



Strategic Program Development Training
Request for Proposal (RFP) 3108

Proposals Due: May 20, 2015 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (NYSERDA) seeks a contractor to provide custom training and hands-on coaching to equip NYSEERDA staff with enhanced strategy tools and approaches that will maximize NYSEERDA's success in catalyzing investment in clean energy through the development of programs that are based on our customers' economics and designed "from the market back." The training program will incorporate, at minimum, (1) a workshop that introduces strategy concepts, tools, and frameworks of relevance to NYSEERDA and (2) coached application of these frameworks to underway initiatives and priorities at NYSEERDA. At the end of the training, 75-100 NYSEERDA participants should have received formal training and coaching and NYSEERDA should have accelerated progress on strategic program development projects critical to enabling the clean energy market. Customized collateral and lessons from the initial projects will be used to continue to develop capabilities across NYSEERDA once the initial training is complete.

Proposal Submission: Electronic submission is preferable. NYSEERDA will also accept proposals by mail or hand-delivery. If submitting electronically, proposers must submit the proposal in either PDF or MS Word format with a completed and signed Proposal Checklist and Disclosure of Prior Findings of Non-Responsibility, in PDF format. Proposal PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility, rather than scanning. For ease of identification, all electronic files must be named using the proposer's entity name in the title of the document. Proposals may be submitted electronically by following the link for electronic submissions found on this RFP's webpage, which is located in the "Current Opportunities" section of NYSEERDA's website (<http://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>). Instructions for submitting electronically are located as Attachment D to this RFP.

If mailing or hand-delivering, proposers must submit (2) paper copies of their proposal with a completed and signed Proposal Checklist, along with a CD or DVD containing both a PDF or MS Word digital copy of the proposal, following the above guidelines. Mailed or hand-delivered proposals must be clearly labeled and submitted to:

Roseanne Viscusi, RFP 3108
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Vanessa Ulmer at (518) 862-1090, ext. 3018 or vanessa.ulmer@nyserda.ny.gov. If you have contractual questions concerning this solicitation, contact Nancy Marucci at (518) 862-1090, ext. 3335 or nancy.marucci@nyserda.ny.gov.

No communication intended to influence this procurement is permitted except by contacting Vanessa Ulmer at (518) 862-1090, ext. 3018 or vanessa.ulmer@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 proposer'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

The New York State Energy Research and Development Authority (NYSERDA) is a public benefit corporation with the mission of advancing innovative energy solutions in ways that improve New York's economy and environment. NYSEDA's programs – including the proposed Clean Energy Fund (CEF); NY-Sun; NY Green Bank; NY Prize; and Cleaner, Greener Communities – are an integral part of the State's Reforming the Energy Vision (REV), a comprehensive strategy to enable self-sustaining clean energy markets. Through the CEF Proposal under consideration before the New York State Public Service Commission, NYSEDA is requesting a 10-year program authorization that will invest \$5 billion in New York's clean energy economy through 2025.¹

The REV vision is to develop an energy infrastructure that is cleaner, more reliable and more affordable, putting the State on a path to an "80 by 50" greenhouse gas emission reduction track. While New York has built a strong foundation over the past decades, new approaches are needed to achieve the energy savings and greenhouse gas reductions that are imperative to the State's future. NYSEDA is therefore refocusing its strategic priorities and developing new and redesigned programs to: catalyze private investment by stimulating competitive markets; remove market complexity and address barriers by attacking soft costs; accelerate solutions through "bridge" incentives; increase consumer confidence in clean energy; influence policy, codes, and regulations; and increase the pace of innovation.

In parallel, NYSEDA seeks to strengthen its strategic program development and strategic marketing capabilities. This RFP does not seek assistance in developing a corporate strategic plan. Nor does it seek assistance with respect to operational effectiveness. Rather, the requested training program is expected to equip NYSEDA professionals with strategic marketing skills and tools to enhance their success in identifying and analyzing the underlying needs and gaps in particular markets, deciding what activities NYSEDA should pursue, and assessing the best uses of available resources, in the interest of designing and evolving impactful NYSEDA programs and interventions. A closely related need is to develop a broadly understood framework and a common vocabulary around strategy that can be applied by staff in the normal course of NYSEDA's work.

