

Greening the Bronx: Urban Heat Island Mitigation Project
Request for Proposals (RFP) No. 2960
\$6,767,360 Available

Proposals Due: September 16, 2014 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (“NYSERDA”) seeks proposals from landscape architects/planners, arborists, community groups/workforce development organizations, environmental and sustainability-focused groups and institutions, and tree planting contractors teams (Proposers), to plant and provide two-year guaranty and stewardship for trees planted under an urban forestry program in designated areas of the Bronx. The primary objectives of this solicitation are to 1) maximize the environmental benefits of strategically sited sustainable infrastructure; and 2) support local workforce development. To achieve these objectives, proposals should demonstrate the ability to provide the following services:

- Work with local sites, landowners and community groups to design a tree planting plan
- Purchase the trees to execute that plan
- Plant the trees according to the plan
- Stewardship planning and implementation with local stakeholders and community groups
- Guarantee and maintaining the trees for a two-year period

Proposers should be experienced with large-scale planting projects. It is strongly advised that Proposers team with certified arborists and planting contractors for planning, design, and planting services. Proposers may include not-for-profit and for-profit corporations, public benefit corporations, public authorities, state and local agencies, schools, community organization, and combinations of the above. NYSERDA anticipates awarding a minimum of three contracts, with the maximum award of \$2,256,000. It is anticipated that up to ten percent (10%) of the trees may be planted in the fall of 2014, with the balance planted in the spring and fall 2015 planting seasons.

NYSERDA will conduct a pre-bidders meeting for prospective Proposers on August 14, 2014, at 1:00 pm EST, at NYSERDA’s office at 1359 Broadway, New York City. NYSERDA will review the RFP requirements and address questions. Those who wish to attend must send an e-mail indicating their intent to participate to lillie.ghobrial@nyserda.ny.gov, by 5 pm EST on August 5, 2014, with the subject line “RFP 2960 Pre-Conference Meeting.” If you are unable to attend, state so in your response. Information to participate via teleconference will be provided on August 13.

Proposers must submit eight (8) paper copies and one (1) on CD of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to:

Roseanne Viscusi, RFP 2960
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Kevin Hunt at (518) 862-1090, ext. 3259 or kevin.hunt@nyserda.ny.gov. If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507 or venice.forbes@nyserda.ny.gov.

No communication intended to influence this procurement is permitted except by contacting Kevin Hunt (Designated Contact) at (518) 862-1090, ext. 3259 or kevin.hunt@nyserda.ny.gov. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

*Late proposals will be returned. Incomplete proposals may be subject to disqualification. It is the bidder's responsibility to ensure that all pages have been included in the proposal. Faxed or e-mailed proposals will not be accepted. Proposals will not be accepted at any other NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's web site at www.nyserda.ny.gov.

I. Introduction

A. Background and Summary

NYSERDA is a public benefit corporation established in 1975 under Title 9 of Article 8 of New York State's Public Authorities Law. Among the statutory purposes of NYSERDA are developing and implementing new energy technologies consistent with economic, social, and environmental objectives.

In 2006, the study "Mitigating New York City's Heat Island with Urban Forestry, Living Roofs, and Light Surfaces" was completed on NYSERDA's behalf. The study cited numerous methods to reduce the impact of the urban heat island effect, with urban forestry as one of the most cost effective methods. Consequently, trees to be planted as a result of this solicitation will be planted adjacent to streets, parking lots and sidewalks, along with parks, playgrounds or other recreational facilities, providing shade for hardscapes, pedestrians and buildings. NYSERDA's goal for this solicitation is for up to 50% of the plantings to be street tree locations or sites that shade impervious areas, though this is flexible given particular planting locations and requirements. All plantings are to occur in areas of the Bronx designated as "Potential EJ [Environmental Justice] Areas" (refer to Attachment C). Information can also be located at http://www.dec.ny.gov/docs/permits_ej_operations_pdf/bronxejdetail.pdf., Plantings should focus on areas with a low density of trees as identified by the New York City Dept of Environmental Protection (DEP) and found at the following link: <https://data.cityofnewyork.us/Environment/Street-Tree-Census-Bronx-bkyy-g74a>.

