



# Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500

[www.gaming.ny.gov](http://www.gaming.ny.gov)

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**Barry Sample**, Commissioner  
**Todd R. Snyder**, Commissioner

**Robert Williams**, Executive Director  
**Edmund C. Burns**, General Counsel

## **REQUEST FOR QUALIFICATIONS**

**For**

## **HEARING OFFICER SERVICES**

**Release Date: March 6, 2015**

**C150006 – C150011**

## **DESIGNATED CONTACTS**

Consistent with the public policy established by the Procurement Lobbying Law, described in Part 1 of this Request for Qualification ("RFQual"), the Contract Management Specialist or Supervisor of Contract Administration, designated below are the only points of contact with regard to matters relating to this RFQual, unless additional points of contact are designated by them.

**ALL BIDDERS RESPONDING TO THIS RFQual AND ALL COMMUNICATIONS CONCERNING THIS OPPORTUNITY MUST BE ADDRESSED IN WRITING VIA E-MAIL OR USPS TO EITHER OR BOTH OF THESE INDIVIDUALS.**

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New York State Gaming Commission  
Contracts Office, 5<sup>th</sup> Floor  
One Broadway Center  
Schenectady, NY 12301-7500

## **PART 1 – GENERAL INFORMATION**

### **1.1 INTRODUCTION**

The New York State Gaming Commission (the “Commission”) regulates all aspects of gaming and gambling activity in the State, including horse racing and pari-mutuel wagering, the state lottery (including video lottery gaming), charitable gaming, commercial casino gaming and Indian casino gaming.

Through this RFQual, the Commission seeks to Contract with qualified attorneys to conduct administrative hearings on an as-needed basis. Most of the hearings will be held in Schenectady and New York City. In some cases, hearings may be conducted within other regions of the State, including, without limitation, Buffalo, Genesee County, Oneida County, Seneca County, Sullivan County and Tioga County, and through the use of video conferencing.

Up to six awards may be made as a result of this solicitation. The term of each Contract will be three years.

### **1.2 ADMINISTRATION OF THIS RFQual**

The Commission is the only office authorized to clarify, modify, amend, alter or withdraw the provisions of this RFQual. The contents of this RFQual, including any modifications, will become contractual obligations if a Contract ensues. Failure of the successful applicant to accept these obligations may result in cancellation of the award.

It is the applicant’s responsibility to become aware of any amendments and/or addenda to this RFQual prior to submission of a response. All amendments and/or addenda will be posted to the Commission website at <http://www.gaming.ny.gov> . Only the Commission website will contain all amendments and/or addenda.

### **1.3 MINIMUM QUALIFICATIONS**

To be considered for award under this RFQual the individual must meet the minimum qualifications listed below.

- Admission to the New York State Bar and a member in good standing with a minimum of five years of post-admission legal experience.
- Good writing, research and communication skills.

- Ability to learn and use the Commission’s electronic technology, including video equipment and related equipment necessary for the hearing process.

#### 1.4 PREFERRED EXPERIENCE

The following experience is preferred, but not mandatory, and may be a consideration in the award.

- Experience in areas of judicial/ hearing officer/ administrative law judge/ litigation/arbitration.
- Experience in the sports industry or with doping regulation.

#### 1.5 SCHEDULE

The following dates are established for informational and planning purposes. The Commission reserves the right to make adjustments to this schedule.

RFQual Issued:	March 6, 2015
Responses Due by 3:00 pm:	March 27, 2015

#### 1.6 APPENDICES AND ATTACHMENTS

The following documents are incorporated into this RFQual:

- Appendix A: Standard Clauses for New York State Contracts
- Appendix B: Contract Form (incorporates Appendix A)
- Appendix C: Procurement Lobbying – Bidder/Offeror Disclosure Form
- Appendix D: Substitute Form W-9 (Vendor Identification Number)
- Appendix E: Electronic Payment Authorization Form
- Appendix F: Consultant Disclosure – Forms A and B

Attachment 1: Conflict of Interest Disclosure Form

#### 1.7 CANDIDATE/CONTRACTOR DIFFERENTIATION

Throughout this RFQual the terms “applicant”, “bidder”, “proposer”, and “respondent” may be used interchangeably in reference to the preparation and submission of the response to this opportunity and any requirements preceding the award of the final contracts. In describing post-contract award requirements, an effort is made to use the term “successful applicant”, “contractor”, and “consultant.”

## 1.8 HEADINGS

The headings used in this RFQual are for convenience only and shall not affect the interpretation of any of the terms and conditions of this RFQual.