II. PROGRAM REQUIREMENTS

NYSERDA seeks to select a contractor to provide custom training and hands-on coaching to equip NYSEDA staff with enhanced strategy tools and approaches to develop programs that are based on our customers' economics and are designed from the market back. The contractor, working with NYSEDA, will provide the training elements and services outlined in the scope of work below; proposers may recommend additional elements/services. NYSEDA will consider responses from firms that can meet the full requirements of this solicitation.

The selected contractor will provide training and coaching for at least three successive cohorts of NYSEDA employees. Each training cohort should be comprised of at least 25 NYSEDA participants, grouped into smaller cross-functional teams of approximately 6-8 people who will work together on a significant strategic program development project. The contractor will assist NYSEDA to identify an estimated 12 projects that will enable training participants to apply (with coaching from the contractor) the

¹ NYSEDA's Clean Energy Fund (CEF) Proposal (September 23, 2014), CEF Forum Presentation slides (January 20, 2015), and CEF Information Supplement (expected April 27, 2015) are available on the New York State Department of Public Service website at www.dps.ny.gov. See materials for Case 14-M-0094, Proceeding on Motion of the Commission to Consider a Clean Energy Fund.

concepts, tools, and frameworks introduced in the training so as to make meaningful progress on underway priorities. The training workshop and coaching sessions outlined below are expected to be held at NYSERDA's Offices in Albany and New York City.

Training Approach and Core Concepts

The contractor will work with NYSERDA to design and provide training that fosters individual and collective learning, with emphasis on providing a shared understanding of concepts, tools, and frameworks that empower participants to apply new capabilities to their work at NYSERDA. The training program will incorporate, at minimum, (1) a workshop (or workshops) that introduces strategy concepts, tools, and frameworks of relevance to NYSERDA and (2) coached application of the concepts/tools/frameworks to accelerate strategic program development projects at NYSERDA while deepening the learning experience.

The training program will cover concepts critical to strategic program development, including:

- Sizing and scoping of opportunity;
- Understanding economic value;
- Segmentation of relevant markets based on customer and partner needs and economics;
- Understanding and building in the voice of the customer into solutions
- Development of value propositions and associated solutions targeted to customers or partners;
- Establishment of go-to-market approaches and business models;
- Alignment of the above with NYSERDA's discipline of test / measure / adjust;
- Alignment of the above with NYSERDA's mission as a public benefit corporation and New York State policy goals as identified in the (draft) 2014 State Energy Plan.

Experienced Training Team

The contractor will provide to NYSERDA a dedicated team of high-level professionals who will support the training program from design through delivery. Assigned personnel must demonstrate relevant content knowledge, practical experience, and training capabilities, and must be able to travel to New York City and Albany to deliver training and coaching for NYSERDA staff. Assigned personnel should have knowledge of the clean energy marketplace in New York State and relevant market segments, including energy efficiency, renewable energy, and related technologies. The contractor and assigned personnel must demonstrate a track record of training and coaching that both has resulted in concrete, measurable success for participants and has supported large institutions to create a foundation useful to staff who did not directly participate in the training. An understanding of the behavioral science discipline and its impact on the shaping of programs is preferred. An understanding of strategy and program deployment in the public sector also is preferred.

Structuring Strategic Program Development Projects and Project Teams

The contractor will work with NYSERDA to identify an estimated 12 strategic program development projects in NYSERDA's pipeline that will provide a basis for applied learning and coaching. These strategy projects are expected to address a variety of market sectors (e.g., commercial real estate, local governments, residential) and clean and renewable energy technologies, with emphasis on new and redesigned programs as described in NYSERDA's Clean Energy Fund proposal. The contractor also will assist NYSERDA to structure project teams that promote dynamic collaboration within and across NYSERDA's diverse organizational groups.

Training Workshop

The contractor will customize and deliver, at a minimum, a 3- to 5-day training workshop that incorporates lecture, cases/readings, and structured breakout sessions in which teams learn and begin to apply core concepts and frameworks to NYSERDA strategy projects. The workshop is anticipated to be delivered to each cohort (i.e., three times), with potential refinement between cohorts.