Horticultural planting locations will be under the jurisdiction of one of the following:

- New York City Dept of Parks and Recreation ("DPR");
- Another New York City agency and operated by the New York City Dept of Parks and Recreation ("DPR-Operated Bronx Facility");
- Another New York City agency and operated and maintained by that agency; or
- In the case of the Roberto Clemente State Park, the New York State Office of Parks, Recreation and Historic Preservation ("OPRHP").

B. Teaming Arrangements

Proposers are required to partner with at least one New York City-based (preferably Bronx-based) community or workforce development organization and/or sustainability-focused group, not-for-profit, or institution to develop teams to strengthen outcomes and fulfill the stewardship requirements of this solicitation.

C. Budget

NYSERDA expects to award a minimum of three contracts. The funding cap per contract is \$2,256,000. It is anticipated that up to 10% of each contract may be spent on planting trees during the fall 2014 planting season. The remaining trees are to be planted in the spring and fall 2015 planting seasons.

II. Program Requirements

1. Planting Locations

Each successful Proposer will be required to develop and implement tree planting projects within the boundaries of the Bronx, and as identified by the New York State Department of Environmental Conservation's Office of Environmental Justice (Attachment C). Planting locations are to be approved by DPR, or other jurisdictional authorities as identified above, prior to planting. Trees planted on roof tops and in above-ground containers are not eligible. Additionally, the New York City Office of Green Infrastructure (OGI) has targeted certain areas of the Bronx as priority areas for stormwater management strategies, including the construction of bioswales (this is to occur under a separate program). Proposers to this solicitation are to avoid these priority areas, referenced in green on the combined sewer area reference map located at

http://www.nyc.gov/html/dep/pdf/green_infrastructure/green_infrastructure_combined_sewer_reference_map.pdf .

The strategic siting of tree plantings in the Bronx (other than those designated as priority areas by NYC OGI) and use of open tree pits (either new or existing), bioswales, or other stormwater management strategies that are cost effective and high impact are also strongly encouraged in appropriate sites, e.g. susceptible to stormwater runoff. However, in all cases, the Proposer must 1) explicitly justify the application and intended outcomes; 2) include other funding sources that cover the majority of costs beyond those of a standard tree pit; and 3) obtain approval from DPR, DEP or other jurisdictional authority prior to implementation. If proposals include construction of bioswales, Proposers must comply with the Right-of-Way Bioswales Standards as established by DEP (See http://www.nyc.gov/html/dep/pdf/green_infrastructure/bioswales-standard-designs.pdf.)

2. Required Services

Each Proposer must have the capability to provide the full range of services in a comprehensive and timely manner. The required services will generally fall into the following:

- a. Design and submit a preliminary planting plan for up to 10% of the total proposed plantings for the fall 2014 planting season as part of the proposal. This plan may include the spring and fall 2015 planting plan, or that plan may be submitted for approval prior to the commencement of the spring 2015 planting season;
- b. Purchase and plant trees using the New York City Approved Street Trees list (Attachment D), or at <http://www.nycgovparks.org/pagefiles/52/Street-Trees-List-For-Permits.pdf>. A diversity of tree species is encouraged, should primarily include areas with a low density of trees, and should consider the locations physical constraints, i.e. overhead power lines and underground infrastructure. Proposers must clearly define the scope of the proposed work including deliverables, the number of trees to be planted, the possible number of tree pit guards that may be required, the average tree caliper the Proposer intends to plant, and the use of stormwater management strategies (see page 3), along with justification of using tree guards versus stakes; and
- c. Guarantee and Stewardship: in accordance with the City of New York Parks and Recreation Tree Planting Standards, a successful Proposer must provide a two-year guaranty for each tree planted (the “Guaranty Period”), and develop a stewardship plan to maintain the trees during this time. The Guaranty Period will commence at the end of each planting season and will cover all trees planted during that season. A successful Proposer will also be asked to address the long term care of the trees (pruning, watering, etc), but will not be contractually required to provide said care.