## 1.9 PROCUREMENT LOBBYING RESTRICTIONS

As required by the Procurement Lobbying Law (State Finance Law Sections 139-j and 139-k), this RFQual includes and imposes certain restrictions on communications between the Commission and a bidder during the procurement process. A bidder is restricted from making contacts from the earliest solicitation of offers through final award and approval of the resulting Contract by the Commission and the Office of the State Comptroller (“restricted period”) to other than designated staff members unless the contact is permitted by the statutory exceptions set forth in New York State Finance Law Section 139-j (3)(a). Designated staff members are identified at the beginning of this RFQual.

Commission employees are permitted to communicate with bidders concerning this RFQual only under circumstances described in the New York State Procurement Lobbying Law. Any bidder causing or attempting to cause a violation or circumvention of those requirements may be disqualified from further consideration for selection.

Commission employees are required to obtain certain information when contacted during the “restricted period” and to make a determination of the responsibility of the bidder pursuant to Sections 139-j and 139-k. A violation can result in a determination of non-responsibility, which can result in disqualification for a Contract award. In the event of two determinations within a four-year period, a bidder will be debarred for a period of four years from obtaining a governmental procurement Contract award. Further information about these requirements can be found at: <http://www.ogs.ny.gov/acpl>.

The Commission reserves the right, in its sole discretion, to terminate the Contract in the event that the Commission determines that the certification filed by the bidder in accordance with New York State Finance Law 139-k was intentionally false or intentionally incomplete. Upon such determination, the Commission may exercise its termination right by providing written notification to the bidder in accordance with the written notification terms of this Contract.

**The BIDDER DISCLOSURE/CERTIFICATION FORM, included with this RFQual as Appendix C, must be completed and submitted with the Response.**

## 1.10 FORM OF CONTRACT

The successful applicants will be expected to sign a contract with the Commission in the form attached to this RFQual as **Appendix B** (the “Contract”). **Appendix A**, Standard Terms for New York State Contracts, is incorporated into the Contract.

The Commission does not intend to negotiate any changes in the provisions of the Contract form subsequent to the award. Any exception to the Contract form must be raised in a bidder question submitted to the Commission pursuant to the Schedule and in accordance with the Question and Answer process set forth in this Part 1. Failure to include the signed Contract in the bidder's response, in the form provided, will deem the submittal non-responsive.

1.11 CONFLICT OF INTEREST DISCLOSURE FORM

All applicants responding to this opportunity must submit with their response a completed and signed Conflict of Interest Disclosure Form included with this solicitation as **Attachment 2**. As provided for in the Contract form, any individual awarded a Contract through this opportunity, will have an on-going responsibility to inform the Commission of any actual or apparent conflict of interest.

1.12 NEWS RELEASES

A news release pertaining to this RFQual or the services, evaluation, or project to which this RFQual relates may not be made without prior written Commission approval, and then only in accordance with express written instructions from the Commission. No results of the award process may be released without prior approval by the Commission and then only to persons designated by the Commission.

1.13 ADVERTISING

Each respondent agrees not to use the Commission's name, logos, images, nor any data or results arising from this RFQual or resulting Contract as part of any commercial advertising without prior written approval by the Commission, and then only in consultation and cooperation with the Commission.

## PART 2 – CONTRACTUAL PROVISIONS

### 2.1 GOVERNING LAW

The Response submission process, the evaluation of Responses, the award procedure, and any Contract resulting from this RFQual shall be governed by the laws of the State of New York and shall be interpreted according to New York State law. Any and all disputes of claims arising under this RFQual or any Contract resulting from this RFQual, other than as specifically set forth in this RFQual, shall be brought exclusively in the appropriate court of the State of New York; and, by submitting a Response, a bidder waives access to any other court or forum that may have concurrent jurisdiction within or outside New York State to hear or resolve any such dispute or claim.

### 2.2 STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**Appendix A** - Standard Contract Clauses for New York State Contracts is attached. **Appendix A** becomes part of all New York State Contracts and is incorporated in the Contract form – Appendix B of this RFQual.

### 2.3 CONTRACT ELEMENTS

The Contract resulting from this RFQual will include the following parts:

- Appendix A – Standard Clauses for New York State Contracts
- Contract
- RFQual
- Applicant's Response

In the event of a conflict in any provisions of these documents, the order of precedence shall be as listed above from the highest to the lowest.

### 2.4 SEVERABILITY

If a court of competent jurisdiction determines any portion of a Contract to be invalid, it shall be severed and the remaining portion of a Contract shall remain in effect.

### 2.5 SUB-CONTRACTING

Sub-contracting will not be permitted under Contracts awarded from this RFQual.

### 2.6 DELEGATION AND/OR ASSIGNMENT

No delegation or assignment of duties will be permitted under a Contract awarded from this RFQual.

## 2.7 CONTRACT TERM

The term of the Contracts resulting from this opportunity shall be April 1, 2015 through March 31, 2018.

