SUBMITTAL OF PROPOSAL

The undersigned submits the following proposal, which is in conformity with the intent of the RFP. The bidder agrees that should it be awarded a contract on the proposal through the issuance of a contract from the Erie County Industrial Development Agency, it will provide the services in strict compliance with the contract documents for the compensation stipulated herein. The bidder agrees that its proposal shall remain effective for a period of 90 days from the formal proposal receipt date.

\_\_\_\_\_  
Bidder

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

### Form 3: Permissible Contacts / Certification

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Bidder affirms that it understands and agrees to comply with the procedures of the ECIDA relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b) – see page 1 & 2 for further information.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Bidder: \_\_\_\_\_

Bidder Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Form 4: Disclosure of Prior Non-Responsibility Determinations

Name of Bidder: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the bidder in the previous four years? (Please circle):

No

Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No

Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

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 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)

Bidder certifies that all information provided to the ECIDA with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_