3. Scheduling

- a. The fall 2014 planting season must commence the earlier of 45 days of contract execution or November 14. Should the date of contract execution fall too late within the season to commence planting or outside of the planting season, the work shall commence at the beginning of the 2015 spring planting season. All plantings are to be completed at the end of the fall 2015 planting season;
- b. The spring planting season is from March 1 – May 31, and the fall planting season is from November 1 – January 2. All trees are to be planted within these windows of opportunity;
- c. All contracts awarded under this RFP will expire approximately 24 months following the final planting season and receipt of the final report. NYSERDA will not make payments on expired contracts.

III. Proposal Requirements

Proposers must submit the appropriate number of copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this Request for Proposals. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals will be returned and proposals lacking the appropriate completed and signed Proposal Checklist may be returned. Faxed or e-mailed copies will not be accepted.**

Procurement Lobbying Requirements - State Finance Law sections 139-j and 139-k

Procurement lobbying requirements contained in State Finance Law sections 139-j and 139-k became effective on January 1, 2006. (The text of the laws is available at:

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>). In compliance with §139-j and §139-k of the State Finance Law, for proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of \$15,000, additional forms must be completed and filed with proposals: (1) a signed copy of the Proposal Checklist including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form. Failure to include a signed copy of the Proposal Checklist referenced in this solicitation will disqualify your proposal.

Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, the RFP, and the page number. The proposal must be in the following format:

The proposal must include the following:

1. The Proposer

Company/Proposer Information—Proposers must provide the following information for each member of the proposed team:

- Name of Business Entity (including any “Doing Business As” names)
- Headquarters/Parent Company Location
- History of Firm
- Internet Web Site Address (if any)
- Details of Entity’s Business Structure (Corporation, Partnership, LLC)
- Date Founded
- Organizational Chart of Business Entity
- New York State and Other Pertinent Locations and Total Number of Employees at each
- List any pending or on-going litigation that would threaten the viability of the firm or the performance of this contract.

2. Experience and Qualifications—The Proposer must have the qualifications, resources and facilities necessary to complete its proposed work. The Proposer must have demonstrated experience with successful tree plantings of a similar magnitude, and must be capable of performing the entire scope of services. The proposal must include letters of commitment from team members. As part of its team, each Proposer must include as a partner at least one New York City-based community or workforce development organization and/or sustainability-focused group. It is preferred, but not required, that such group be Bronx-based.

1. Proposer: Provide information below for *two* prior projects of similar size and scope:

- a. Project name and location;
 - b. Client contact information (title, address, email and telephone number);
 - c. A brief description of the project and work scope;
 - d. Total project costs;
 - e. Number of trees planted on both pervious and impervious surfaces;
 - f. Describe the project schedule. Was the project completed on time and on budget? If not, why?; and
 - g. What was your company's specific role in the project?
2. Staffing: Identify the key staff in your firm, and your team, that will be used on this project, and the role each will have. Clearly identify the individual(s) responsible for completing the planting design, along with his or her experience, education and professional designation(s). Include a copy of their resume, identify the project manager, and identify the roles of key staff. Clearly indicate who the primary NYSERDA contact will be. If appropriate, identify New York City- and/or Bronx-based workforce development and training partner organizations that may be participating in the on-going stewardship, planting, and/or other positions that may be created through this project, along with the anticipated number of jobs that may be created. Such participation is encouraged and valued to the extent that costs are contained and reasonable.

3. Design Criteria/Scope of Work- The scope of work must be clearly defined with sufficient detail included. A listing of New York City Approved Street Trees is included as (Attachment D). Design must be prepared by an International Society of Arboriculture (ISA)-certified arborist, a landscape architect, a forester, or professional degree in related areas.

The plan must demonstrate conformance to appropriate tree planting standards. For DPR's Tree Planting Standards, go to <http://www.nycgovparks.org/pagefiles/53/Tree-Planting-Standards.pdf>. Photos of locations where trees are expected to be planted are to be included. The proposal must include a plan to obtain owner's permission to plant street trees.

The successful Proposers shall have until the later of November 1, 2014, or contract execution, to submit to NYSERDA planting permits for the fall 2014 planting. Should contract execution be delayed to the point that planting in 2014 is impractical, then this requirement will be waved and all trees are to be planted in 2015.

