

**Purchase of New York Tier 1 Eligible
Renewable Energy Certificates (RECs)
Request for Proposals (RFP) No. RESRFP23-1
RFP Release Date: November 30, 2023**

**Step One Eligibility Applications Due:
December 28, 2023, by 3:00 p.m. Eastern Time (ET)
Step Two Bid Proposals Due:
January 31, 2024, by 3:00 p.m. ET**

**NYSERDA SEEKS TO ACQUIRE NEW YORK TIER 1 ELIGIBLE
RENEWABLE ENERGY CERTIFICATES**

The New York State Energy Research and Development Authority (NYSERDA) seeks to procure Tier 1 eligible Renewable Energy Certificates (RECs) from Bid Facilities that meet the eligibility requirements described in this Request for Proposals (RFP or RESRFP23-1).

RESRFP23-1 will be implemented through a two-step process, consisting of:

1. **Step One Eligibility Application:** A qualifying step through which the Proposer must provide evidence that the Bid Facility is Tier 1 eligible and other general information about the Proposer and the Bid Facility.
2. **Step Two Bid Proposal:** A competitive Bid Proposal step, through which NYSERDA will: (1) examine Bid Proposals to determine whether they demonstrate that the Bid Facility and Proposer meet the Minimum Threshold Requirements; and (2) for Bid Proposals that meet those Minimum Threshold Requirements, a competitive evaluation based on price and non-price factors.

Only those Proposers found eligible under Step One will be permitted to submit a Step Two Bid Proposal. Only those Proposals found to have met all Minimum Threshold Requirements will be evaluated under Step Two.

Step One Eligibility Application: Step One Eligibility Applications must be **received by NYSERDA by 3:00 p.m. ET on Thursday, December 28, 2023 via electronic submission on the [solicitation website](#).**

NYSERDA staff will be available to support Proposer inquiries regarding Step One Eligibility Applications prior to the deadline. Applications may be submitted electronically by following the link for electronic submissions found on [NYSERDA's Solicitations for Large-scale Renewables webpage](#)¹ or [NYSERDA's](#)

¹ <https://www.nyserda.ny.gov/ces/rfp>

[Current Funding Opportunities website](#),² located in the “Current Funding Opportunities” section of NYSERDA’s website at that time.

NYSERDA intends to notify all prospective Proposers as to their eligibility status by **January 5, 2024**. Eligible Proposers will receive a Notice of Qualification and will be provided with detailed instructions for submitting a Step Two Bid Proposal.

Step Two Bid Proposal: Step Two Bid Proposals must be **received by NYSERDA by 3:00 p.m. ET on Wednesday, January 31, 2024, via electronic submission**. Instructions for submitting electronically and the link for electronic submissions will be included in a Proposer’s Notice of Qualification. Additional information regarding NYSERDA’s Renewable Energy Solicitations can be found on [NYSERDA’s Renewable Energy Solicitations Standard \(RES\) Tier 1 website](#).³

NYSERDA recommends that Proposers set aside ample time, well in advance of each deadline, to gather the required information and documentation and to understand the requirements to complete the above processes. NYSERDA recommends that Proposers mark any commercially sensitive materials as “Confidential” or “Proprietary” in any submission made to NYSERDA pursuant to this RFP. Further information regarding confidentiality is set forth in Section 9.1.

Each Proposer has sole responsibility for reviewing this RFP and all attachments hereto and for investigating and informing itself with respect to all matters pertinent to this RFP, including the [NYGATS Operating Rules](#) and NYISO’s Open Access Transmission Tariff (OATT) and market rules, or those of the control area into which the Bid Facility may interconnect. Each Proposer is solely responsible for informing itself regarding the External Facility Electricity Delivery Requirements in the RES Standard Form Agreement, and all transmission wheeling and scheduling provisions set forth in the OATT of relevance in any external control area, including Canada, the NYGATS rules as they apply to Tier 1 imports.⁴

Prior to the opening of the [solicitation website](#) and the Step One Eligibility Application, all questions regarding RESRFP23-1 must be directed to res@nyserda.ny.gov.

All general questions about this RFP may be submitted in writing via email to res@nyserda.ny.gov or via the Q&A feature of the solicitation website.⁵ Project-specific questions may be addressed to res@nyserda.ny.gov or to the Messages feature on the solicitation website.

No communication intended to influence this procurement is permitted except by contacting the Designated Contacts. Questions about this solicitation should be directed to the RESRFP23-1 Designated Contacts in writing through the options detailed above. NYSERDA reserves the right to conduct meetings with any Proposer, and any question posed to NYSERDA, as well as any response provided by NYSERDA to a Proposer, may be publicly posted on the solicitation website. The Designated Contacts for RESRFP23-1 are: Mac Farrell, Bram Peterson, Abbey DeRocker, Marci Brunner, John Bernecker, Brian Newton, Jeremy Wyble, Liz Hanna, Jenn Phelps, Nathalie Simoes, Georges Sassine, Anthony Fiore, Doreen Harris, Alex Stein, Nate Chumley, and Beata Raczynska. Contacting anyone other than the

² <http://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>

³ <https://www.nyserda.ny.gov/ces/rfp>

⁴ See Section 11 of the [NYGATS Operating Rules](#).

⁵ The Q&A page is intended for general questions which are suitable for public review.

Designated Contacts (either directly by the Proposer or indirectly through a consultant or lobbyist or other person acting on the Proposer's behalf) to influence the procurement: (1) may result in a Proposer being deemed a non-responsible offeror, and (2) may result in the Proposer not receiving an award.

Proposers should rely only on information provided in this RFP and any associated written updates posted on [NYSERDA's Renewable Energy Standard website](#) and the [solicitation website](#) when preparing Proposals. Each Proposer shall be solely responsible for and shall bear all costs incurred in the preparation of its Proposal and/or participation in this RFP.

Incomplete submittals will be subject to disqualification. It is the Proposer's responsibility to ensure that all required forms and attachments have been completed and submitted. Late Step One Eligibility Applications and Step Two Bid Proposals will not be accepted and those lacking a completed and signed Step Two Bid Proposal form may be returned. Faxed, mailed, or e-mailed packages will not be accepted.⁶ RFP responses will not be accepted by hand delivery at any NYSERDA location. Proposers will be notified of Bid Proposals deemed ineligible before evaluation of Bid Proposals begins. Bid Fees submitted for late or incomplete submittals will be returned to the Proposer.

If changes are made to this solicitation, notification will be posted on [NYSERDA's Renewable Energy Standard website](#), the [solicitation website](#) under the Announcements tab, and provided to those that provide their email address to NYSERDA via the [solicitation website](#) or [NYSERDA's Large-Scale Renewables Email List Sign-Up Page](#).⁷ It is the Proposer's responsibility to check for, and conform to, any solicitation changes prior to submittal.

⁶ Unless otherwise agreed to by NYSERDA. Contact a Designated Contact for more information if needed.

⁷ <https://www.nysERDA.ny.gov/all-programs/clean-energy-standard/renewable-generators-and-developers/large-scale-renewables-email-list>

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APPENDICES

[Appendix 1 – Resource Assessment and Energy Production Estimate Requirements](#)

[Appendix 2 – RESRFP23-1 Smart Solar Siting Scorecard](#)

[Exhibit 1 to Appendix 2 – RESRFP23-1 Smart Solar Siting Scorecard Workbook](#)

[Exhibit 2 to Appendix 2 – Scorecard Acronyms and Definitions](#)

[Exhibit 3 to Appendix 2 – Scorecard Resources](#)

ACRONYMS AND DEFINITIONS

94-c – Section 94-c of the New York State Executive Law, which consolidates the environmental review and permitting of major renewable energy facilities in New York State under the Office of Renewable Energy Siting (ORES).

Actual Annual Eligible Production – The amount, in MWh, of the Actual Eligible Production that (a) the new Bid Facility produces during a Contract Year or (b) the Upgrade or Repowering Bid Facility produces during a Contract Year after completion of the Upgrade/Repowering.

Actual Eligible Production – For new Bid Facilities, equal to the Actual Production. For Upgrade Bid Facilities, the product of (a) the Actual Production, multiplied by (b) the Incremental Upgrade Percentage. For Repowering Bid Facilities, the product of (a) the Actual Production multiplied by (b) the Tier-1 Percentage for the applicable period.

Actual Production – The amount, in MWh, of the total electric energy production of the Bid Facility during any period within the Contract Delivery Term as measured at the Injection Point.

AGM – New York State Department of Agriculture and Markets.

Agreement – RES Standard Form Agreement, provided as Attachment A, including Exhibits if applicable.

Agricultural Co-Utilization Plan – A plan developed by the Proposer that proposes a viable co-utilization of a Bid Facility site with the agricultural production of “crops, livestock, or livestock products,” as that phrase is defined by New York State Agriculture and Markets Law (AML) § 301(2) for the duration of the Contract Delivery Term.

Agricultural Mitigation Payment – A one-time “Mitigation Fund Payment” for a Bid Facility, as defined in and calculated as set forth in Appendix 2 to this RFP, which amount for the Bid Facility will not exceed the estimated Mitigation Fund Payment in Proposer’s Bid Proposal, unless the Bid Facility layout is substantively revised or expanded to increase the Bid Facility area’s footprint in MSG 1-4 lands.]

Annual REC Cap – An amount of Tier-1 RECs equal to the product of (x) the Bid Quantity and (y) one and two-tenths (1.2), rounded down to the nearest whole REC.

Applicable Zone – The NYISO load zone that includes the Delivery Point.

Authority Having Jurisdiction (AHJ) – The town(s) or city(ies) within which the Bid Facility is located.

Annual REC Cap – The maximum number of RECs that NYSERDA is obligated to purchase from Seller in any Contract Year as defined in the Agreement.

Applicable REC Price Method – The method employed by NYSERDA in each month for determining the Monthly REC Price as determined in Article IV of the Agreement.

Award Notification Date: The date upon which NYSERDA provides written confirmation to a Proposer indicating that a Bid Facility has been selected for contract negotiations.

Benchmark LNRC – The confidential maximum price levels for the Fixed REC and Index REC offers that NYSERDA will employ in its determination of potential award(s).

Bid Capacity – An amount equal to (i) the gross generating capacity of the entire Bid Facility as bid to NYSERDA (after completion of the Upgrade/Repowerings, where applicable) in MWac multiplied by (ii) the Bid Quantity Percentage and (iii) (x) for Upgrades, further multiplied by the Incremental Upgrade Percentage and (y) for Repowerings, further multiplied by the applicable Tier 1 Percentage.

Bid Facility – An electric generating station that has been submitted by the Proposer for consideration in response to this RFP.

Bid Price – The price per REC offered by Proposer, offered either as a Fixed REC Price or an Index REC Price.

Bid Proposal – Documents submitted by Proposer in response to this RFP.

Bid Quantity – The amount stated in the **Bid Proposal** of Tier-1 RECs the Bid Facility expects to proffer as performance under the Agreement during each Contract Year during the Contract Delivery Term.

Bid Quantity Percentage – The percentage of the Bid Facility’s Actual Annual Eligible Production that will be committed by the Proposer to performance under the Agreement. The Bid Quantity Percentage must be at least 30% and may not exceed 100% of the Annual Production.

CES – Clean Energy Standard.

Climate Act – Climate Leadership and Community Protection Act.

Climate Justice Working Group (CJWG) – An advisory group in the Climate Action Council process, responsible for providing strategic advice for incorporating the needs of Disadvantaged Communities.

Commercial Operation – A state of operational readiness of the Bid Facility under which (i) the Bid Facility has been mechanically constructed and interconnected, (ii) generating capacity is available to physically produce and deliver electric energy to the Injection Point and associated Tier-1 RECs, and (iii) all rights, abilities, permits and approvals to schedule and deliver energy to the Injection Point have been obtained.

COMD – Commercial Operation Milestone Date, as further defined in the Agreement.