## 2.8 COMPENSATION

The total compensation paid under each Contract awarded through this opportunity shall not exceed \$47,000. Details of compensation are defined in the Contract.

## 2.9 CONTRACT INVOICING AND PAYMENT

Payment under the Contract will be in accordance with New York State Prompt Payment Law (Article 11-A of the New York State Finance Law). The Commission shall promptly process all payments due to the Contractor that conform to the provisions of this RFQual and resulting Contract and are approved by the Commission staff.

## 2.10 CONTRACTOR IDENTIFICATION NUMBER

**Substitute Form W-9:** In order to do business with the State of New York, each successful applicant will be required to obtain a NYS bidder Identification number for use in the Statewide Financial System (SFS). The Substitute Form W-9 must be completed and submitted directly to the Commission with the signed Contract (following notification of Contract award). The purpose of the Substitute Form W-9, which will capture the Contractor's taxpayer identification number, business name, and business contact person, is to allow the State to establish a bidder file in the State Financial System. Note: IRS Form W-9 is not acceptable for this purpose.

**The Substitute Form W-9 is included in this RFQual as Appendix D.**

## 2.11 ELECTRONIC PAYMENT (EPAY) PROGRAM

In accordance with a directive by the New York State Division of the Budget, if awarded a Contract under this RFQual the Contractor will be required to enroll in the Electronic Payment ("epay") Program through the OSC. Upon execution of the Contract the Contractor will need to submit an Electronic Payment Authorization Form. Additional information and procedures for enrollment into the epay program can be found at OSC's website: <http://www.osc.state.ny.us/epay>.

**The Electronic Payment Authorization Form is included in this RFQual as Appendix E.**



## 2.12 CONSULTANT DISCLOSURE

The Contractor must comply with the requirements of New York State Finance Law Section 163(4)(g), which imposes certain reporting requirements on Contractors doing business as bidders with New York State. In furtherance of these reporting requirements, the Contractor agrees to complete and submit Contractor's Planned Employment Report (**Appendix F – Form A**) within two business days after receiving notice of a Contract award and Contractor's Annual Employment Report (**Appendix F – Form B**) by May 15, for each fiscal year (April 1 – March 31) the Contract term is in effect. Page two of each form provides the necessary addresses for submitting the form.

While the Planned Employment Report (Form A) is a one-time projection of the planned employment under the upcoming Contract term, the Annual Employment Report (Form B) is a reporting of the actual employment history for the previous fiscal year.

Forms A and B should be completed as follows:

- **Employment Category:** The Contractor must use specific occupation titles as listed in the O\*net occupational classification system found through the U.S. Department of Labor's Employment and Training Administration ([www.online.onetcenter.org](http://www.online.onetcenter.org)). The classification system provides a code for various occupational titles; the Contractor should use the code that best defines the employment titles to be utilized under the Contract.
- **Number of Employees:** Enter the number of employees in the employment category employed to provide services (Form A), or who have performed services (Form B), during the reporting period, including part-time employees and employees of sub-contractors.
- **Number of Hours Worked or to be Worked:** Enter the number of hours to be worked (Form A), or worked (Form B) under the employment category for the reporting period.
- **Amount payable or paid under the Contract:** Enter the estimated amount to be paid (Form A), or actually paid (Form B) for each employment category for the reporting period.
- **Scope of Contract (Form B only):** Choose the category that best describes the predominate nature of the services performed under the Contract.

## 2.13 CODE OF CONDUCT FOR CONTRACTOR

The Commission is an extremely sensitive enterprise because of the nature of the business and because it is government operated. Therefore, it is essential that its operation, and the operation of other enterprises that would be linked to it in the public mind, avoid not only impropriety but also the appearance of

impropriety. Due to this, contractors associated with the Commission are expected to:

- A. Offer goods and services only of the highest standards;
- B. Use their best efforts to prevent the industry from becoming embroiled in unfavorable publicity;
- C. Make sales presentations in a responsible manner; and when it is necessary to point out the superiority of their goods or services over those of their competitors, to do so in such a manner as to avoid unfavorable publicity for the industry;
- D. Avoid promotional activities that could be interpreted as improper and result in embarrassment to the industry;
- E. Report security problems or potential security problems promptly to the Commission;
- F. Not offer or give any gift, gratuity, favor, entertainment, loan or any other thing of material monetary value to any Commission employee, or to any individual influencing the outcome of this project;
- G. At any point during the procurement and resulting Contract bidder must identify, and bring to the attention of the Commission, actual or apparent conflicts of interest as knowledge of such conflicts arise.

#### 2.14 NON EXCLUSIVE RIGHTS

Nothing in this RFQual or the Contract resulting from this RFQual shall preclude the Commission from obtaining services from other sources.