The proposal must include the following information:

- a. Identify the proposed planting locations. For each location, list the number of trees to be planted, the species to be planted, and the minimum tree caliper. A diversity of species is expected, as is matching the species to a locations physical constraints;
- b. It is expected that up to 50% of plantings will be street trees, though this is flexible given the difficulties of planting at certain sites;
- c. Indicate if using standard tree pits or enhanced tree pits, i.e. bioswales, open pits, whether tree pits are new or existing, and/or other stormwater management strategies that are both cost effective and high impact. If proposing such strategies, 1) explicitly justify the application and intended outcomes; 2) include other funding sources that cover the majority of such costs; and 3) acknowledge your understanding that DPR or other jurisdictional authority must approve the strategy and site;
- d. Indicate the number of trees to be planted per planting season. Refer to 4a, below. Describe how the tree locations will be tracked for use by DPR's geographic information system;

- e. For all sites not governed by DPR planting guidelines, provide a copy of the planting guidelines to be used;
- f. Provide copies of commitment letters the Proposer may already have showing site commitments for trees to be planted, including copies of planting permits for trees covered in these commitment letters; and
- g. Describe any extraordinary protection, such as tree guards, planned for the trees, along with the intended location. The use of any extraordinary protection must be justified.

4. Schedule of Planting- The Proposer must describe the on-site project management strategy using an ISA-certified arborist, landscape architect, forester, or approved equal, to ensure the proper trees are selected and tagged, and that planting specifications, such as planting depth, stock handling, and other critical factors related to the long term viability of the trees are met.

The proposal must include a two-year tree survival guarantee by the Contactor to NYSERDA, along with a stewardship plan for the Guaranty Period.

The Schedule of Planting and Completion must include for following information:

- a. The Proposer must provide a planting schedule for the mid-November through December 2014 planting season, when it is expected that up to 10% of the trees are to be planted. If possible, the planting schedule should incorporate the 2015 spring and fall planting season as well. If not, a second, monthly schedule for the spring and fall of 2015 will be required no later than January 30, 2015;
- b. The planting schedule must reflect the planting of trees on pervious sites separately from impervious sites. A minimum of 50% of all trees planted are to be street trees, or on sites that shade impervious areas. This goal is flexible given particular planting locations and requirements;
- c. The Proposer must agree to provide planting permits for the numerous locations by the following dates:

Fall 2014- the latter of November 14, 2014 or 45 days of contract execution

Spring 2015- February 15, 2015

Fall 2015- September 15, 2015

5. Stewardship and Maintenance—Provide the following information:

- a. The stewardship plan must be comprehensive, appropriate and cost effective to enhance tree survival for the Guaranty Period;
- b. The stewardship plan must include a description of how the local community and neighborhood residents will be involved in and informed about the tree planning project, and educated about the care and maintenance needs to elicit cooperation so trees can reach maturity. The plan must include the names of organizations that will implement the stewardship plan. Provide a commitment letter from each organization that will participate in the stewardship plan. Ideally, such letters will be from Bronx-based organizations.
- c. The stewardship plan should address the long term maintenance of the planted trees beyond the 2-year guaranty period, though the Proposer/Contractor will not be contractually required to provide such care.

6. Project Costs

- a. The overall costs are to be proportionate to the overall benefits. All associated costs are to be clearly shown on the Pricing Sheet, Attachment E;
- b. Unit prices and quantities must be reasonable in comparison to total project costs. The Proposer must confirm, in writing, that it is aware that this is a Public Works Project, and that Prevailing Wages must be paid. Refer to Attachment F for the 2014-15 Prevailing Wage schedule;
- c. If appropriate, clearly identify the source of any workforce training initiative you may be participating in or partnering with for this proposal. Identify the number of said trainees and the hourly cost;
- d. The cost of using stormwater management strategies, such as enhanced tree pits and bioswales must be justified, locations identified, and funding sources identified to cover the majority of the cost identified;
- e. The successful Proposer can invoice NYSERDA 1) at time when infrastructure investments are demonstrated, i.e., concrete cuts, tree pits open, trees on-site, etc; and 2) when trees are planted and inspected for the season. The successful Proposer can invoice quarterly during the Guaranty Period for on-going maintenance. The Proposer may put forth alternatives to this timing of invoicing. For the planting seasons, NYSERDA will hire an independent third party to verify the number, species and caliper of trees planted and invoiced. The third party contractor will also periodically monitor tree maintenance.
- f. The Proposer must acknowledge that NYSERDA will retain 5% of each invoice paid, to be paid at the end of the Guaranty Period, provided the trees are healthy.