Construction Activities – The physical activities associated with the construction of any on-site structure or civil site works including, but not limited to, the clearing, grubbing, grading, staging, installation, erection and placement of the Bid Facility and electrical interconnection, as well as start-up and commissioning of the Bid Facility.

Contract Delivery Term – The period commencing on the first day of the month after the month in which the Bid Facility commences Commercial Operation. For Bid Facilities in Commercial Operation as of the Award Notification Date, unless otherwise agreed to in writing by NYSERDA, the Contract Delivery Term shall commence on the first day of the month after the Effective Date of the Agreement. The Contract Delivery Term shall extend for the term of the Contract Tenor.

Contract Security – Security delivered to NYSERDA by Proposer for its performance under the terms of the Agreement, in the form of cash, certified funds, or a Letter of Credit, as described in Article XV of the Agreement.

Contract Tenor – The duration, in years, of the Contract Delivery Term.

Contract Year – A 12-month period commencing with the beginning of the Contract Delivery Term and each anniversary thereof during the Contract Delivery Term. The phrase “Contract Year” followed by a number shall refer to a discrete Contract Year within the Contract Delivery Term such that “Contract Year 1” refers to the first 12-month period commencing with the beginning of the Contract Delivery Term, “Contract Year 2” refers to the second such 12-month period, and so on.

Delivery Point – For Bid Facilities located within the NYCA, the generator bus or location where (a) the administrator of the wholesale power market or (b) the operator of the transmission/distribution utility, public authority or municipal electric company, measures or otherwise determines energy production from the Bid Facility. For Bid Facilities located outside of the NYCA, the generator bus or location where the NYISO measures energy delivery from the Bid Facility into the NYCA.

Disadvantaged Communities: Has the meaning established by the Climate Act in § 75-0101(5) of the New York Environmental Conservation Law. The Climate Act directs the [Climate Justice Working Group](#) (CJWG) to establish criteria for identifying Disadvantaged Communities. The CJWG finalized the Disadvantaged Communities criteria on March 27, 2023. Communities meeting the criteria can be identified with the map found on the NYSERDA Disadvantaged Communities [webpage](#) and a list of census tracts that meet the disadvantaged community criteria can be found on the [Climate Act Website](#) under the “Disadvantaged Communities Criteria Documents” section.

Disadvantaged Community Commitments – Shall be those commitments contained in the Seller’s Bid Proposal and described in Section 6.10 of the Agreement.

Economic Benefits Start Date – June 2, 2017.⁸

End of Useful Life Bid Capacity – With respect to a Repowering, means the Bid Capacity of such Repowering after the end of the Existing Facility’s useful life.

End of Useful Life Installed Capacity – With respect to a Repowering, means the Installed Capacity of such Repowering after the end of the Existing Facility’s useful life.

Environmental Attributes – All environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, allocations, howsoever characterized, denominated, measured or entitled, attributable to the generation of Actual Production by a Bid Facility, consistent with the delineation of attributes set forth in the Agreement.

EO 16 – Executive Order No. 16, Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia, issued and effective March 17, 2022.

⁸ The date NYSERDA issued its 2017 Renewable Energy Standard Request for Proposals (RESRFP17-1).

Existing Facility – With respect to a Repowering, the facility prior to the implementation of such Repowering.

Expected Dollars/MW – The total dollar amount of Incremental Economic Benefits per MW of (a) for new Bid Facilities and Upgrades, Bid Capacity, or (b) for Repowerings, End of Useful Life Bid Capacity, as presented in the Bid Proposal and accepted by NYSERDA, expected to accrue to New York as a result of the development, construction, modification and operation of the Bid Facility from the Economic Benefits Start Date through the end of the first three (3) Contract Years.

Expected MWBE and SDVOB Dollars/MW – The total amount of Expected Dollars/MW, as presented in the Bid Proposal and accepted by NYSERDA, expected to accrue specifically to New York State Certified Minority or Women-Owned Business Enterprises (MWBE) and Service-Disabled Veteran-Owned Businesses (SDVOB). MWBE businesses must be certified by the Division of MWBE and SDVOB businesses must be certified by NYS Office of General Services.

Expected U.S. Iron and Steel Dollars/MW – The total dollar amount per MW of (a) for new Bid Facilities and Upgrades, Bid Capacity, or (b) for Repowerings, End of Useful Life Bid Capacity, associated with expenditures for iron and steel components of the Bid Facility manufactured in the United States using iron or steel from steel mills located in the United States.

Facility Area – All land occupied during the commercial operation of the generation facility, the associated interconnection equipment as verified through the Operational Certification process. Generally, this will include all areas within the facility’s perimeter security fence(s) and the applicable facility related improvements outside of fenced areas. The Facility Area shall include the area “inside the fence” of the project including all fencing inclosing the mechanical equipment such as the solar arrays, inverters, location of any combiner boxes, fuses, switches, meters, distribution boards, monitoring systems such as balance of systems components, interconnection equipment, and stormwater controls. The Facility Area shall additionally include improvements of the project “outside of the fence” including access roads, parking areas, stormwater controls and other permanent facilities, or structures installed at the Facility Area, except vegetative landscape screenings or appropriately buried utilities such as electrical conductors or conduit(s) that do not impact Forest Land during installation.

Fixed REC Price – An as-bid price in dollars per Tier-1 REC as described in Section 4.02 of the Agreement.

FOIL – New York’s Freedom of Information Law, [Public Officers’ Law Article 6](#).

Host Community Benefit Program – A Program providing benefits to utility customers in Host Communities in which future Major Renewable Energy Facilities are located.

Incremental Economic Benefits: Incremental Economic Benefits are financial expenditures benefitting New York State within the categories specified in Section 4.4 of this RFP that a Seller can demonstrate: (1) were incurred on or after the Economic Benefits Start Date, and (2) would not have accrued but for an award under a NYSERDA competitive solicitation to procure Tier-1 RECs or in anticipation of the potential for such an award. Economic benefits previously claimed with respect to a Bid Facility that are subject to a pending award under a previous solicitation or that is the subject of a current NYSERDA Agreement are not Incremental Economic Benefits.

Incremental Upgrade Percentage – For Upgrade Bid Facilities, the percentage of the Actual Production that is Tier-1 eligible resulting from the Upgrade as initially established through the NYGATS Provisional

Statement of Qualification process, and as may be updated through the submission of engineering documentation during the Statement of Qualification and Operational Certification processes, in accordance with NYSERDA's New York State Clean Energy Standard RES Tier-1 Certification Submission Instructions and Eligibility Guidelines.

Index REC Price – An adjustable price in dollars per REC that nets the Index REC Strike Price monthly against a reference price expressed in a market index pursuant to Section 4.01 of the Agreement.

Index REC Strike Price: The as-bid value for each Contract Year as submitted in the Bid Proposal and as stated in the Agreement, subject to adjustment pursuant to Article V of the Agreement.

Injection Point – For Bid Facilities located within the New York Control Area, the Injection Point shall be the Delivery Point. For Bid Facilities located outside of the New York Control Area, the Injection Point shall be the generator bus or location where the administrator of the local control area measures energy delivery from the Bid Facility into the local market.

Installed Capacity – An amount equal to (i) the gross generating capacity of (a) a new Bid Facility or, (b) for a Bid Facility that is the subject of an Upgrade or a Repowering, such Bid Facility, after completion of such Upgrade or Repowering, in MWac in accordance with its Statement of Qualification (SoQ) and Operational Certification, multiplied by (ii) the Bid Quantity Percentage, and (iii) (x) for Upgrades, further multiplied by the Incremental Upgrade Percentage, or (y) for Repowerings, further multiplied by the applicable Tier-1 Percentage.

Key Permit – For a Bid Facility located within the NYCA, “Key Permit” means (i) for Sellers seeking approval for the Bid Facility under Article 10 of the New York Public Service Law, a Certificate of Environmental Compatibility and Public Need, (ii) for Sellers seeking approval for the Bid Facility under Section 94-c of the New York State Executive Law, a New York State Office of Renewable Energy Siting permit, or (iii) for all other Sellers, the required discretionary (non-ministerial) land use permit or approval by the applicable municipality for the development, construction, operation, and/or maintenance of the Bid Facility which permit or approval incorporates a determination under SEQRA. For a Bid Facility located outside of the NYCA, “Key Permit” means such required discretionary (non-ministerial) land use permit or approval reasonably analogous to those set forth in the foregoing sentence issued by the state or local authority having jurisdiction over the Bid Facility. Notwithstanding the foregoing, for hydroelectric Bid Facilities, “Key Permit” means the Bid Facility’s FERC license.

Levelized Net REC Cost (LNRC) – A means of comparing Proposals with different Bid Prices, Bid Quantities, and Commercial Operation Dates, as described in Section 5.4.

Major Renewable Energy Facility – Any renewable energy system with a nameplate generating capacity of twenty-five thousand kilowatts or more, and any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission system, including all associated appurtenances to electric plants as defined under Section 2 of the New York State Public Service Law, including electric transmission facilities less than ten (10) miles in length in order to provide access to load and to integrate such facilities into the state’s bulk electrical transmission system.

Mineral Soil Groups (MSG) 1-4 – Soils with a mineral soil group value of 1, 2, 3, or 4 as assigned by the New York State Department of Agriculture and Markets in the Agricultural Land Classification System for New York. For the purposes of this Agreement, MSG 1-4 have been established in ‘NYSERDA 2023 Soils Data.’ A map of MSG 1-4 is available on NYSERDA’s Solicitations for Large-scale Renewables webpage.

Mitigation Fund Payment (Mitigation Payment) – The Mitigation Fund Payment acts as the estimated benchmark that the Proposer would expect to pay based on the proposed site configuration (Facility Area), knowledge of on-site conditions and before any other action to decrease this payment amount. Payment amounts may be adjusted through consultations with the New York State Department of Agriculture and Markets (AGM) regarding co-agricultural opportunities, and based on the final site configuration (reduced or expanded facility occupied acreage).

Monthly REC Price – A price in dollars per REC determined by NYSERDA for each month of the Contract Delivery Term. If the Applicable REC Price Method is the Index REC Price, the Monthly REC Price shall be calculated pursuant to Section 4.01 of the Agreement. If the Applicable REC Price Method is the Fixed REC Price, the Monthly REC Price shall be calculated pursuant to Section 4.02 of the Agreement.

MW or MWac – A megawatt of alternating current electric energy generating capacity.

MWdc – A megawatt of direct current electric energy generating capacity.

MWh – A megawatt-hour of electric energy.

Nameplate Capacity – The gross generating capacity of the entire Bid Facility in MW. For Upgrade and Repowering Bid Facilities, this value represents the gross generating capacity of the entire Bid Facility after completion of the Upgrade or Repowering.

New York Control Area (NYCA) – The control area that is under the control of the NYISO, which includes transmission facilities listed in the ISO/Transmission Owner Agreement Appendices A-1 and A-2, as may be amended from time to time.

New York Generation Attribute Tracking System (NYGATS) – The tracking system that records electricity generation attribute information within New York State, and processes generation attribute information from energy imported and consumed within New York State, as a basis for creating generation attribute certificates, including Tier 1 RECs. NYGATS will create exactly one Tier 1 REC per MWh of RES eligible generation.

NYGATS Forward Certificate Transfer – An automated monthly transfer of Tier 1 RECs to NYSERDA as described in Section 9.3 of the [NYGATS Operating Rules](#).

New York Independent System Operator (NYISO) – Administrator of the wholesale power markets in New York and manages the physical electrical operations of the NYCA.

OATT – NYISO’s Open Access Transmission Tariff.

Operating Rules – The NYGATS Operating Rules, the General Terms of Use and other guidelines posted to the NYGATS website at: <https://www.nyserda.ny.gov/All-Programs/nygats/registration-documents>.

Operational Certification – Verification by NYSERDA that the Bid Facility has been constructed and/or will operate in accordance with the Bid Proposal, as further defined in the Agreement.