Hands-On Coaching

The contractor will provide hands-on coaching to empower project teams to apply the strategy concepts and frameworks, at minimum during the training workshop and through work sessions at established intervals anticipated over a minimum of a 3-month period.

Extending the Program Learning Across NYSERDA

The contractor will work with NYSERDA to plan for organizational support to take full advantage of NYSERDA's investment in this training program. At minimum, this will include: (1) proposing and implementing mechanisms to engage NYSERDA executives and senior leadership (e.g., a half-day executive training session) and (2) providing guidance and tools that equip training participants to disseminate learning from the training and initial projects. Proposers may recommend additional elements/services to extend the program learning across NYSERDA.

Measuring Impact and Reporting

The contractor will propose, record, and report on performance metrics for the training program. Metrics may include, but are not limited to, the number of training participants and project teams; the number of workshops and coaching sessions; participant feedback; and assessment of each team's progress on their strategic program development project.

Working with NYSERDA, the contractor will develop and administer a means for NYSERDA training participants to provide feedback on training content and delivery at the conclusion of the workshop and following scheduled coaching sessions. Feedback will be incorporated, as appropriate, into subsequent sessions and to capture and disseminate learning across NYSERDA.

Training Collateral

The right to use slides, cases/readings (in accordance with copyright), team project reports, and other collateral developed or delivered as part of the training program will be retained by NYSERDA to train others at NYSERDA going forward.

Schedule

NYSERDA anticipates award of the contract within two weeks from the proposal due date, after which NYSERDA and the selected contractor will work together to negotiate the training scope of work, budget, and timeframes. The contractor shall demonstrate the ability to successfully begin implementation of the training program within 60 days of being awarded the contract. NYSERDA seeks to commence training on as aggressive a timeline as possible.

III. PROPOSAL REQUIREMENTS

Proposals should be divided into clearly defined sections, in the order of and as outlined in the list below. Proposals must be clearly and concisely written to address, at a minimum, the following information:

- 1. Proposal Checklist:** A completed and signed Proposal Checklist (Attachment A of this RFP), which must be included as the front cover of the proposal. Indicate whether you accept the Standard Terms

and Conditions as contained in the attached Sample Agreement (Attachment C). If you do not accept the Standard Terms and Conditions, be prepared to provide alternative terms with justification based on the risk and benefit to NYSERDA and New York State.

2. **Approach:** A general statement of the firm's proposed training approach with particular focus on distinguishing characteristics of services.
3. **Work Proposed to be Performed:** A discussion of the firm's understanding of the scope of services to be provided, the major work tasks to be performed, and how the firm proposes to address the objectives described above in Section II, Program Requirements. An effective response must clearly articulate:
 - The approach to assisting NYSERDA to identify strategic program development projects for inclusion in the training program and corresponding project teams made up of training participants.
 - The training curriculum, including the central concepts, tools, and frameworks that will be introduced and the training methodologies that will be employed. The training content should be inclusive of concepts laid out above in Section II, Program Requirements, Training Approach and Core Concepts. The length (in days) of the proposed workshop must be specified and an indicative workshop schedule must be included with your response. Attach examples of relevant frameworks and training materials as appropriate.
 - Services to be provided to deliver hands-on coaching for strategic program development projects and teams. A schedule for follow-on coaching over a specified period (e.g., 3 months) must be proposed.
 - Training elements/services that are proposed to reach beyond direct participants to extend the learning across NYSERDA. Please also discuss what the contractor will need from NYSERDA to ensure that the training is effective and impactful for the organization.
 - A description of training collateral that will be developed or delivered (e.g., slides, cases, team project reports, etc.).
 - Proposed performance metrics and reporting.
 - Roles, responsibilities, and expectations of NYSERDA leadership and staff.
 - Thoughtful attention to how the overall training program and content will be aligned with NYSERDA's mission, organizational structure, and priorities as a public benefit corporation.
4. **Staff Plan and Qualifications:** Clear identification of personnel being proposed for the training team, including their respective roles(s), qualifications, and credentials. Attach resumes for key personnel. State the team's individual and combined expertise that would enable successful completion of the training program. List and briefly describe 3 to 5 related trainings that have been successfully delivered by the proposed training team or team members. Indicate the name and telephone number for at least 3 references for whom your organization has completed similar trainings.
5. **Timeline for Training Launch:** Address the ability of the firm to assemble, in a timely manner, key personnel to customize the training program and deliver the first training workshop within 60 days of the contract award.
6. **Cost Proposal:** A fixed cost proposal to accomplish the work requested, broken out by major tasks proposed along with the hourly rates for all personnel and relevant expenses for travel and materials.
7. Other relevant information the proposer feels should be included to demonstrate its capabilities, experience, and proposed approach to providing the training program requested.
8. **Attachments:** Resumes of key personnel; examples of training materials or other supporting materials (optional); and required attachments listed in Section VI.