IV. Proposal Evaluation Criteria

Proposals that meet Proposal Requirements will be reviewed by a Technical Evaluation Panel (TEP) using the Evaluation Criteria below listed in order of importance. The TEP will review each proposal and may contact selected references as necessary to determine whether a Proposer has the necessary resources to successfully perform the scope of services. As part of the evaluation process, Proposers may be required to have appropriate representatives attend an interview at NYSERDA's New York City office prior to final selection.

The TEP will score and rank the initial proposals received using the evaluation criteria. The TEP reserves the right to adjust initial scores based on the interview.

- a. Experience and qualifications of the Proposer: Does the Proposer demonstrate experience with projects of a similar size and scope as outlined in this RFP? Are at least two prior projects of a similar size detailed? Are commitment letters from team members provided? As part of the team, does the Proposer identify a New York City/Bronx-based community group or workforce development group, explaining its role?
- b. Experience and qualifications of staff: Are key staff identified and resumes provided? Is their background commensurate with a project of this size? Is the planting designer(s) clearly identified, along with their professional designation(s) and resume? Are team members clearly identified and well-positioned to contribute to the project?
- c. Design criteria and work scope: Is the design plan prepared by an ISA- certified arborist or equivalent? Are planting locations identified, along with species, tree caliper, and trees per season? Is the percent of trees planted in and around impervious surfaces (maximum 50%) reasonable? Does the plan address obtaining owner's permission for plantings? For DPR permitted planting sites, did the Proposer identify a method to track trees using DPR's geographic information system? If other than DPR permitted sites were applicable planting guidelines provided? Were commitment letters for plantings and planting permits included? Are the use of tree guards and other protection strategies justified? Is the use of stormwater management strategies justified and reasonable, and are other funding sources identified? Are commitment letters for plantings and planting permits included?

- d. Planting schedule: Does the Proposer describe an on-site planting management strategy? Does the Proposer demonstrate or acknowledge that it can have all trees planted by the end of the fall 2015 planting season? Is the Proposer able to commence planting in the fall of 2014, and plant up to 10% of the total trees?
- e. Stewardship and maintenance: Is the stewardship plan comprehensive? Does it address the 2-year Maintenance Period post planting? Are commitment letters from participating organizations included in the submission? Are New York City/Bronx-based local community and neighborhood groups identified and involved, and to what extent? Is the long term care of the planted trees addressed?
- f. Project cost: Are the unit and labor costs reasonable? Is the cost of using stormwater management strategies justified and reasonable, and other funding sources identified for said implementation? Are administrative costs to total project costs reasonable? Is the use of volunteers, community and neighborhood groups, interns or apprentices through workforce development initiatives cost effective?
- g. MWBE: Five (5) points will be awarded if the primary contractor on the proposing team is a Minority or Woman Owned Enterprise (MWBE). The Proposer must be registered with the NYS Department of State as an entity authorized to conduct business in New York State, and certified by Empire State Development Corp's Division of Minority and Woman's Development. Provide a copy of the certification.

V. Additional Information

i. **Performance-** Failure to meet established schedules, to perform work within the negotiated/approved fees, or to conform to the scope of services may result in termination of the contract.

ii. **Reporting-** The successful Proposers will be required to submit reports not later than January 15 and July 15 of each contract year, describing the status of the project, including but not limited to, the number of trees planted during the immediately prior planting season and in aggregate, the number of previously planted trees in need of replacement or that have been replaced, the reason for replacement, and the aggregate number of trees replaced, and note any obstacles that may impede planting for the pending season. The Contractor will also need to report on the frequency of meetings and correspondences, quality control issues, and outcomes of any issues throughout the 2-year maintenance period with NYSERDA's A final report at completion of the entire project is required.