Orders – August 1, 2016 CES Framework Order (Case No. 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, “Order Adopting a Clean Energy Standard,” issued and effective August 1, 2016), January 16, 2020 Tier 1

Modification Order (Case No. 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, “Order Modifying Tier 1 Renewable Procurements,” issued and effective January 16, 2020), October 15, 2020 CES Modification Order (Case No. 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, “Order Adopting Modifications to the Clean Energy Standard,” issued and effective October 15, 2020), January 20, 2022 PGS Order (Case No. 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, “[Order on Power Grid Study Recommendations](#),” issued and effective January 20, 2022), and November 20, 2023 Reference Capacity Price Order (Case No. 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, “Order Addressing Capacity Accreditation Rules,” issued and effective November 20, 2023).

ORES – New York State Office of Renewable Energy Siting, website is <https://ores.ny.gov/> and the regulations can be found at <https://ores.ny.gov/regulations>.

Quantity Obligation — For any period during the Contract Delivery Term, the number of Tier-1 RECs equal to the product of (a) the Bid Quantity Percentage multiplied by (b) the Actual Production.

Prevailing Wage – Shall have the meaning set forth at and shall be interpreted in accordance with Section 18.10 of the Agreement.

Price Structure – Either a Fixed REC or Index REC price.

Proposer – The business entity that submits a Bid Proposal in response to this RFP.

PSoQ – NYGATS Provisional Statement of Qualification.

Reference Capacity Price: An amount based on an index of NYISO Capacity Market prices for the Applicable Zone calculated as set forth in Section 4.01 of the Agreement.

Reference Energy Price – An amount based on an index of NYISO Energy Market prices for the Applicable Zone calculated as set forth in Section 4.01 of the Agreement.

Repowering – The physical improvements made to the existing Bid Facility that meet the repowering requirements of the 2020 CES Order, as proposed by Seller in the Application for Qualification and Bid Proposal in response to RESRFP23-1 and confirmed through the Statement of Qualification and the Operational Certification process.

Tier-1 Percentage – For a Repowering, the quantity of generation from the Bid Facility, expressed as a percentage associated with specific date ranges, that meets the Repowering requirements of the 2020 CES Order.

Tier-1 Renewable Energy Certificate (REC) or Tier-1 REC — The electronic record of generation data created by NYGATS and representing all of the attributes of one MWh of electricity generation from a RES Tier-1 Bid Facility registered with NYGATS. The attributes represented in each Tier-1 REC include all environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, and allocations, however characterized, denominated, measured or entitled, attributable to the generation of Actual Eligible Production by a Bid Facility, including but not limited to: (i) any direct emissions or any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (SOx),

nitrogen oxides (NOx), carbon monoxide (CO), particulate matter and other pollutants; (ii) any direct or avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (“GHGs”) that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (iii) all set-aside allowances and/or allocations from emissions trading programs made unnecessary for compliance in such program as a result of performance under the Agreement, including but not limited to allocations available under 6 NYCRR §§ 204, 237 and 238; and (iv) all credits, certificates, registrations, recordations, or other memorializations of whatever type or sort, representing any of the above.

Renewable Energy System – As defined in the Climate Act, and for purposes of this RFP, a system that generates electricity through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.

Seller – A Proposer selected by NYSERDA who has executed an Agreement to sell Tier 1 RECs to NYSERDA pursuant to this RFP.

SEQR – New York State Environmental Quality Review Act.

Short-Term Jobs – Jobs lasting less than three years.

SoQ – NYGATS Statement of Qualification.

Technical Evaluation Panel (TEP) – Members of NYSERDA staff, New York State Department of Public Service (DPS) Staff, and competitively-selected Independent Evaluators (outside reviewers who possess proficiency in the evaluation of energy generation projects) responsible for evaluating Bid Proposals received through this RFP.

Upgrade – The physical improvements made to the existing Bid Facility that cause an increase in renewable generation incremental to a historical baseline level of generation by the Bid Facility, as proposed by Seller in the Application for Qualification and Bid Proposal in response to RESRFP23-1 and confirmed through the Statement of Qualification and the Operational Certification process.

NEW ITEMS & IMPORTANT NOTES

1. Commercial Operation Milestone Date

The initial Commercial Operation Milestone Date (COMD) for RESRFP23-1, the date by which Bid Facilities must enter commercial operation, is May 31, 2026, which may be extended through May 31, 2029.

2. Solicitation Target and Resource Mix

Per the CES Modification Order, NYSERDA is authorized to procure approximately 4.5 million Tier 1 RECs annually through 2026. NYSERDA will assess this non-binding target quantity prior to determining an award group to account for any forecasted shortfalls to achieving a 70% renewable electric grid by 2030. The RESRFP23-1 non-binding procurement target is intended to be comprised of a diverse resource mix that will complement the existing fleet of operating renewable energy generators in New York and the portfolio of under development large-scale renewable energy projects contracted by NYSERDA, with the goal of maintaining a pipeline of large-scale renewable projects that will support the goal to achieve a 70% renewable electric grid by 2030. Proposers are encouraged to review past and recent reports and Orders that detail the resource mix that will best enable New York to achieve a 70% renewable electric grid by 2030, including the [CES White Paper Appendix](#),⁹ the [Final Climate Action Council Scoping Plan](#)¹⁰ (see Appendix G. Integration Analysis Technical Supplement),¹¹ and the most recent draft [NYISO System & Resource Outlook Report](#).¹²

3. Tier 1 REC agreement termination, contract security and eligibility to submit proposals

To be eligible to submit a proposal in RESRFP23-1, a Proposer cannot have an active agreement with NYSERDA or another entity with respect to the Tier-1 RECs being offered in that solicitation at the time of submission of the Step One Eligibility Application. Section 2.2 sets forth NYSERDA's policy regarding Tier 1 REC agreement termination, contract security and eligibility to submit proposals into RESRFP23-1 and RESRFP24-1.

⁹ <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DCA9763C-D2DA-4FD1-9801-D859E7ED8FE3}>

¹⁰ <https://climate.ny.gov/-/media/project/climate/files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf>

¹¹ <https://climate.ny.gov/-/media/Project/Climate/Files/Draft-Scoping-Plan-Appendix-G-Integration-Analysis-Technical-Supplement.pdf>

¹² https://www.nyiso.com/documents/20142/32663964/2021-2040_System_Resource_Outlook_Report_DRAFT_v15_ESPWG_Clean.pdf/99fb4cbf-ed93-f32e-9acf-ecb6a0cf4841.

Additional information on the System & Resource Outlook, including more recent drafts if available, can be found in the [meeting materials for the NYISO Electric System Planning Working Group](#) (<https://www.nyiso.com/espwg>).

4. Minimum Threshold Requirements & Non-Price Evaluation

The Step Two Bid Proposal Minimum Threshold Requirements include updated requirements for the Interconnection and Permitting subcategories, and have otherwise retained or lightened the Minimum Threshold Requirements for all other categories. See Sections 4.3 for requirement-specific details.

5. Agricultural and Forested Land Requirements

NYSERDA adopted an approach starting under the RESRFP20-1 solicitation to address concerns relating to solar development on, and the protection of, agricultural lands in Agricultural Districts. Under this approach, awardees may be responsible for making an agricultural mitigation payment to a designated fund (e.g., NYSFL § 99-pp Agricultural and farmland viability protection fund) based on the extent to which the solar project footprint overlaps with Mineral Soil Groups (MSG) classifications 1-4. For the RESRFP23-1 solicitation, all Proposers of solar Bid Facilities are required to provide a complete Appendix 2 RESRFP23-1 Smart Solar Siting Scorecard by submitting the Scorecard Workbook in Exhibit 1 to Appendix 2 RESRFP23-1 Smart Solar Siting Scorecard. Proposers may also indicate their intent to defer this payment to the extent that the Seller elects to adopt agricultural co-utilization measures in their Step Two Bid Proposal. Proposers are advised to reference Section 4.3.6 of the RFP, Section 6.11 of the Agreement, and Appendix 2 RESRFP23-1 Smart Solar Siting Scorecard (the Scorecard) to understand the approach in full and assess the applicability of a potential Agricultural Mitigation Fund Payment to their Bid Facility(ies). As in previous solicitations, in addition to a potential Mitigation Fund Payment, all solar awardees are to adopt and employ the provisions of the [Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands](#) document (see Exhibit E to the Agreement).

6. Economic Benefits to New York State

Proposers are strongly encouraged to explore innovative ways in which short- and long-term economic benefits can be provided to New York State. The Inflation Reduction Act of 2022 has provided tremendous opportunities for renewable energy growth and Proposers are asked to utilize this monumental investment in the clean energy transition to their creative advantage, in particular relative to New York State job creation, manufacturing, and economic growth opportunities. Please be advised: the timeframe for economic benefits evaluation under this solicitation has been expanded to include all eligible expenditures beginning from the Release Date of the first CES RFP, June 2, 2017 (see Section 4.4).

The economic benefits category “Investments & Commitments to Economic and Workforce Development” (Category 3) has been removed from RESRFP23-1. Proposers who wish to submit incremental economic benefits that will address economic and workforce development should do so using Category 1 and Category 2 economic benefits commitments.

Proposers are also encouraged to familiarize themselves with the updated requirements and guidance related to directing incremental economic benefits to Disadvantaged Communities. On March 27, 2023, the Climate Justice Working Group voted to approve and adopt the final disadvantaged communities criteria for New York State. Only incremental economic benefits to Disadvantaged Communities that meet the final Disadvantaged Communities criteria set by the Climate Justice Working Group will be eligible for RESRFP23-1. NYSERDA will more favorably evaluate economic benefits to New York State that will be realized in part or in full by Disadvantaged Communities as part of the development of the Bid Facility. Under RESRFP23-1, incremental economic benefits to New York State that will be realized in part or in full by MWBE and SDVOB will be more favorably evaluated. Benefits afforded to

Disadvantaged Communities, MWBE, and SDVOB that are committed to as part of the Step Two Bid Proposal will be treated as a separate category of incremental economic benefits in the Agreement.

7. Climate Resiliency

A new Minimum Threshold component for Climate Resiliency has been added to RESRFP23-1. Proposers are required to demonstrate how the impacts of climate change have been considered in Bid Facility design and incorporated into the reliability (the extent to which the system provides output and avoids temporary disruptions) and expected performance (ability of the system to provide expected output of energy over its useful life) of the Bid Facility.

8. Modifications to RESRFP23-1 Submission Requirements

RESRFP23-1 incorporates several modifications to reduce the scope of submitted Bid Proposals due to both the increased project maturity of the Bid Facilities eligible to bid and the truncated timeline under which the solicitation is being conducted, in light of the Public Service Commission (Commission) Order Denying Petitions to Preserve Competitive Renewable Energy Market and Protect Consumers issued on October 12, 2023 (the October 2023 Order) and New York’s 10-Point Action Plan.¹³ These modified requirements include, but are not limited to, the removal of pairing Bid Proposals with Energy Storage facilities and the removal of multiple studies required from Proposers under previous Tier 1 Solicitations. See Section 4.3 for requirement-specific details.

9. RES Standard Form Agreement

The RES Standard Form Agreement (the “Agreement”) associated with RESRFP23-1 is published as Attachment A to this solicitation. The Agreement is a legally binding document; Proposers are advised to consult with an attorney, and all Proposers should familiarize themselves with the structure, terms and conditions of the Agreement prior to participating.

¹³ <https://www.nyseda.ny.gov/-/media/Project/Nyserda/Files/Programs/Offshore-Wind/10-point-plan.pdf>

1 INTRODUCTION

1.1 The New York Clean Energy Standard and Renewable Energy Standard

On July 6, 2015, the New York State Energy Planning Board issued the 2015 State Energy Plan (SEP)¹⁴ which stated the goal to achieve 50% of the State's electricity generated from renewable resources by 2030 (50x30 goal).

