

OFFICE OF THE TOWN ATTORNEY  
TOWN OF OYSTER BAY  
NASSAU COUNTY, NEW YORK

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REQUEST FOR PROPOSALS  
FOR  
SPECIAL COUNSEL SERVICES

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NOTES:

1. ISSUANCE DATE: July 2, 2019
  2. THIS RESPONSE IS DUE BY: July 31, 2019  
[Consideration will only be given to responses received at the Office of the Town Attorney at or before 4:00 p.m. EDT]
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PROJECT NAME: **SPECIAL COUNSEL TO THE TOWN ATTORNEY  
HOUSING LITIGATION**

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A. AUTHORIZED CONTACT PERSON

Prospective firms are advised that the authorized Town of Oyster Bay (the “Town”) contact person for all matters concerning this Request for Proposals (the “Request” or “RFP”) is:

Joseph Nocella, Town Attorney  
54 Audrey Avenue  
Oyster Bay, NY 11771  
Telephone: (516) 624-6150 – Fax: (516) 624-6196  
Email: jnocella@oysterbay-ny.gov

B. INTRODUCTION

In accordance with the General Municipal Law § 104-b and the Town’s Procurement Policy, the Office of the Town Attorney is seeking proposals from qualified law firms interested in serving as litigation counsel to the Town in connection with two civil actions captioned as *United States of America v. The Town of Oyster Bay*, 14-cv-2317 (E.D.N.Y.) and *New York State Division of Human Rights v. The Town of Oyster Bay*, Nassau County Supreme Court, Index No. 608105/2015. As a general matter, these cases both involve challenges to the Town’s “Golden Age” and “Next Generation” Housing Programs.

As reflected by their respective index numbers, both actions have been in litigation for a number of years. Consequently, any firm that is selected under this Request will be serving as incoming counsel to the Town, in place and stead of existing counsel. Thus, it is strongly recommended that interested firms review the on-line docket sheets for each case to familiarize itself with the pleadings, motions, and proceedings that have occurred to date. *See* § G, *infra*.

Counsel must be admitted to the New York State courts and the United States District Court, Eastern District of New York.

The scope of the anticipated services and experience and knowledge required are more fully described below.

C. FORM OF PROPOSAL

Firms must submit three (3) copies of their firm’s resume, individual attorneys’ credentials, representative case work, and a proposed fee schedule.

Firms should conduct a conflicts check prior to submitting a response to this Request. By submitting a proposal to the Town, the firm represents and warrants to the Town that it conducted a conflicts check and that no disqualifying conflict(s) of interest exist.

At a minimum, proposing firms should expansively and thoroughly address the following subjects as a part of their proposal:

1. *Proposer Profile: Organization, Capacity, Staffing, Resumes*

Provide a complete description of the firm's organizational structure, and capacity to provide and support the proposed services; resumes of the proposed personnel (quality/demonstrated skills of proposed personnel); and a clear description of potential resource utilization methods and approach to the litigation.

2. *Related Experience*

Describe any prior public sector experience, project management and implementation qualifications and related experiences of the proposer including references, organizational and technical capacity, and outcome/results of services provided to other similar clients of similar size; comprehensive description of why the proposer can perform the tasks defined in the RFP.

3. *Fee Proposal*

Submit a proposed fee schedule, including proposed hourly rates for attorneys and support staff.

In addition, and further to the Town's on-going commitment to increased transparency and ethics, proposers must submit a completed Town Disclosure Questionnaire. A copy of the questionnaire is annexed to the end of this Request.

D. QUALIFICATION BASED SELECTION PROCESS

The Town, after receipt and review of responses to this RFP, reserves the right to reject any or all proposals based upon the information provided by the firm(s) in their proposal(s) and based upon subsequent negotiations between the Town and the firm(s). The review process is based on the qualifications of the firm for the nature of the services solicited under this RFP, as guided by the Town's Procurement Policy, adopted by Town Board Resolution 208-2018, a copy of which is available at <http://oysterbaytown.com/wp-content/uploads/Procurement-Policy-209-2018.pdf>.

In reviewing the proposals, the following factors will be considered, without limitation:

1. Magnitude, scope, and complexity of the services to be rendered;
2. Experience of the firm in assignments of similar size, scope, and complexity;
3. Special knowledge relevant to the project;
4. Size, staffing, resources, and financial capability of the firm vs. the size of the assignment;
5. Past performance with the Town, if any;
6. Firm's current workload with the Town; and
7. Acceptability and efficacy of proposed analysis, management and implementation methods and procedures and supporting systems for ongoing project management and

implementation support, previous engagements of similar scope and quality, description of recommendations and alternative approaches that the Town might use to improve its management process including rationale for the recommendations or alternative approaches.