iii. **Permits and Approvals**—The successful Proposers is responsible for obtaining, submitting and covering the costs of all necessary permits and providing photocopies to NYSERDA. Said photocopies can be emailed, faxed or mailed to NYSERDA. Planting on all sites governed by the DPR shall comply with DPR's planting specifications. The planting standards can be found at the following address:

<http://www.nycgovparks.org/pagefiles/53/Tree-Planting-Standards.pdf>

Nursery stock used for planting must conform to the *American Standard for Nursery Stock, ANSI Z60.1*, American Nursery and Landscape Association, 1000 Vermont Avenue NW, Suite 300, Washington, DC, 20005. Refer to http://americanhort.org/documents/nursery_stock_standards_AmericanHort_2004.pdf.

V. GENERAL CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a

commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx>. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

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

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

A directory of certified minority- and women-owned business enterprises is available from:

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

Article 15-A (MWBE) Provisions for Solicitation Documents (non-construction)

New York State Law

Pursuant to New York State Executive Law Article 15-A, NYSERDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of NYSERDA contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that NYSERDA establishes goals for maximum feasible participation of New York State Certified minority- and

women – owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

Article 15-A EEO Policy

- (1) Contractors and subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed (religion), color, national origin, sex, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.
- (2) Following the award of a State contract and as a precondition to entering into that contract, a winning proposer shall submit an equal employment opportunity (“EEO”) policy statement to NYSERDA within seventy-two (72) hours following such proposer’s receipt of NYSERDA’s award letter. A proposer’s failure to timely submit the EEO policy statement could result in NYSERDA’s rejection of that proposer’s proposal.
- (3) The proposer’s EEO policy statement shall contain, but not necessarily be limited to, and the proposer, as a precondition to entering into a valid and binding State contract, shall, during the performance of the State contract, agree to the following:
 - (i) The proposer will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.
 - (ii) The proposer shall state in all solicitations or advertisements for employees that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - (iii) At the request of NYSERDA, the proposer shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the proposer’s obligations.
 - (iv) Pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also

follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

- (4) Within ten (10) business days following a winning proposer's receipt of NYSERDA's award letter, such proposer shall submit to NYSERDA a staffing plan of the anticipated work force to be utilized on the State contract. The form of the staffing plan shall be supplied by NYSERDA. In the case where the workforce to be utilized in the performance of this Agreement cannot be separated out from the Contractor's and/or its subcontractor workforce, the Contractor shall submit, in lieu of a staffing plan, information on the Contractor's and/or subcontractor's total workforce. The staffing plan or workforce information shall be broken down by ethnic background, gender and Federal occupational categories. A proposer's failure to submit the staffing plan or workforce data could result in NYSERDA's rejection of that proposer's proposal. If a proposer changes its utilization plan after submission, it shall notify NYSERDA in writing of such change and obtain approval from NYSERDA in accordance with the Regulations §§ 142.6 & 142.8.
- (5) A proposer's failure to submit an EEO policy statement and staffing plan or total work force data shall result in NYSERDA's rejection of proposer's proposal, unless the proposer provides NYSERDA with a reasonable justification in writing for such failure (e.g., the failure to submit a staffing plan where proposer has a work force of 10 employees or less), or makes a commitment to submit an EEO policy statement and a staffing plan or total work force data by a date to be specified by NYSERDA.
- (6) To demonstrate compliance with the stated participation goals as set forth herein, a contractor shall be required to periodically submit compliance reports to NYSERDA, on the forms attached to the contract, during the entire term of the contract.

Contract Participation Goals by MWBE on NYSERDA procurements

In accordance with Article 15-A of the N.Y. Executive Law ("Article 15-A") and pursuant to the regulations adopted thereto, NYSERDA has established certain contract participation goals for minority and women-owned business enterprises (MWBE). NYSERDA's participation goals for contracts awarded pursuant to this solicitation are 10% for minority-owned business enterprises and 10% for women-owned business enterprises as set forth in Attachment F of the Sample Agreement (Attachment G). These participation goals are subject to the requirements of Article 15-A, and its implementing regulations as set forth in Title 5, Chapter XIV, Parts 140-144 of the New York Codes, Rules and Regulations (the "Regulations").