The Public Service Commission's (PSC) [Order Adopting the Clean Energy Standard](#) (CES Framework Order) issued on August 1, 2016, along with additional orders and implementation plans issued under Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard (Orders), established the Renewable Energy Standard (RES) as the State's principal means of achieving the 50x30 goal. A component of the RES consists of a Tier 1 obligation on load serving entities (LSE) to procure Renewable Energy Certificates (RECs)¹⁵ associated with new renewable energy resources.

In furtherance of the Orders and targets established in the CES, on July 18, 2019, New York State adopted the Climate Leadership and Community Protection Act (Climate Act), which includes the goal for New York State to achieve 70% renewable energy generation by 2030, incremental to reducing 100% of the electricity sector's greenhouse gas emissions by 2040, among other clean energy targets.¹⁶

RES Tier 1 procurements were further amended on January 16, 2020 by the [Order Modifying Tier 1 Renewable Procurements](#) (Tier 1 Modification Order), whereby the PSC directed NYSEDA to offer bidders an Index REC price option in future RES solicitations, beginning with RESRFP20-1.

The Accelerated Renewables Act became law on April 2, 2020, and made major changes in the forum and permitting process for large-scale renewable projects. Specifically, the bill established a new renewable siting structure to be managed by a new office within the Department of State.¹⁷

On October 15, 2020, the PSC issued its [Order Adopting Modifications to the Clean Energy Standard](#) (CES Modification Order) in Case 15-E-0302. In the CES Modification Order, the PSC adopted several modifications to the CES to align it with the Climate Act mandates. Modifications affecting Tier 1 solicitations include setting annual procurement targets to achieve the 70 by 30 target, allowing rejection of projects that are not presently viable, combining of the Project Viability and Operational Flexibility and Peak Coincidence evaluation factors, approving the development of portfolio risk factors, and clarifying the CES delivery requirements.

On January 20, 2022, the PSC issued its [Order on Power Grid Study Recommendations](#) (PGS Order) in Case Nos. 20-E-0197, 18-E-0071, and 15-E-0302. The PGS Order concurs with the Power Grid Study finding that energy storage on Long Island and New York City will play an important role in integrating

¹⁴ 2015 New York State Energy Plan is available from <http://energyplan.ny.gov/>

¹⁵ While the PSC's August 1, 2016 Order references renewable energy "credits," NYGATS creates renewable energy certificates, and therefore that term is used in this RFP. The NYGATS certificates are created in one MWh denominations and are in all other ways consistent with the Order.

¹⁶ [New York State Senate Bill S6599](https://www.nysenate.gov/legislation/bills/2019/s6599), <https://www.nysenate.gov/legislation/bills/2019/s6599>

¹⁷ [New York State Announces Passage of Accelerated Renewable Energy Growth and Community Benefit Act as Part of 2020-2021 Enacted State Budget](#)

offshore wind generation. The coordinated planning process undertaken in the Power Grid Study proceeding will allow the PSC to anticipate system needs and respond to them in a timely manner, including implementation of local transmission upgrades and invocation of the NYISO's Order 1000 process where bulk solutions are necessary.

On September 9, 2021, the PSC addressed the Utilities' proposed policy recommendations in its Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals (Phase 2 Order).¹⁸ Among other things, the Phase 2 Order found the Utilities' proposed investment criteria required certain modifications, and directed additional work to develop a coordinated grid planning process (which includes a revised benefit cost analysis framework, enhanced stakeholder engagement and a participant funding agreement to share CLCPA project costs across the state on a volumetric load ratio share basis). In addition, the Phase 2 Order adopted DPS Staff's recommended modifications to the calculation of headroom and directed the investor-owned utilities to provide updated headroom data to stakeholders.

On December 19, 2022, New York's Climate Action Council adopted a Final Scoping Plan to outline recommended policies and actions to help meet the climate action requirements of the Climate Act. The Scoping Plan indicated that 7 to 15 gigawatts of land-based wind energy and 32 to 43 gigawatts of solar energy in New York may be necessary by 2040 to achieve the Climate Act's greenhouse gas emission-reduction requirements and carbon neutrality goals.

On October 12, 2023, the PSC issued the [Order Denying Petitions Seeking to Amend Contracts With Renewable Energy Projects](#), which denied a Petition submitted by the Alliance for Clean Energy New York, Inc. seeking price adjustments to Tier 1 REC agreements with NYSERDA to address inflationary pressures and supply chain disruptions impacting project economics. The Order supported NYSERDA's continued efforts to meet the Climate Act mandates through subsequent competitive offshore wind solicitations, potentially on an expedited basis. The same day, New York State released a new [10-Point Action Plan](#) to expand and support the growing large-scale renewable energy industry in the State, which included a plan to launch an accelerated procurement process for Tier 1 land-based renewables and offshore wind.

On November 20, 2023, the PSC issued its [Order Addressing Capacity Accreditation Rules](#) (Reference Capacity Price Order) in Case 15-E-0302 and Case 18-E-0071. In the Reference Capacity Price Order, the PSC addressed NYSERDA's petition to adjust the Reference Capacity Price formulas in index renewable energy certificate and offshore wind renewable energy certificate purchase and sales agreements. The PSC approved certain changes to the Reference Capacity Price formula to address the impact of the new NYISO Capacity Accreditation Rules.

The Orders authorize NYSERDA, as central procurement administrator, to offer long-term contracts to generators for the purchase of Tier 1-eligible RECs, in the form of Tier 1 NYGATS certificates. Pursuant to the Orders, NYSERDA seeks to accomplish the RES objective by contracting with suppliers, through a series of competitive RFPs, for only the RES Tier 1 RECs created by eligible generation resources.¹⁹ For

¹⁸ LT&D Planning Proceeding, Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals (September 9, 2021) (Phase 2 Order).

¹⁹ Directives pertaining to NYSERDA's RES Central Procurement role are contained in the February 22, 2017 [Order Approving the Phase 1 Implementation Plan](#) and the [Final Phase 1 Implementation Plan](#) filed by NYSERDA on

the avoidance of doubt, NYSEDA seeks to acquire Tier 1-eligible RECs only, and will not have any claim to associated energy, capacity, or ancillary services associated with the RECs.²⁰

The RECs generated from the Bid Facility offered to NYSEDA through this RFP, up to the Annual REC Cap (defined in the Agreement), may not be contractually committed to any other entity over the Contract Tenor. Awardees will retain ownership and all rights to RECs generated that exceed the Annual REC Cap.

The CES/RES Orders can be accessed from the [NYS Public Service Commission's website](#).²¹ All Proposers are strongly advised to review the Orders before participating in this RFP. Information regarding NYSEDA's implementation of the RES and prior solicitations under the RES, RESRFP17-1, RESRFP18-1, RESRFP19-1, RESRFP20-1, and RESRFP21-1, can be found on [NYSEDA's RES Solicitation website](#).²²

Information on the Renewable Portfolio Standard (RPS), the precursor to the CES, and past Main Tier solicitations can be found on [NYSEDA's RPS webpage](#).²³

1.2 Background on NYSEDA and NY Green Bank

NYSEDA was created in 1975 by the New York State Legislature as a public authority and public benefit corporation. As designated in the CES Framework Order, NYSEDA acts as the Central Administrator of the RES program. Under the RES, each LSE is obligated to serve their retail customers by procuring new renewable resources, evidenced by the procurement of Tier 1 RECs from NYSEDA or other sources, or by making Alternative Compliance Payments (ACPs), in increasing quantities to satisfy the State's greenhouse gas emissions reduction goals. Through this RFP, NYSEDA will purchase RECs from the contracted Bid Facilities, on behalf of the LSEs in New York State, and will then sell the RECs to the LSEs for compliance with the LSEs' Tier 1 obligations.

NY Green Bank, a division of NYSEDA, is a \$1 billion specialized financial investment fund working with the private sector to increase investments into New York's clean energy markets, creating a more efficient, reliable and sustainable energy system. NY Green Bank steps in to fill gaps in the market where financing might not be available from conventional lenders, potentially due to barriers such as limited precedent, small deal sizes, challenges in evaluating technology risk, asset structures and/or business

March 24, 2017, the November 17, 2017 [Order Approving the Phase 2 Implementation Plan](#) and the [Final Phase 2 Implementation Plan](#) filed by NYSEDA on December 18, 2017, and the December 14, 2018 [Order Approving the Phase 3 Implementation Plan](#) and the [Final Phase 3 Implementation Plan](#) filed by NYSEDA on January 11, 2019. The March 9, 2017 [Order on the Value of Distributed Energy Resources](#) further clarifies the treatment of certain distributed energy resources (DERs) such resources under the CES and their eligibility to participate in NYSEDA's long term procurements for RECs. The January 16, 2020 [Order Modifying Tier 1 Renewable Procurements](#) directs NYSEDA to include an additional option for bidders to offer an Index REC price.

²⁰ RECs represent the environmental attributes, including but not limited to estimated avoided carbon dioxide emissions, associated with electricity generated by facilities that meet the Tier 1 eligibility criteria established in the CES Framework Order.

²¹ <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=15-e-0302>

²² <https://www.nyserda.ny.gov/ces/rfp>

²³ <https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/Important-Orders-Reports-and-Filings/Renewable-Portfolio-Standard/Past-Main-Tier-Solicitations>

models unfamiliar to banks and institutional investors, and/or deal structuring and underwriting complexities.

Supporting the expansion of large-scale renewables in New York is a strategic priority for NY Green Bank. NY Green Bank is prepared to support project developers and investors with a range of credit products and structures through various project financing stages, including and not limited to:

- Interconnection deposit financing;
- Long lead equipment financing;
- Construction financing; and
- Term loans, including subordinated debt to increase tenor and leverage.

In the context of providing financing, NY Green Bank would evaluate contracted revenues, including various NYSERDA incentive payments, as well as wholesale power and capacity sales to support long-term financing.

1.3 Schedule

The schedule for RESRFP23-1 is as follows (all times ET):

Table 1. RFP Schedule

RFP Release Date	Thursday, November 30, 2023
NYSERDA opens Step One Eligibility Application	Thursday, November 30, 2023
Proposers' Webinar	Thursday, December 7, 2023
Deadline to complete an application requesting a Resource Eligibility Determination in NYGATS	Wednesday, December 13, 2023
Deadline for Step One Eligibility Application Submission	Thursday, December 28, 2023 by 3:00 p.m.
NYSERDA responds with Notice of Qualification Determinations	Friday, January 5, 2024
Deadline for Bid Fee Submission	Tuesday, January 30, 2024
Deadline for Step Two Bid Proposal Submission	Wednesday, January 31, 2024 by 3:00 p.m.
NYSERDA notifies Proposers receiving Awards	Expected April 2024

Please note that the above dates are subject to change. Notification of any changes to the solicitation schedule or documents will be posted on [NYSERDA's RES website](#) and sent via email to those parties who have submitted contact information to NYSEDA's RESRFP23-1 [solicitation website](#).

1.4 Eligibility & Contractual Requirements

Information on Bid Proposal eligibility and contractual requirements is detailed in Section 2 below. This includes details regarding Tier 1 eligibility guidelines and contractual provisions made mandatory in New York State's FY 2022 enacted budget.

1.5 Bid Fee

The Step Two Bid Proposal for a Bid Facility must be accompanied by a single Bid Fee, in the form of electronic wire (preferred) or certified funds, in an amount determined by the Nameplate Capacity in megawatts (MWac) of the Bid Facility in accord with Table 2. The submission of Alternate Bid Proposal(s) does not require multiple Bid Fee payments – Bid Fee requirements are only submitted once for the Bid Facility.

Table 2. Bid Fees by Nameplate Capacity

Nameplate Capacity (MW)	Bid Fee
Less than 5.00 MW	\$5,000
5.00 – 19.99 MW	\$20,000
20.00 – 49.99 MW	\$50,000
50.00 MW or more	\$100,000

See Section 4.2 for additional details and instructions for submitting the Bid Fee.