E. CRITERIA FOR EVALUATION

It is expressly acknowledged that the quality of the services to be rendered is of paramount importance to the Town. However, it is further expressly acknowledged that the cost of the services to be rendered is a substantial concern because the Town seeks effective representation at reasonable rates.

Following its review of each proposal, the Town will notify the responding firms of their standing. The top ranked firm will be invited to submit an engagement letter, which will be subject to negotiation. If a satisfactory agreement cannot be negotiated with such firm at a fee determined by the Town to be fair and reasonable, then negotiations with such firm will be terminated and negotiations will continue with other suitably ranked firm(s).

Please note that the Town does not make retainer payments in advance of services rendered.

F. USE OF SUB-CONSULTANTS AND OTHER SUBORDINATE ENTITIES

Prospective firms are advised that the Town will entertain proposals that include the use of sub-consultants and/or other subordinate entities, i.e. expert witnesses. In such event, the proposal must clearly state the extent and nature of the work proposed to be delegated to the other entity and the cost reasonably estimated to be passed on to the Town in connection with the service to the extent presently known and/or ascertainable.

G. FAMILIARIZATION WITH CURRENT PROGRAMS, FACILITIES, AND DOCUMENTS

It is the sole responsibility of the prospective firms to familiarize themselves with the Town's current programs, facilities, documents and any other information which is necessary and relevant to the scope of this RFP. Upon sufficient and reasonable advance notice to the contact person named above, arrangements may be made to visit and inspect any involved Town facilities and/or to view applicable documents.

Any and all costs borne by the prospective proposer in familiarizing themselves with the above are to be borne solely by the prospective proposer. *See § L(1), infra.* In the event that the prospective proposer is ultimately awarded a retainer pursuant to this RFP, the Town will not allow any claims for payment which include billable time for such familiarization and travel costs, regardless of whether they were incurred prior to or following the submission of the proposer's proposal.

H. PAYMENTS AND CLAIMS

Payment for services rendered is made on a monthly basis, following submission of an invoice and Town claim form, which is subject to review and audit by Town personnel. Billing shall be computed on one-tenth of an hour basis, and invoices must clearly reflect the staff assigned to this project, the number of hours or portion thereof spent on this project, the hourly rate of each staff member, and a description of the services rendered by each staff member.

**Note: The Town makes no representation of the actual value of the work. Further, as part of the award process, a maximum dollar amount may be determined and may be incorporated into the agreement that is awarded pursuant to this Request for Proposals. The Town further states that it also makes no representation that actual services required will be for the full maximum dollar amount incorporated into the agreement.**

I. SCOPE OF SERVICES

The Town seeks qualified legal counsel to provide litigation services to the Town in connection with the housing litigation described in Section B. A more detailed description of the legal issues involved in those disputes is attached to this Request for Proposals as “Exhibit A.”

J. REQUIRED EXPERIENCE AND SPECIAL KNOWLEDGE

- Federal and New York State litigation;
- Familiarity with housing litigation, including claims of housing/racial discrimination;
- Familiarity with and experience handling claims made under the Fair Housing Act, 42 U.S.C. § 3601, *et seq*; and
- Familiarity with and experience handling claims made under New York Executive Law § 296.

K. PROPOSAL SUBMISSION INSTRUCTIONS

Each proposal shall be prepared simply and economically avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete, accurate, and reliable presentation.

The proposals must be signed by an individual who is authorized to bind the Firm to all commitments made in the proposal. Three (3) copies of the proposal, together with all attachments, must be submitted to the Town in a sealed envelope **no later than 4:00 p.m. EST on July 31, 2019**. Proposals received after the above date and time will not be considered. The Town is under no obligation to return proposals.

It is each Proposer’s responsibility to carefully review all requirements of the RFP, including the scope of work, the specification and terms and conditions. It is further the proposer’s responsibility to ask questions, request clarifications, or otherwise advise the Town if any language, specifications or requirements of this RFP appear to be ambiguous, contradictory, or vague. Any questions must be submitted by e-mail only by July 19, 2019 at 12:00 p.m.