Proposals should be a maximum of 10 pages plus attachments. Proposals should not be 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 number, and the page number.

A completed and signed Proposal Checklist (Attachment A) must be attached as the front cover of your proposal. **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.**

IV. PROPOSAL EVALUATION

Proposals that meet the Proposal Requirements will be reviewed by a Technical Evaluation Panel (TEP) using the Evaluation Criteria below, listed in approximate order of importance:

- Responsiveness of the proposal to the objectives and scope of work described in this RFP, including thoughtful alignment of the training approach, content, and services with NYSERDA's mission
- Experience, qualifications, and capabilities of the proposer and assigned personnel in relevant areas including:
 - Knowledge of the clean energy marketplace in New York State, including the economics of relevant market segments
 - Expertise in strategy and strategic marketing, with specific background in market segmentation, behavioral science, solution development, and other relevant disciplines
 - Expertise and demonstrated successful experience in delivering comparable training/coaching
- Rigor and relevance to NYSERDA of proposed strategy concepts, tools, and frameworks
- Overall value and reasonableness of the proposal cost, including the consistency of the rates with expertise and qualifications of the identified personnel
- Ability to meet schedule
- Other considerations including references, past experience with the proposer, known accomplishments on similar engagements, etc.

V. CONTRACT AWARD

NYSERDA anticipates making one award under this solicitation. NYSERDA may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the proposals and this RFP. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement provided as Attachment C 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 two weeks from the proposal due date. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

VI. 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

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 (Attachment A) 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 (Attachment B) 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>.

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 (Attachment C).

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.

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, or other appropriate categories specified by NYSERDA. 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, NYSEERDA has established certain contract participation goals for minority and women-owned business enterprises (MWBE). NYSEERDA's participation goals for contracts awarded pursuant to this solicitation are 15% for minority-owned business enterprises and 15% for women-owned business enterprises. 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").

NYSEERDA requires every winning proposer to undertake "good faith" efforts to actively solicit MWBE participation in connection with its potential award of the NYSEERDA contract. Within ten (10) business days following the receipt of NYSEERDA's award letter, a winning proposer must submit to NYSEERDA an MWBE Utilization Plan Form, in a form provided by NYSEERDA. Within twenty (20) days following its receipt of the Utilization Plan, NYSEERDA will issue a written notice of acceptance or deficiency. If NYSEERDA issues a notice of deficiency then proposer must provide NYSEERDA 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 NYSEERDA to be inadequate, NYSEERDA 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 NYSEERDA 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, NYSEERDA shall provide proposer with a waiver form to be provided by proposer prior to the award of the NYSEERDA contract. Prior to granting or denying a waiver, NYSEERDA shall evaluate proposer's "good faith efforts" and may consider the factors set forth in the Regulations §143.7. In the event NYSEERDA 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

NYSEERDA, 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.

NYSEERDA 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 NYSEERDA 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 Action and Equal Opportunity compliance.

VII. Attachments:

Attachment A – Proposal Checklist (Mandatory)

Attachment B – Disclosure of Prior Findings of Non- Responsibility (Mandatory)

Attachment C – Sample Agreement

Attachment D – Electronic Proposal Submission Instructions