1.6 Proposers' Webinar and Inquiries

NYSERDA will [hold a webinar for Proposers](#) on Thursday, December 7, 2023 at 10:00 a.m. ET (Albany, NY time). During the webinar, NYSERDA will review the Step One Eligibility Application and Step Two Bid Proposal requirements, the Agreement, and highlight changes to the 2023 solicitation process.

Questions will be taken and, to the extent possible, responses will be provided during the webinar.

Proposers who intend to participate must register prior to the webinar on NYSERDA's RES website.²⁴

Proposers are encouraged to submit questions prior to the webinar via email to res@nyserda.ny.gov, and during the Proposers' Webinar using the built-in Q&A feature. Written responses will be posted to the solicitation website and will supersede any responses given by NYSERDA during the Proposers' Webinar. All questions regarding the RFP documents or the process must be directed as indicated. NYSERDA will post submitted questions anonymously, along with NYSERDA's responses, on the solicitation website under the Q&A feature, which is accessible to all Proposers, following the webinar.

Questions may not be submitted directly to any individual at NYSERDA other than the Designated Contacts. Questions should not be submitted to DPS Staff, or to individuals working for or on behalf of NYSERDA that are not listed as Designated Contacts.

Bid Facility-specific questions must be submitted through the Messages feature of the solicitation website following Proposers' registration. Questions that reveal a Proposers' identity and/or commercial information should be submitted through the Messages feature of the solicitation website. Proposers must register on the solicitation website to gain access to the Messages feature. The Messages feature of the solicitation website is available only to Proposers and is a secure communication between each Proposer and NYSERDA's Designated Contacts.

²⁴ To sign up for the Proposers' Webinar please register here: [RESRFP23-1 Proposers' Webinar](#)

1.7 Modification or Cancellation of the RFP and Solicitation Process

Notification of any changes in RFP process or documents will be posted on [NYSERDA's RES Tier 1 website](#), the solicitation website under the Announcements tab, and sent via email to parties that have submitted contact information to NYSEDA's RESRFP23-1 solicitation via the solicitation website. Prospective Proposers are encouraged to check the website frequently to be advised of any RFP changes or other news.

The terms and conditions of this RFP may, at any time, be changed, postponed, withdrawn, and/or canceled, including any requirement, term or condition of this RFP, without any liability to NYSEDA.

1.8 Updates to the Eligibility Application and/or Bid Proposal

Proposers will not have an opportunity to refresh or restate submissions after the corresponding submission deadline for each Step. If a Proposer wishes to modify an already submitted submission before the submission deadline for that Step, the Proposer should follow the posted instructions for editing a submission and may contact NYSEDA's Designated Contacts with questions or issues.

After the submission deadline, Proposers may provide information that was not available at the time of their submission at NYSEDA's request under Section 1.9. These requests are for informational purposes only and will not be treated by NYSEDA as a change or revision to the submission. However, if there are any material events that affect the validity of a submission, Proposers must promptly notify NYSEDA in writing.

1.9 Requests for Additional Information and/or Interview

Following the submission of Proposals, NYSEDA and the Technical Evaluation Panel may request clarification and additional information from Proposers at any time throughout the duration of the evaluation process. Such information will be subject to protection of proprietary information as described in Section 9, consistent with other Proposal submission materials. If the Proposer does not respond promptly to such information requests or does not provide adequate information, the affected Proposal(s) will be evaluated based on the information as originally submitted.

1.10 Coordination with Non-Jurisdictional Load-Serving Entities

The Order Adopting a Clean Energy Standard provides for NYSEDA to conduct regularly scheduled solicitations for the procurement of Tier 1 RECs on behalf of the State's jurisdictional LSEs. The New York Power Authority (NYPA) and/or the Long Island Power Authority (LIPA) may choose to issue their own solicitations and/or contract with NYSEDA for a long-term commitment to purchase a percentage of the Tier 1 RECs that may be procured under this solicitation to fulfill their proportional shares of the statewide Tier 1 targets.

1.11 Coordination with NYSEDA's T4RFP21-1

On January 13, 2021, NYSEDA issued T4RFP21-1, a solicitation to procure the unbundled environmental attributes in the form of Tier 4 RECs for renewable energy delivered into New York City (NYISO Zone J) pursuant to the CES Modification Order. On November 30, 2021, NYSEDA submitted contracts with the Clean Path NY and Champlain Hudson Power Express projects to the PSC for approval and public comment. The PSC approved the contracts on April 14, 2022, subject to limited contract clarification and

similar requirements as laid out in its [Order Approving Contracts for the Purchase of Tier 4 Renewable Energy Certificates](#). The selected projects will deliver renewable energy sourced from wind, solar and hydropower to New York City. Information about the projects is available on [NYSERDA's Tier 4 website](#).²⁵

Facilities that do not have a Tier 1 agreement and are included as a component of an awarded Tier 4 proposal (or subsequently added to an awarded Tier 4 project through modification of the Tier 4 Agreement) may participate in RESRFP23-1 and/or future Tier 1 solicitations subject to Tier 1 eligibility requirements.

For facilities participating in RESRFP23-1 that are included in a Tier 4 contract, economic benefits claimed under the awarded Tier 4 proposal may also be claimed as part of a Tier 1 Bid Proposal. Should a Bid Facility be awarded under both solicitations, NYSERDA will work with the awarded Proposer to ensure that claims are not double counted under the contractual economic benefits claims (See Expected Dollars/MW definition in the Agreement).

1.12 Forced Labor Prevention

In order to ensure an ethical and sustainable supply chain for renewable energy, NYSERDA is requiring all RESRFP23-1 awardees to sign SEIA's [Forced Labor Prevention Pledge](#) (Pledge), opposing forced labor practices and heightening awareness of human rights abuses against Uighurs, an ethnic minority living in the Xinjiang region of China. Companies that sign the Pledge agree to conduct their business in an ethical manner. Proposer's will be required to evidence that they have signed the Pledge as part of their Step Two Bid Proposal submission.

²⁵ <https://www.nyseda.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/Tier-Four>

2 STEP ONE & STEP TWO COMPONENTS; ELIGIBILITY & EVALUATION

RESRFP23-1 will be implemented through a two-step process. Submissions for both steps are required for all participating Bid Facilities and must be made via the [solicitation website](#). The solicitation website will open for submissions on October 12, 2022. The requirements for each step are summarized in the table below, consisting of:

1. **Step One: A qualifying step** through which the Proposer submits an Eligibility Application providing evidence that the Bid Facility is Tier 1 eligible and other information regarding the Proposer and the Bid Facility. See **Section 3** for detailed instructions about how to prepare and submit a Step One Eligibility Application.
2. **Step Two: A competitive Bid Proposal step**, through which the Proposer submits a Bid Proposal. NYSERDA will: (1) examine each Bid Proposal to determine whether the Proposal demonstrates that the Bid Facility and Proposer meet the Minimum Threshold Requirements; and (2) for Bid Proposals that meet those minimum requirements, perform a full competitive evaluation based on price and non-price factors. See **Section 4** for detailed instructions about how to prepare and submit a Step Two Bid Proposal.

Table 3. Submission Requirements

Step One Eligibility Application	Step Two Bid Proposal
Due Date: Thursday, December 28, 2023 by 3:00 p.m.	Due Date: Wednesday, January 31, 2024 by 3:00 p.m.
<p>Requirements for Submission:</p> <ul style="list-style-type: none"> • Tier 1 eligibility certification (PSoQ or SoQ), obtained via NYGATS. • Key Proposer and Bid Facility characteristics (location, point of interconnection, capacity, <i>etc.</i>). • Executive Order No. 16 certification forms • Executive Order No. 192 certification forms 	<p>Requirements for Submission:</p> <ul style="list-style-type: none"> • Expanded project characteristics and details, interconnection and environmental mitigation cost estimates. • Binding Bid Price and Bid Quantity data. • Overview of how Bid Facility meets all Minimum Threshold Requirements • Minimum Threshold Requirements documentation (Site Control, Interconnection, <i>etc.</i>) • Expected benefits and burdens to Disadvantaged Communities. • Community Engagement Plan • Operational Flexibility and Peak Coincidence documentation (P(50) 8760, <i>etc.</i>). • If applicable, Incremental Economic Benefits claims, including identification of specific claims that will benefit Disadvantaged Communities. • Non-Disclosure Agreement • Proof of Bid Fee payment

Proposers submitting Step One Eligibility Applications that are determined to be qualified will be invited to submit a Step Two Bid Proposal. Step Two Bid Proposals that are determined to meet the Minimum Threshold Requirements will be evaluated and scored based on: (1) the Fixed REC Bid Price or Index REC Bid Price, weighted at 70% of the overall score, and (2) non-price factors, which have a combined weight equaling 30% of the overall score.

Please note that the Minimum Threshold Requirements apply only to items within the Project Viability, Operational Flexibility and Peak Coincidence (Project Viability and OpFlex) category. There are no minimum requirements for Incremental Economic Benefits to New York State.

The 30% non-price evaluation component is divided into two categories:

- 1) 20% Project Viability, Operational Flexibility and Peak Coincidence (beyond the Minimum Threshold Requirements); and
- 2) 10% Incremental Economic Benefits to New York State.

Pursuant to the February 22, 2017, PSC [Order Approving the Phase 1 Implementation Plan](#) and the subsequent Orders, a Technical Evaluation Panel (TEP), consisting of NYSERDA staff, DPS Staff, and Independent Evaluators, all of whom will execute a non-disclosure agreement, will evaluate and award points for the non-price evaluation components of each Bid Proposal.²⁶ NYSERDA may also enlist other state agencies, authorities, and subject-matter experts to inform the non-price evaluation conducted by the TEP. The Bid Price evaluation will be conducted by NYSERDA.

Non-Price Minimum Threshold Requirements and determinations, and the Non-Price evaluation are detailed in Section 4. Price evaluation is detailed in Section 4.4.5.

Instructions and requirements on how to submit a Step One Eligibility Application and Step Two Bid Proposal are detailed in Sections 3 and 4, respectively.

2.1 Eligibility & Evaluation

To be eligible, a Bid Facility must be a Tier 1 RES eligible resource technology type qualifying under the updated Clean Energy Standard Tier 1 eligibility requirements outlined in the CES Modification Order and described herein.²⁷ Pursuant to the CES Framework Order, to participate an eligible Bid Facility must also: (1) be located within the New York Control Area (NYCA) or in an adjacent control area and supply energy into New York State, in accordance with the RES Delivery Requirements in the Agreement, and (2) have first commenced Commercial Operation on or after January 1, 2015, or (3) must produce new, incremental energy and Tier 1 RECs from new Bid Capacity above a historical baseline.

²⁶ The Order and subsequent Plans are available on NYSERDA's CES Orders, Reports, and Filings website: <https://www.nyserdera.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Important-Orders-Reports-and-Filings/Filings-Orders-and-Reports>

²⁷ Proposers should note that the Climate Act definition of renewable energy systems as adopted by the CES Modification Order excludes certain resources previously eligible under the CES Framework Order, including biomass, biogas, liquid biofuels, fuel cells using natural gas and anaerobic digesters, among others, and should review the RFP and Agreement prior to commencing a request for a Provisional Statement of Qualification.

Upgrade Bid Facilities are eligible to the extent that they produce incremental generation that exceeds the Bid Facility’s historical generation levels as verified by a third-party engineering report.

The full generation produced by a Repowering Bid Facility is eligible if the Bid Facility has reached the end of its useful life (e.g., 20 years for wind and solar Bid Facilities, 50 years for hydroelectric Bid Facilities) and has met the requirements to (i) replace each prime mover,²⁸ resulting in an overall increase of 15% or more in the production of the generation unit, and (ii) make capital expenditures in excess of 80% of the Repowering Bid Facility’s tax basis (not including its property and tangible assets). Proposers are encouraged to reference Section 7.6 Repowering Project of the [New York State Clean Energy Standard RES Tier 1 Certification Submission Instructions and Eligibility Guidelines](#) to review the full scope of requirements for Tier 1-eligible Repowering Bid Facilities and the requirements for third-party engineering reports needed to demonstrate provisional Tier 1 eligibility.