Although the Town will make best efforts to respond to any question(s) received by the deadline established above, the Town is under no obligation to respond to such questions, inquiries or assertions. Note that all questions, and all corresponding answers, if any, will be shared with all prospective law firms.

Proposers will submit all proposals and direct all responses, questions and any other communications to the following contact person:

Joseph Nocella, Town Attorney (jnocella@oysterbay-ny.gov)

with copies to

Jeffrey A. Lesser, Esq. (jlesser@oysterbay-ny.gov); and  
Matthew M. Rozea, Esq. (mrozea@oysterbay-ny.gov).

Please indicate in the subject line of any email “Special Counsel RFP (Housing Litigation).”

No contact with any other Town personnel other than the authorized contact person is permitted until such time as an award has been made by the Town Board.

L. OTHER GENERAL INFORMATION

1. **Incurring Cost.** The Town shall not be liable for any costs incurred in the preparation and production of a proposal in response to this RFP or for any work performed prior to the issuance of a contract.

2. **Rejection of Proposals.** This RFP does not commit the Town to award a contract, or to procure, or to contract for services or supplies. The Town reserves the right to award this contract to the proposer(s) that best meet the requirements of the RFP. The Town reserves the right to accept or reject any or all proposals received as a result of this request; to negotiate with all qualified sources, or to cancel in part or in its entirety this RFP if it is in the interests of the Town to do so. The Town may require the Proposer selected to participate in negotiation and to submit any price, technical, or other revisions, or their proposals as may result from negotiations.

3. **Addenda to Request for Proposals.** Amendments to this RFP may be necessary prior to closing date and will be posted on the Town website: <http://oysterbaytown.com/doing-business-with-the-town>. It is the sole responsibility of proposers to review that website for addenda prior to making any proposal; the Town will not directly contact interested firms to advise of any amendments to this Request.

4. **Contract Negotiations.** The Town intends to enter into contract negotiations with the firm(s) selected by the Town Board, who shall be required to enter into a written contract with the Town in a form approved by legal counsel for the Town.

5. **Disclosure of Proposal Contents.** The Town will withhold proposals submitted

under this RFP from disclosure, unless otherwise required by law, including, but not limited to, the Freedom of Information Law (“FOIL”). Proposers should indicate any information they feel is exempted from disclosure under FOIL. In the event that the Town determines that information is required by applicable law to be disclosed, the Town will notify the Proposer in advance of such disclosure to enable the Proposer to take such actions as it deems appropriate. Copies of executed contracts are not exempt from FOIL.

6. **Ownership of Information.** All material submitted in response to this RFP will become the property of the Town.

7. **Examination of Records:** In submitting a proposal, the successful Proposer agrees that the Town shall have access to and the right to examine all pertinent documents, papers and records of the Proposer and/or any sub-proposer as related to any contract and/or subcontract resulting from this RFP until six years after final payment has been made pursuant to any contract awarded as a result of the Town’s acceptance of proposal.

8. **Disclaimer** The Town and its respective officers, directors, agents, members and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, the Town does not warrant nor make any representations as to the quality, content, accuracy or completeness of the information, text graphics, links or other facets of this RFP once it has been downloaded or printed from this or any server, and hereby disclaims any liability for technical errors or difficulties of any nature that may arise in connection with the Website on which this RFP if posted, or in connection with any electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.

9. **Negotiated Changes.** In the event that negotiated changes occur after the awarding of the contract, the same pricing policies called for in the original contract will remain in effect.

10. **Certain Termination Provisions.** The contract shall provide that in the event of any material misrepresentation by the Proposer contained in its proposal, the Town shall have the right to immediately terminate the agreement. It shall also provide that in the event the Proposer or any of its principals are convicted of a misdemeanor or felony during the term of the agreement, that the Town shall also have the right to terminate the agreement.

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# EXHIBIT A

In April 2014, the United States Government ("Government") commenced a civil action against the Town and then Supervisor John Venditto, alleging, in sum and substance, that the Town's Next Generation and Golden Age housing programs (collectively, the "Housing Programs") were discriminatory and in violation of, inter alia, the Fair Housing Act inasmuch as the Housing Programs had an alleged disparate impact upon African Americans. The Government's allegations were and remain based upon statistics only, and, significantly, do not contain any indicia that the Housing Programs were intentionally designed and implemented to have a discriminatory intent.