NYSERDA requires every winning proposer to undertake "good faith" efforts to actively solicit MWBE participation in connection with its potential award of the NYSERDA contract. Within ten (10) business days following the receipt of NYSERDA's award letter, a winning proposer must submit to NYSERDA an MWBE Utilization Plan Form, in a form provided by NYSERDA. Within twenty (20) days following its receipt of the Utilization Plan, NYSERDA will issue a written notice of acceptance or deficiency. If NYSERDA issues a notice of deficiency then proposer must provide NYSERDA with a written remedy in response to said notice of deficiency within seven (7) business days of its receipt. If the proposer's remedy to the notice of deficiency is not timely provided or if it is found by NYSERDA to be inadequate, NYSERDA shall so notify proposer and request proposer to submit a waiver form within five (5) business days. Failure to file the written remedy or a waiver form in a timely manner as set forth above may be grounds for disqualification of proposer's award for non-responsibility, after NYSERDA gives proposer notice and opportunity to be heard in accordance with Article 15-A § 313(5)(c) and the Regulations § 142.9.

A winning proposer may request a total or partial waiver of the requirements of the participation goals set forth above. In such event, NYSERDA shall provide proposer with a waiver form to be provided by proposer prior to the award of the NYSERDA contract. Prior to granting or denying a waiver, NYSERDA shall evaluate proposer's "good faith efforts" and may consider the factors set forth in the Regulations §143.7. In the event NYSERDA refuses to grant proposer a waiver, proposer may file a complaint with the NYS Empire State Development's Division of Minority and Women Business Development (the "Division") in accordance with Sections 313(8) & (9) of Article 15-A and Section 142.12 of the Regulations.

Relevant sections of the Regulations may be found at the following link, which Regulations and each party's rights and obligations set forth therein, are incorporated herein by this reference (in the event of a conflict between this solicitation and the Regulations, the Regulations shall govern):

http://www.empire.state.ny.us/MWBE/Data/122210_MWBE15-ARegs.pdf.

A Directory of certified MWBEs may be found at the Division's website, here:

<http://www.empire.state.ny.us/MWBE/directorySearch.html>

Article 15-A Disqualification and Dispute Resolution Procedures

NYSERDA, and applicable proposers and contractors shall be subject to and bound by the disqualification and dispute resolution procedures contained in Article 15-A (including, without limitation, Sections 312(5), 313(5)(c), 313(8), 313(9) and 316), and in relevant sections of the Regulations (including, without limitation, Sections 142.9, 142.12 and 143.6), as and where applicable.

NYSERDA may disqualify a proposer as being non-responsive under the following circumstances:

- a) If a proposer fails to submit a MWBE Utilization Plan;
- b) If a proposer fails to submit a written remedy to a notice of deficiency;
- c) If a proposer fails to submit a request for waiver; or
- d) If NYSERDA determines that the proposer has failed to document good faith efforts.

Penalties

In accordance with the Regulations §142.13, NYSERDA's contract shall require contractor to agree that its willful and intentional failure to comply with the MWBE requirements of Article 15-A shall create liability to NYSERDA for damages in an amount equal to NYSERDA's actual cost related to its expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified minority- and women-owned business enterprise programmatic goals and Affirmative Ac

State Finance Law sections 139-j and 139-k - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>

The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

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

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

Contract Award - NYSERDA anticipates making multiple awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the submitted proposal (see Proposal Checklist). Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. NYSERDA expects to notify proposers in approximately eight weeks from the proposal due date whether your proposal has been selected to receive an award. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

Limitation - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest. NYSERDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Agreement.

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

VI. Attachments:

Attachment A - Proposal Checklist

Attachment B - Disclosure of Prior Findings of Non- Responsibility

Attachment C – Potential Environmental Justice Areas in Bronx County

Attachment D – New York City Approved Street Trees

Attachment E – Pricing Sheet

Attachment F – Prevailing Wage Schedule

Attachment G - Sample Agreement