Bid Facility that have not reached the end of its useful life may be eligible for a portion of its generation to be Tier 1 eligible prior to the end of the useful life based on the results of the required third-party engineering report. Prior to the end of the Bid Facility’s useful life, the percentage increase in generation attributable to the Repowering will be Tier 1 eligible. Once the useful life of the original project is met, all generation (100%) from the Repowering Bid Facility will be Tier 1 eligible. See Table 4 below for an illustrative example of a Repowering Bid Facility that will be partially Tier 1 eligible prior to the end of the 20-year useful life.

Table 4. Illustrative Example of Pre-End of Useful Life Tier 1 Eligible Generation

Calendar Date	Useful Life	Original Project (Projected Generation)	Repowering Bid Facility (Projected Generation)	% Increase in Generation	Tier 1 % Applicability	Non-Tier 1 % Applicability	Tier 1 Eligibility Applicable to Generation Dates
7/1/22-6/30/23	17	762,120	914,544	20%	20%	80%	
7/1/23-6/30/24	18	744,600	914,544	23%	23%	77%	4/1/24-6/30/24
7/1/24-6/30/25	19	727,080	914,544	26%	26%	74%	7/1/24-6/30/25
7/1/25-6/30/26	20	709,560	914,544	29%	29%	71%	7/1/25-6/30/26
7/1/26-6/30/27	21	n/a	914,544	n/a	100%	0%	7/1/26-6/30/27

A Proposer may not condition the acceptance of one Proposal based on the withdrawal or acceptance of other Proposals. NYSERDA will not award more than one Bid Proposal for the same Bid Facility.

Tier 1 eligible RECs or environmental attributes that are the subject of a current NYSERDA RES contract, or that were the subject of an award under NYSERDA’s RESRFP22-1 solicitation, are not eligible under this RFP. Additionally, Proposers that are seeking or have secured funding through a separate NYSERDA incentive program (e.g., NY-Sun for solar facilities, NYSERDA funding for geothermal facilities) are not eligible to participate under this RFP.

²⁸ For purposes of this requirement, “prime mover” is defined as follows: for wind Bid Facilities, the wind turbine, including the generator, gearbox (if any), rotor and blades; and for solar PV Bid Facilities, the modules and inverters. Hydroelectric Bid Facilities are not subject to the requirement to replace the prime mover, but must meet the other Repowering eligibility requirements.

Proposers whose Step One Applications are found to be complete and that demonstrate eligibility will receive a Notice of Qualification, which will provide Proposers with a description of and access to the process and forms to be used to submit a Step Two Bid Proposal.

2.2 Policy Regarding Tier 1 REC Agreement Termination, Contract Security and Eligibility to Submit Proposals into RESRFP23-1 and RESRFP24-1

NYSERDA's current policy regarding Tier 1 REC agreement termination, contract security and eligibility to submit proposals into RESRFP23-1 and RESRFP24-1 is described below. **Please note, the policy described herein is based on special and unique current circumstances and is not expected to apply to future solicitations and has been updated since the original policy was published on November 16, 2023.**

Eligibility and Timing of Termination: To be eligible to submit a proposal in RESRFP23-1 or RESRFP24-1, a proposer cannot have an active agreement with NYSERDA or another entity with respect to the Tier-1 RECs being offered in that solicitation at the time of submission of the Step One Eligibility Application.

For Bid Facilities that utilize the mutual termination agreement form prepared by NYSERDA described below, the Bid Facility will satisfy this eligibility criteria if (i) the mutual termination agreement form provided by NYSERDA is signed by the Seller and submitted to NYSERDA prior to submission of the Step One Eligibility Application and the only remaining condition to effectiveness is execution by NYSERDA and delivery by Seller of replacement contract security (whether in the form of a letter of credit or cash deposit) and (ii) the replacement contract security (whether in the form of a letter of credit or cash deposit) is delivered by the Seller to NYSERDA prior to submission of the Step Two Bid Proposal.

Mutual Termination Agreement: NYSERDA has prepared an updated [form of mutual termination agreement](#) released with this RFP, **which has been updated since the original version was published on November 16, 2023**, that can be utilized by eligible Sellers with a Tier-1 REC agreement in place with NYSERDA (an "Existing NYSERDA Agreement") that elect to submit proposals into RESRFP23-1 or, if ineligible for RESRFP23-1, into RESRFP24-1 (if eligible).

Only Sellers that have **not** yet issued a notice to proceed for the Bid Facility and have concluded that the Bid Facility is not economically feasible under the pricing agreed to and set forth in the Existing NYSERDA Agreement are eligible to enter into the mutual termination agreement.

For this purpose, notice to proceed is defined as a notice from Seller to its general contractor (or in the event that there is no general contractor to all material internal construction unit(s) and/or third-party contractor(s)) to proceed with the construction of the Bid Facility, at a minimum of eighty percent (80%) of the Bid Capacity, other than a limited notice to proceed only with site preparation and/or site civil work.

[Attachment I. Mutual Termination Agreement is available here](#) and includes the following key terms:

1. The contract security provided pursuant to the Existing NYSERDA Agreement (the "Posted Contract Security") will temporarily **not** be drawn by NYSERDA pending the outcome of RESRFP23-1.

2. If the same Bid Facility that was subject to the terminated Existing NYSERDA Agreement is awarded in RESRFP23-1, the Posted Contract Security will be **added** to the amount of contract security required to be posted in connection with the RESRFP23-1 award and will be drawable in accordance with the same terms and conditions that apply to such award (including the resulting Tier-1 REC agreement).
3. If the Bid Facility that was the subject of the terminated Existing NYSERDA Agreement is eligible for RESRFP23-1 but no proposal is submitted for the Bid Facility, or if a proposal for the Bid Facility is submitted into RESRFP23-1 but is not awarded, NYSERDA reserves the right to draw on the Posted Contract Security at that time.
4. Only if the Bid Facility that was the subject of the terminated Existing NYSERDA Agreement is **ineligible for RESRFP23-1** (and provides reasonably satisfactory evidence to NYSERDA of such ineligibility by the RESRFP23-1 Step Two Bid Proposal submission deadline), the terms described above will apply to such Bid Facility for RESRFP24-1.

Additional key terms not included in the version published on November 16, 2023:

5. For purposes of the Mutual Termination Agreement, a Bid Facility proposed into RESRFP23-1 or RESRFP24-1 will be considered the “same” Bid Facility if it (i) retains the same technology type (e.g., a solar project cannot be changed to a wind project), (ii) retains the same Delivery Point, and (iii) remains in materially the same physical location. Two Bid Facilities combined into a single Bid Facility will also be considered the same Bid Facility so long as the combined Bid Facility fulfills the characteristics above with respect to the two Bid Facilities as a whole.
6. If the Bid Capacity of the Bid Facility proposed into RESRFP23-1 or RESRFP24-1 is less than the Bid Capacity under the Existing NYSERDA Agreement(s), NYSERDA will draw on and permanently retain the portion of the contract security that is proportional to the percent reduction in the proposed Bid Capacity compared with the Bid Capacity under the Existing NYSERDA Agreement(s).

To ensure that any terminations of Existing NYSERDA Agreements can be processed prior to the deadline for submission of Step One Eligibility Applications to RESRFP23-1, Sellers that wish to proceed with mutual termination are requested to execute the Mutual Termination Agreement and submit it to NYSERDA no later than **Thursday, December 14, 2023**.

Updates on the land-based renewable energy project pipeline, including any contract terminations, will be available in [NYSERDA’s Large-Scale Renewables Open NY database](#) in periodic updates: the next update will be posted no later than Friday, December 8, and the following update will be posted no later than Thursday, December 28. NYSERDA is required to update Open NY at least quarterly.

2.3 Subsequent Tier 1 Eligibility Changes

Bid Facilities selected for an award under this RFP will not be subject to subsequent changes in RES eligibility rules; however, if the Bid Facility fails to maintain eligibility consistent with the RES requirements as they existed at the time of an award, such ineligibility will extend to the RECs

associated with the Bid Facility's production throughout the entire period in which the Bid Facility fails to maintain eligibility.

Bid Facilities selected for an award under this RFP will be subject to any ongoing PSC proceedings related to Tier 1 eligibility, and awards may be made to Bid Facilities conditional upon confirmation from the PSC that the resource is Tier 1 eligible.

2.4 Conformance with NYGATS Operating Rules

If awarded under RESRFP23-1, Proposers must maintain a valid NYGATS ID, obtain a Statement of Qualification, achieve Operational Certification, and operate in conformance with the [NYGATS Operating Rules](#).²⁹ Proposers must implement a Forward Certificate Transfer of Tier 1 RECs in NYGATS, up to the Annual REC Cap, into NYSERDA's NYGATS Account. NYSERDA will make payment for Tier 1 RECs from the Bid Facility delivered to NYSERDA's NYGATS account.

For Bid Facilities located in adjacent control areas, Proposers must ensure that if awarded under a Tier 1 solicitation that the electricity associated with their RECs is (1) scheduled, transmitted, delivered, and settled in the NYISO energy market on an hourly basis, and (2) accompanied by documentation of a unit-specific contract path between the injection point in the control area of origin to the delivery point in New York.

Documentation of a unit-specific contract path must indicate the provision of transmission rights for delivering the generation via the NYISO using the North American Electric Reliability Corporation (NERC) tag fields "Sending and Receiving Control Areas," "Purchasing/Selling Entity Name," and "Number." For imported RECs to be flagged as eligible for Tier 1, projects located in an adjacent control area will need to continuously demonstrate the delivery of energy and RECs into New York State through the requirements laid out in the Final Phase 1 Implementation Plan. Tier 1 eligible energy scheduled and delivered from external control areas must be accompanied by the NERC tag information from an outside organization such as the Open Access Technology International (OATI) System identifying the importing project as the source for the scheduled and transmitted electricity into the NYISO, which NYSERDA uses to ensure that the requirements set forth in the Final Phase 1 Implementation Plan have been satisfied.

All Bid Facilities located in adjacent control areas (known as Import projects or External Bid Facilities) must apply for Provisional Eligibility and provide a sample tag. Once approved as Operational, NERC tag information must be emailed to res@nyserdera.ny.gov directly in its original unaltered form from OATI or a similar system.

2.5 Alternate Bid Proposals

Proposers may elect to submit Alternate Bid Proposals for a Bid Facility that includes a different Nameplate Capacity or inflation adjustment. Step Two Bid Proposals may contain one or more of the components that comprise an Alternate Bid Proposal. In order to submit an Alternate Bid Proposal, Proposers must indicate this election in the Step One Eligibility Application and provide a populated Attachment D. Bid Data Form with the Step Two Bid Proposal.

²⁹ [New York Generation Attribute Tracking System \(NYGATS\)](#)

2.5.1 Alternate Nameplate Capacity Bid Proposal

Bid Facility configurations representing different Nameplate Capacities may be submitted as Alternate Bids under Step Two of RESRFP23-1. Proposers electing to submit with a different Nameplate Capacity for the same Bid Facility must select the option for an Alternate Bid Proposal with a different Nameplate Capacity in the Step Two Bid Proposal. Neither a separate Step One Eligibility Application in the solicitation website or a separate PSoQ is not required, but all Bid Facility Nameplate Capacities must be equal to or less than the Nameplate Capacity associated with the evidence provided that the Bid Facility has achieved the Minimum Threshold Criteria. Proposers must enter information representing both the Base Bid and the Alternate Bid Proposal(s) with a different Nameplate Capacity in Attachment D. Bid Data Form.