More specifically, according to the complaint, the Government alleges that the Town's Housing Programs have a discriminatory effect because (1) the Housing Programs gave priority to Town residents and relatives of Town residents and (2) the eligible population in the Town happens to include a smaller percentage of African Americans than the eligible populations of New York City and Nassau and Suffolk Counties. Responding to the Government's complaint, the Town has argued, among other things, that the Fair Housing Act prohibits intentional discrimination, only; that a disparate impact claim based upon statistics alone is legally insufficient; and, that notwithstanding the foregoing points, the Fair Housing Act does not require municipalities to engage in "racial balancing" as the Government seeks.

The Government's complaint seeks a declaration that the Housing Programs violated the Fair Housing Act, an injunction to enjoin the Town and its employees from engaging in discrimination on the basis of race, ordering the Town to take steps to prevent discriminatory conduct, and insignificant civil penalties, and unspecified damages related to the financial position of the Town. The Town has vigorously defended against this action, which is presently stayed pending the resolution of an unrelated court proceeding.

In a related matter, on December 17, 2015, New York State, through its Division of Human Rights brought a similar lawsuit under the New York State Human Rights Law in Nassau County Supreme Court. The complaint makes almost identical statistically based allegations of discrimination as those set forth in the United States' action. The Town made a motion to dismiss which was denied by the Court. The Town's appeal of the decision is pending.

CONTRACT# \_\_\_\_\_ TITLE \_\_\_\_\_

**TOWN OF OYSTER BAY  
DISCLOSURE QUESTIONNAIRE**

All questions on this questionnaire must be answered by an officer and any stakeholders who hold a majority or greater ownership interest in the proposer. Answers must be typewritten or printed in ink. If you need more space to answer any question, make as many photocopies of the appropriate page(s) as necessary and attach them to the questionnaire.

COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY. FAILURE TO  
SUBMIT A COMPLETE QUESTIONNAIRE MAY MEAN THAT YOUR BID OR PROPOSAL  
MAY BE REJECTED AS NON-RESPONSIVE AND IT MAY NOT BE CONSIDERED FOR  
AWARD

**NOTE: All questions require a response, even if response is “none” or “not-applicable.” No blanks.**

**SECTION I: GENERAL INFORMATION**

1. Business name (legal name): \_\_\_\_\_
2. Federal Employer ID No. (FEIN): \_\_\_\_\_
3. d/b/a – doing business as (if applicable): \_\_\_\_\_  
County filed: \_\_\_\_\_
4. Website address (if applicable): \_\_\_\_\_
5. Business e-mail address: \_\_\_\_\_
6. Principal place of business address: \_\_\_\_\_
7. Telephone number: \_\_\_\_\_ 7. Fax number: \_\_\_\_\_
8. Does the business use, or has it used in the past five (5) years, any other business name, FEIN, or d/b/a other than what is listed in questions 1-3 above? Yes \_\_\_ No \_\_\_  
If yes, please provide details. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. Authorized contact:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone number: \_\_\_\_\_ Fax number: \_\_\_\_\_  
E-mail: \_\_\_\_\_

10. How many years has this entity been in business? \_\_\_\_\_
11. The proposer is a (check one):  Sole Proprietorship  Partnership  Corporation  
 Other (Describe) \_\_\_\_\_

**SECTION II: PRINCIPAL INFORMATION**

1. Principal Name \_\_\_\_\_  
 Date of birth \_\_\_\_/\_\_\_\_/\_\_\_\_ % Equity Interest in Company \_\_\_\_\_  
 Home address \_\_\_\_\_  
 City/state/zip \_\_\_\_\_  
 Telephone \_\_\_\_\_

2. Positions held in submitting business  
 \_\_\_\_\_  
 \_\_\_\_\_

3. Within the past five years, have you been a principal owner or officer of any business or not-for-profit organization other than the one submitting the questionnaire?  
 YES \_\_\_ NO \_\_\_; If Yes, provide details. \_\_\_\_\_  
 \_\_\_\_\_

4. Has any governmental entity awarded any contracts to a business or organization listed in question 3 above in the past five (5) years while you were a principal owner or officer?  
 YES \_\_\_ NO \_\_\_; If Yes, provide details. \_\_\_\_\_  
 \_\_\_\_\_

**SECTION III: DUE DILIGENCE QUESTIONS - TO BE COMPLETED IF CONTRACT VALUE IS \$25,000.00 OR OVER IN A 12 MONTH PERIOD.**