### **PART 3 – SCOPE OF SERVICES**

Upon Contract award the Hearing Officer will be required to:

- A. Preside at hearings as assigned by the Commission, and perform other services incidental to such assignments.
- B. Perform administrative tasks, including but not limited to, managing video equipment and other equipment necessary for the hearing process; arranging the placement of the parties; and instructing the court reporter or stenographer, so as to optimize the hearing process in accordance with Commission regulations and procedures.
- C. Abide by the Model Code of Judicial Conduct for State Administrative Law Judges (“Code”) adopted by the New York State Bar Association (“NYSBA”) House of Delegates on April 4, 2009, and by any subsequent superseding Code adopted by the NYSBA House of Delegates.
- D. Perform the duties of a hearing officer on behalf of the Commission in administrative adjudications pursuant to the State Administrative Procedure Act; the Racing, Pari-Mutuel Wagering and Breeding Law; and the administrative adjudication rules of the Commission, which, unless explicitly directed otherwise in writing by the Commission, for each such matter shall include without limitation case management and scheduling; hearing and ruling on pre-hearing motions; appearances at the hearing location specified by the Secretary of the Commission; conduct of the evidentiary hearings; marshaling of the hearing record; and preparation of a hearing officer report.
- E. Be available to perform services upon notification of the Commission. The Commission shall make an effort to provide a month’s prior notice to the hearing officer of a hearing. In cases where public health, safety or welfare imperatively requires emergency action, a hearing officer may be asked to provide services without such notice.
- F. Assure that the record in any matter shall be complete when the hearing concludes, a court reporter, if any, submits to the Commission a complete transcript of the hearing and the Hearing Officer receives any requested or permitted post-hearing submissions.
- G. Produce and deliver to the Commission’s Secretary (or, in the absence of a Secretary, to such person as the Commission may designate) (the “Secretary”) (i) a written report and recommendations in regard to the matter, which shall include findings of fact and conclusions of law explicitly labeled as such and a recommendation of a particular penalty or sanction, if Hearing Officer determines that a charged party is culpable of conduct for which a sanction or penalty is recommended, and (ii) the complete record in the matter, including a record of all testimony given; any exhibits received into evidence (labeled and organized as such), exhibits not received into evidence

(labeled and organized as such) and all materials, papers, briefs, correspondence, arguments or other submissions submitted by the litigants in the matter (organized and labeled appropriately). Such report and recommendations shall include findings of fact and conclusions of law (labeled as such). Such final report and recommendations and complete record shall be submitted to the Secretary not later than 30 days after the final hearing record has been received by the Hearing Officer to an e-mail address designated by the Secretary, unless the Secretary grants an extension of time for good cause shown, in the discretion of the Secretary.

- H. Perform at all times faithfully, impartially, industriously and to the best of the Hearing Officer's ability, experience and talent all responsibilities and other duties that may be required of the Hearing Officer in the Hearing Officer's capacity as an administrative hearing officer. Cooperate fully and in a professional and impartial manner with the Commission and with litigants before the Commission. Perform and complete any duties or obligations required of a hearing officer by law, rule or regulation.
- I. Be capable of using, sending and receiving correspondence, notices, decisions, reports, and other documents, in a secure and confidential electronic format acceptable to the Commission, including compact disc ("CD"), digital versatile disc ("DVD") and electronic mail.
- J. Complete and submit any forms or reports required by the Commission relating to performance of duties under the Contract.

## PART 4 – SUBMISSION REQUIREMENTS AND AWARD METHODOLOGY

### 4.1 RESPONSE TO RFQual

Individuals interested in this opportunity must provide the following:

- A one-page transmittal letter describing interest and qualification for this opportunity, including geographic areas of interest.
- Resume, including relevant experience.
- A brief writing sample (not to exceed five pages).
- Signed Contract form, Appendix B of this RFQual.
- Two references, including contact information (email address and phone number).
- Completed and signed Conflict of Interest Disclosure Form, Attachment 1 of this RFQual.

### 4.2 SUBMISSION REQUIREMENTS

Responses must be addressed to the individual listed below by the due date specified in Part 1 of this RFQual.

Diane Seaburg, Contract Management Specialist I  
New York State Gaming Commission  
Contracts Office  
One Broadway Center  
Schenectady, NY 12301-7500

Responses may be submitted by Contracted carrier, courier delivery, USPS, or in person delivery. If a Response is to be delivered by other than USPS, the bidder should contact the designated contacts, prior to delivery, to arrange for receipt.  
**Fax or e-mail submissions are not acceptable and will not be considered.**

### 4.3 AWARD METHODOLOGY

Responses received in response to this RFQual will be reviewed by the Commission's General Counsel and/or designated staff. The experience of the applicant will be considered, including the areas defined in Section 1.4 of this RFQual. References may also be contacted to substantiate an applicant's response.