2.5.2 Inflation Risk Adjusted Bid Proposal

Proposers may submit an Alternate Bid Proposal with a price structure where the Index REC Strike Price or Fixed REC Price would be subject to a one-time adjustment to reflect changes in a pre-determined price index subsequent to the Step Two Deadline for Submission of Proposals. Proposers electing to submit with an Inflation Risk Adjusted Bid Proposal must select the option for an Inflation Risk Adjusted Bid Proposal in the Step Two Bid Proposal. Additional details on this adjustment mechanism are provided in Section 5.2.1 of this RFP and in Section 5.03 of the Agreement. Proposals that include this adjustment will be evaluated using a price adder reflecting NYSERDA's inflation expectation as further described in Section 5.4 of this RFP.

2.6 Contractual Commitments

2.6.1 Prevailing Wage Requirement

In accordance with Labor Law § 224-d (2), and NYSERDA's requirements as contained in the Agreement, and unless otherwise provided in a Project Labor Agreement (PLA) covering the construction of the Bid Facility that complies with the requirements of Labor Law § 222, all laborers, workmen and mechanics (within the meaning of those terms under New York State Labor Law Article 8) performing Construction Activities with respect to the Bid Facility, including, but not limited to, the assembly, staging, installation, erection, and placement of the Bid Facility as well as those construction activities related to start-up and commissioning of the Bid Facility, whether through long-term or short-term employment, must be paid wages and benefits in an amount not less than the Prevailing Rates (as determined under New York State Labor Law § 220). No less than six months prior to the commencement of Construction Activities, Seller must notify NYSERDA of its intent to commence construction activities, and in cooperation with the New York State Department of Labor, generate a prevailing wage determination for the Bid Facility, as will be updated from time to time. Unless relieved of such requirements by entering into a duly executed PLA in accordance with New York State Labor Law § 222 & 224-d(2), Seller will be responsible for complying with all prevailing wage requirements (including but not limited to reporting requirements) under New York State Labor Law §§ 220, 220-b, and 224-d. For more, see Section 18.10 of the Agreement and New York State Labor Law § 224-d.

2.6.2 Project Labor Agreement

As referenced herein, a Project Labor Agreement (PLA) refers generally to a single collective bargaining agreement (including a pre-hire agreement) covering both contractors in the construction industry working on a Bid Facility and a bona fide building and construction trade labor organization representing

the craft workers on that Bid Facility. Bid Facilities constructed under a PLA that meets the requirements of Labor Law §222 and the Agreement, specifically, Exhibit J to the Agreement, are not subject to the aforementioned prevailing wage requirements. For more, please see Sections 18.10 and 18.12 of the Agreement, Exhibit J to the Agreement, and Labor Law §§ 220, 220-b, 222 and 224-d.

2.6.3 Labor Peace Agreement

New York State Public Service Law § 66-r (3) requires that the Agreement include a stipulation that the Seller, as owner of the Bid Facility, or a third party acting on the Seller's behalf, stipulate that it will enter into a Labor Peace Agreement (LPA) where a bona fide labor organization is actively representing, or attempting to represent, employees providing operations and maintenance services for the Bid Facility. As described more fully in Section 18.13 of the Agreement, pursuant to and to the extent legally required by New York State Public Service Law § 66-r (3), the maintenance of such an LPA shall be an ongoing material condition of any continuation of payments under the Agreement.

2.6.4 U. S. Iron and Steel (Buy-American)

New York State Public Service Law (PSL) § 66-r (4) (a) (the Buy-American Act) requires public entities to include within the terms and conditions of any covered contracts a contractual requirement that "iron and structural steel used or supplied in the performance of the Contract or any subcontract thereto[,] and that is permanently incorporated into the public work, [be] produced or made in whole or substantial part in the United States, its territories or possessions." However, PSL § 66-r (4) (b) provides that the Buy-American requirement "shall not apply if the head of the department or agency constructing the public works, in his or her sole discretion, determines that the provisions would not be in the public interest, would result in unreasonable costs, or that obtaining such steel or iron in the United States would increase the cost of the contract by an unreasonable amount, or such iron or steel, including without limitation structural iron and structural steel cannot be produced or made in the United States in sufficient and reasonably available quantities and of satisfactory quality." The Buy-American Act requires the soliciting agency to make such determination in each RFP.

In the context of RESRFP23-1, NYSERDA finds that "structural" iron and steel subject to PSL §66-r includes the following components. For onshore wind, NYSERDA determined that the following were "structural" iron and steel components: (1) the tower supporting the turbine, inclusive of any platforms, transition pieces, or other similar structural elements permanently affixed to the tower ("tower"); and (2) elements incorporated into or comprising the foundation supporting the tower, including reinforcing iron or steel ("rebar"). Similarly, NYSERDA determined that the following components are operational by nature and are therefore not "structural" iron or steel components that are "permanently incorporated" into an onshore/land-based wind project, and therefore are not subject to the PSL §66-r: (1) rotor hub; (2) main shaft; (3) main frame (transition from nacelle to tower); (4) yaw system; (5) rotor blades; (6) rotor bearings; (7) gearbox; (8) generator; (9) pitch system; (10) power converter (11) transformer; (12) brake system; (13) nacelle housing; (14) electrical equipment; and (15) cables, screws, and other fasteners.

For utility-scale solar, NYSERDA determined that the following were "structural" iron and steel components: (1) the iron or steel piers, piles, or ground screws that are driven into the ground to provide support to the solar system racking; and (2) the solar system racking that is mounted to the system foundation and provides support to the solar photovoltaic modules and other electrical systems. Similarly, NYSERDA determined that the following components are operational by nature and are

therefore not “structural” iron or steel components that are “permanently incorporated” into a utility-scale solar project, and therefore are not subject to the PSL §66-r: (1) solar modules; (2) wiring; (3) trackers systems; (4) inverters; (5) transformers; (6) electrical equipment; and (7) cables, screws, nuts, bolts, clamps, and other fasteners.

In accordance with the objectives of the Buy-American Act, NYSEDA has undertaken a study to examine the implications of the Buy-American Act as applied to the Large-Scale Renewables Facilities and associated Bid Facility components anticipated to be the subject of Proposals submitted in response to this RFP (RESRFP23-1). On the basis of this study, NYSEDA has determined that due to the potential for increased costs, schedule delay, current market dynamics, manufacturer availability, and steel availability, including the requirement in RESRFP23-1 would not be in the public interest.³⁰ Requiring all structural iron or steel to be sourced domestically would not be in the public interest, as it may result in unreasonable increased costs and schedule delays. The study also examined the feasibility of contractual requirements to use domestic structural iron and steel. The study found that a contractual requirement for a reasonable minimum amount of U.S. iron and steel to be used in each Bid Facility would align with New York State’s policy goals to incentivize utilization and growth of the renewable energy supply chain, including the U.S. steel industry that supports it, and reduce embodied carbon. The study commenced for RESRFP23-1 evidenced that an increase in the minimum amount of U.S. iron and steel to be procured for each Bid Facility is warranted for this RFP, reflecting recent market dynamics including increased cost and greater domestic availability of major structural elements.

Accordingly, the President and CEO of NYSEDA hereby determines to not require all structural iron or steel to be produced in the United States for utility-scale solar PV and onshore wind energy generation systems; however, use of iron and steel that is produced in New York, and in the United States, is valued by NYSEDA. Accordingly, as a matter of procurement policy in promoting the intent of the New York Buy American Act, any onshore wind Bid Facility awarded a contract in RESRFP23-1 is required to establish that it expends a minimum of \$58,000 per MWac on iron and/or steel components that are manufactured in the U.S. with iron and steel produced by U.S. steel mills for use in the Bid Facility. Any solar Bid Facility awarded a contract in RESRFP23-1 is required to establish that it expends a minimum of \$32,000 per MWdc on iron and/or steel components that are manufactured in the U.S. with iron and steel produced by U.S. steel mills for use in the Bid Facility. The applicable minimums noted above for U.S. iron and Steel per MW of Bid Capacity will be entered in the Agreement as Expected U.S. Iron and Steel Dollars/MW. For Upgrades and Repowering Bid Facilities of utility-scale solar PV and onshore wind, the Expected U.S. Iron and Steel Dollars/MW will be determined by NYSEDA in cooperation with Proposers prior to the Step Two Bid Proposal deadline.

To the extent a Bid Facility falls short of the minimum dollar requirement determined for the project, any shortfall will be addressed through the remedy provided in Section 5.02 (f) of the Agreement.

For Bid Facilities that utilize technology other than utility-scale solar PV or onshore wind, and have yet to be constructed, NYSEDA will determine the compliance obligation in cooperation with Proposers in advance of the Step Two Bid Proposal deadline.

³⁰ For more, see Appendix 3. RESRFI22-1 Preliminary Determination Memorandum, Public Service Law (PSL) § 66-r (the New York “Buy-American” law), revised September 2022, available at <https://nyserda.ny.gov/-/media/Project/Nyserda/Files/Programs/Clean-Energy-Standard/NYSEDA-Buy-American-Supplemental-Study-Onshore-Wind-UtilityScale-Solar.pdf>

2.6.5 Disadvantaged Communities Economic Benefit Commitments

Proposers are encouraged to make elective commitments in their Step Two Bid Proposals that will commit the Proposer to a certain dollar amount of expenditures that will accrue to Disadvantaged Communities. Such commitments will be evaluated favorably and be incorporated into the Agreement as Disadvantaged Community Commitments. To the extent a Bid Facility falls short of the minimum dollar requirement set forth in the Agreement, any shortfall will be addressed through the remedy provided in Section 6.10 of the Agreement.

2.6.6 MWBE and SDVOB Economic Benefit Commitments

Proposers are also encouraged to make elective commitments in their Step Two Bid Proposals that will commit the Proposer to a certain dollar amount of expenditures per MW of nameplate capacity that will accrue to MWBE and SDVOB. Such commitments will be evaluated favorably and be incorporated into the Agreement as Expected MWBE and SDVOB Dollars/MW. To the extent a Bid Facility falls short of the minimum dollar requirement set forth in the Agreement, any shortfall will be addressed through the remedy provided in Section 5.02 (f) of the Agreement.

2.6.7 Host Community Benefit Program

In [Public Service Commission Case 20-E-0249](#), In the Matter of a Renewable Energy Facility Host Community Benefit Program, the [PSC Ordered](#) that residential electric utility customers residing in a renewable Host Community receive an annual bill credit for each of the first ten years that a Major Renewable Energy Facility operates in that community. Funding for the bill credits will be provided by the owners of major solar and wind renewable energy facilities by paying an annual fee of \$500 per megawatt (MW) and \$1,000 per MW, respectively, of nameplate capacity. The fees paid by a Major Renewable Energy Facility would be distributed equally among the residential utility customers within the Host Community of the facility.

Therefore, NYSERDA directs Proposers submitting Bid Facilities 25 MW and larger sited within New York State to RESRFP23-1 to include at least a \$500 per megawatt (MWac) Host Community Benefit Program Fee (“Program Fee”) for solar projects and \$1,000 per megawatt Program Fee for wind projects, for each of the first ten years once the Bid Facility reaches Commercial Operation.³¹ Proposers are encouraged to include these Program Fees in their Incremental Economic Benefits submission.

³¹ PSC February 11, 2021 Order Adopting a Host Community Benefit Program, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DFD69D2F-A16F-404F-9A7C-283F0C79D1DB}>

3 STEP ONE ELIGIBILITY APPLICATION AND DETERMINATION

Step One is an initial qualifying step through which the Proposer must provide documentation confirming that the Bid Facility is registered in NYGATS as Tier 1 eligible and other key information about the Proposer and the Bid Facility. Step One Eligibility Applications must be submitted via the [solicitation website](#) and will be examined for completeness and to determine whether the Proposer and Bid Facility meet the eligibility requirements outlined in Sections 1.4 and 2. In order to meet the eligibility criteria, the Proposer must:

- Be located within NYCA or in an adjacent control area and deliver energy into New York State in accordance with the RES Delivery Requirements in the Agreement and NYGATS Operating Rules, and have first commenced Commercial Operation on or after January 1, 2015, or must produce new, incremental energy and Tier 1 RECs from new Bid Capacity above a historical baseline.