1. Does the business possess all certifications, licenses, permits, approvals, insurance, bonds or other authorizations issued by any local, state, or federal governmental entity in connection with the proposal/project, business services, operations, business, or ability to conduct its activities? Please note this does not include construction related activities such as building permits and certificates of occupancy.  
 YES \_\_\_ NO \_\_\_ If no, please provide details \_\_\_\_\_  
 \_\_\_\_\_
2. Does this business have one or more affiliates, and/or is it a subsidiary of, or controlled by, any other business?  
 YES \_\_\_ NO \_\_\_ If Yes, provide details. \_\_\_\_\_  
 \_\_\_\_\_

3. Has the proposer ever had a bond or surety cancelled or forfeited, or a contract with any entity terminated? YES \_\_\_ NO \_\_\_ If Yes, state the name of bonding agency, (if a bond), date, amount of bond and reason for such cancellation or forfeiture; or details regarding the termination.

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4. On a separate document attached hereto, list all contracts that business has entered into with any municipality in the past three (3) years. Please list the names, address and contact person for the contracting entities.

5. Has the proposer, during the past five (5) years, been declared bankrupt? YES \_\_\_ NO \_\_\_ If Yes, state date, court jurisdiction, amount of liabilities and amount of assets \_\_\_\_\_

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6. In the past five years, has this business and/or any of its owners and/or officers and/or any affiliated business, been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency?

YES \_\_\_ NO \_\_\_ If Yes, provide details for each such investigation. \_\_\_\_\_

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7. In the past 5 years, have any owner and/or officer of any affiliated business been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, where such investigation was related to activities performed at, for, or on behalf of an affiliated business.

YES \_\_\_ NO \_\_\_ If Yes, provide details for each such investigation. \_\_\_\_\_

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8. In the past 5 years, has this business and/or any of its owners and/or officers and/or any affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies?

YES \_\_\_ NO \_\_\_ If Yes, provide details for each such investigation. \_\_\_\_\_

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9. In the past 5 years, has any owner and/or officer of an affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies, for matters pertaining to that individual's position at or relationship to an affiliated business.

YES \_\_\_ NO \_\_\_ If Yes, provide details for each such investigation. \_\_\_\_\_

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10. Has any current or former director, owner or officer or managerial employee of this business had, either before or during such person's employment, or since such employment( if the conduct pertained to events that allegedly occurred during the time of employment):

a) Any felony charge pending? YES \_\_\_ NO \_\_\_ If Yes, provide details for each such charge.

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b) Any misdemeanor charge pending? YES \_\_\_ NO \_\_\_ If Yes, provide details for each such charge. \_\_\_\_\_

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c) Any violations of administrative, statutory or regulatory provisions pending? YES \_\_\_ NO \_\_\_ If Yes, provide details for each such charge. \_\_\_\_\_

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d) In the past ten (10) years, you been convicted, after trial or by plea, of any felony and/or any other crime, an element of which relates to truthfulness.? YES \_\_\_ NO \_\_\_ If Yes, provide details for each such conviction.

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e) In the past ten (10) years, been convicted, after trial or by plea, of a misdemeanor? YES \_\_\_ NO \_\_\_ If Yes, provide details for each such conviction. \_\_\_\_\_

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f) In the past ten (10)years, been found in violation of any administrative, statutory, or regulatory provisions? YES \_\_\_ NO \_\_\_ If Yes, provide details for each such occurrence.

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11. In the past five (5) years, has this business or any of its owners or officers, or any other affiliated business had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held? YES \_\_\_ NO \_\_\_; If Yes, provide details for each such instance.

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12. For the past five (5) tax years, has this business failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges? YES \_\_\_ NO \_\_\_ If Yes, provide details for each such year. \_\_\_\_\_

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**SECTION IV: CONFLICT OF INTEREST**

Please disclose any conflicts of interest as outlined below. NOTE: If no conflicts exist, please expressly state "No conflict exists."

1. Any material financial relationships that your firm or any firm employee has that may create a conflict of interest or the appearance of a conflict of interest in being awarded this contract with the Town of Oyster Bay.

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2. Any family relationship that any employee of your firm has with any public servant that may create a conflict of interest or the appearance of a conflict of interest in being awarded this contract with the Town of Oyster Bay.

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3. Any other matter that your firm believes may create a conflict of interest or the appearance of a conflict of interest in being awarded this contract with the Town of Oyster Bay.

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