Proposers are advised that the Tier 1-eligible technology types have been amended per the CES Modification Order, and include the following technologies:

Table 5. Eligible Tier 1 Technology Types

Technology	Source	Other Requirements
Solar Photovoltaics and Thermal		
On-land and offshore wind	Wind turbines	
Hydroelectric	Low-Impact Run-of-River Hydroelectric; Upgrades	No new storage impoundments; eligibility for Upgrades limited to the incremental production associated with the upgrade.
Fuel Cells	Solid Oxide Fuel Cells (SOFC) Molten Carbonate Fuel Cells (MCFC) Proton Exchange Membrane Cells (PEM) Phosphoric Acid Fuel Cells (PAFC)	Must utilize a non-fossil fuel resource, such as hydrogen (or other fuel), that has been produced using a “renewable energy system” ³² as a primary source.
Tidal/Wave/Ocean	Tidal and Ocean Wave or Current (turbines and other rotary motion devices); Ocean Thermal Pumped Storage Hydro Powered by Tidal	
Geothermal Electric		
Geothermal Ground Source Heat		

Proposers are advised that the Tier 1 eligibility requirements regarding Repowering have also been updated pursuant to the CES Modification Order, as discussed in Section 3.3.

Proposers should ensure that each proposed Bid Facility meets the Tier 1 eligibility requirements to participate in RESRFP23-1, and each Bid Facility is registered in the New York Generation Attribute

³² A system that generates electricity through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.

Tracking System (NYGATS) as early as possible to ensure that the facility is eligible to submit a Step One Eligibility Application.

Interested Proposers may access [the Tier 1 Certification Submission Instructions and Eligibility Guidelines here](#), and are strongly encouraged to register each Bid Facility in NYGATS by following the instructions posted on the Clean Energy Standard website: [RES Tier 1 Certification](#). Interested Proposers may register their facilities in NYGATS at any time (open, rolling enrollment), including prior to the issuance of RESRFP23-1 and no later than Wednesday December 13, 2023.

A complete Step One Eligibility Application consists of the following components:

- 1) The letter received in the Proposer's NYGATS account from NYSERDA confirming that the application for Tier 1 eligibility (SoQ or PSoQ) has been approved.
- 2) The Step One Eligibility Application electronic form on the solicitation website providing required information about the Proposer and the Bid Facility for which the SoQ/PSoQ was granted. This will include Proposer contact information, and Bid Facility name, nameplate capacity, expected annual generation, interconnection location (e.g., NYISO Zone), host community or communities, and intended pricing structure (Fixed REC or Index REC; not binding).

Instructions on how to submit a full Step One Eligibility Application are available on the [solicitation website](#). Proposers whose Step One Eligibility Applications are found to be complete and that demonstrate eligibility will receive a Notice of Qualification, which will provide Proposers with a description of and access to the process and forms to be used to submit a Step Two Bid Proposal.

Proposers must submit the full Step One Eligibility Application, including an approved PSoQ or SoQ, via the [solicitation website](#) by **3:00 p.m. ET on Thursday, December 28, 2023**.

Incomplete Step One Eligibility Applications will be subject to disqualification. It is the Proposer's responsibility to ensure that all required forms and attachments have been completed and submitted. Late submissions will not be accepted. Proposers deemed qualified to submit a Step Two Bid Proposal will be emailed a Notice of Qualification and notified via the solicitation website.

Proposers whose Step One Eligibility Applications are found not to satisfy the eligibility requirements or to be deficient in some other respect will receive notification that they are not eligible to submit a Step Two Bid Proposal. NYSERDA will attempt to contact any Proposers with deficient Step One Applications prior to issuing a notice that the Bid Facility is not eligible to submit Step Two Bid Proposal.

3.1 NYGATS Registration and Request for NYGATS Resource Eligibility Determination; Provisional Statement of Qualification (PSoQ) or Statement of Qualification (SoQ)

All Tier 1 eligibility applications to obtain a PSoQ/SoQ must be approved in the New York Generation Attribute Tracking System (NYGATS). Proposers can access the NYGATS system at the following links:

- New User Registration: <https://nygats.ny.gov/ng/Admin/Account>
- Existing User Sign-In: <https://nygats.ny.gov/>

Requests to obtain Tier 1 certification are completed in NYGATS. To complete a request, Proposers must create a NYGATS account, complete a project registration for the Bid Facility, and once the registration is

approved, complete an application requesting a Resource Eligibility Determination, in the form of either a Statement of Qualification (SoQ), for facilities in operation at the time of request, or a Provisional Statement of Qualification (PSoQ), for facilities not yet in operation at the time of request. The SoQ/PSoQ certifies that a Bid Facility has met or will meet the eligibility requirements under Tier 1 of the RES.³³ NYSERDA will notify the Proposer of its eligibility determination by posting a letter in the Proposer's NYGATS account associated with the Bid Facility.

The Bid Facility characteristics submitted for the NYGATS project registration must align as closely as possible with the characteristics intended to be submitted as part of a Step Two Bid Proposal (*e.g.*, Nameplate Capacity, NYISO Zone). Alternate Applications and Bid Proposals do not require a separate PSoQ in NYGATS (*e.g.*, Bid Facilities seeking to submit the project as different Nameplate Capacities). Step One Eligibility Applications with a different Nameplate Capacity than the Bid Facility's PSoQ must be smaller than the Nameplate Capacity associated with the PSoQ.

The application requesting a new Resource Eligibility Determination must be completed in NYGATS by 3:00 p.m. ET on Wednesday, December 13, 2023. This will enable NYSERDA to complete the Tier 1 eligibility determination and issue the SoQ/PSoQ prior to the deadline for submitting the Step One Eligibility Application.

More information on the Resource Eligibility Determination process, including guidelines for documenting eligibility for certification, including the eligibility of distributed energy resources, Upgrades, relocated facilities and facilities returning to service can be found on [NYSERDA's RES Tier 1 Eligibility website](#).³⁴ Training materials for using NYGATS to apply for an eligibility determination may be found on the [NYGATS website](#).³⁵

3.2 Consistency with Existing SoQ or PSoQ

For a Bid Facility with an existing SoQ or PSoQ, a Step One Eligibility Application submitted for the Bid Facility under this RESRFP23-1 must be consistent with the existing SoQ or PSoQ. Some resource changes, for example a change in the Technology Type, Nameplate Capacity, Control System Operator, New York Independent System Operator (NYISO) Zone, Electric Utility Company, Tariff Type, Vintage Type, Bid Facility address, or other key project components will require Proposers to submit either (1) an SoQ or PSoQ revision, or (2) a request for a new SoQ or PSoQ. NYSERDA will work with the Proposer to rectify any discrepancies. If assistance is needed, please contact res@nyserdera.ny.gov with a subject line "SoQ/PSoQ Assistance."

3.3 Upgrade and Repowering Bid Facilities

Prior to the end of an existing Bid Facility's useful life (20 years for wind and solar Bid Facilities, 50 years for hydroelectric Bid Facilities), only incremental generation can qualify for Tier 1 as an Upgrade Bid

³³ See <https://www.nyserdera.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Certification>

³⁴ <https://www.nyserdera.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Eligibility>

³⁵ <https://www.nyserdera.ny.gov/All-Programs/Programs/NYGATS/Registration-Documents>

Facility, to the extent it exceeds the Bid Facility's historical generation levels as verified by a third-party engineering report.

After the existing Bid Facility has reached the end of its useful life, the entire capacity can be eligible as a Repowering Bid Facility if the following requirements are met:

- The Repowering must include replacement of each prime mover, and result in an overall increase of 15% or more in the production of the generation unit compared to its projected future output. For purposes of this requirement, "prime mover" is defined as follows: for wind Bid Facilities, the wind turbine, including the generator, gearbox (if any), rotor and blades; and for solar PV Bid Facilities, the modules and inverters. Hydroelectric Bid Facilities are not subject to the prime mover replacement requirement but are subject to the 15% production increase requirement.
- The Repowering must have the result that 80% of the tax basis per Generally Accepted Accounting Principles (GAAP) from the completed Repowering Bid Facility (not including its property and tangible assets) is derived from capital expenditures made on or after October 15, 2020. An independent audit and verification will be required. Certification will be required and submitted at the time of the resource eligibility determination under Tier 1 of the RES.

Additionally, Bid Facilities that have not reached the end of their useful life may be eligible for a portion of their generation to be Tier 1 eligible prior to the end of their useful life based on the results of the required third-party engineering report. Prior to the end of the Bid Facility's useful life, the percentage increase in generation attributable to the Repowering will be Tier 1 eligible. Once the useful life of the original project is met, all generation (100%) from the Repowering Bid Facility will be Tier 1 eligible.

Proposers seeking to participate in RESRFP23-1 with an Upgrade or Repowering Bid Facility are strongly encouraged to contact the Large-Scale Renewables team at res@nyserda.ny.gov prior to starting a Tier 1 request in NYGATS. NYSERDA also strongly encourages submitting a Tier 1 request as soon as possible if seeking to participate in RESRFP23-1. Proposers must submit a Tier 1 request for a Provisional Statement of Qualification (PSoQ), if under development, or Statement of Qualification (SoQ), if operational. Proposers seeking to submit a Step Two Bid Proposal for an Upgrade or Repowering Bid Facility must submit a Tier 1 request for PSoQ if the upgraded or repowered actions have not yet been constructed for the Bid Facility. In Attachment E. P(50) 8760 Template that will be submitted as part of the Step Two Bid Proposal, Proposers will enter the Bid Facility's full generation profile and annual Tier 1 Upgrade Percentage to calculate estimated Tier 1 RECs. Proposers should also re-submit the historical generation data submitted with the request for PSoQ with the Step Two Bid Proposal to verify the application of the Tier 1 eligibility percentage in Attachment E.

Proposers that intend to submit bids for incremental Upgrades must utilize the Tier 1 Upgrade Percentage determined in the NYGATS SoQ or PSoQ. The Tier 1 Upgrade Percentage will be used in both the Step One Eligibility Application and Step Two Bid Proposal to ultimately determine a Bid Facility's Bid Quantity.

Upgrade Bid Facilities require a PSoQ, not an SoQ, if the proposed Upgrade Bid Facility is not yet in operation.

To obtain a PSoQ for a project already in commercial operation planning an Upgrade, the Proposer will need to register a new provisional project and submit a request for a PSoQ for the incremental Upgrade

and associated production. The provisional Nameplate Capacity (MW-AC) entered by the Proposer should indicate the total capacity of the Bid Facility after the Upgrade. After the provisional project registration is approved, the applicant can submit a PSoQ request for the incremental production associated with the Upgrade. See Section 7.3 of the [New York State Clean Energy Standard RES Tier 1 Certification Submission Instructions and Eligibility Guidelines](#) for information on technology-specific PSoQ requirements for Upgrade Bid Facilities.

Repowering Bid Facilities require a PSoQ, not an SoQ, if the proposed Repowering Bid Facility has not yet undergone the required capital improvements to qualify as Tier 1. Proposers are advised to consult the CES Modification Order for the full requirements to qualify a repowered facility as Tier 1 eligible.

For all technologies except Hydroelectric, the Repowering must include replacement of each prime mover. The Repowering must result in an overall increase of 15% or more in the production of the generation unit compared to its projected future output. A third-party engineering report will be required to verify the projected generation through the Tier 1 certification process. The third-party engineering report must include:

- For the original project:
 - Commercial Operation date – Month/Year
 - Description of age and useful life or prime mover, equipment, and other project specific details (Nameplate Capacity in MWac, Capacity Factor, etc.)
 - Useful life end date of the original project – Month/Year
 - All available historical generation associated with the original project – MWh/year
 - If applicable, the projected generation for each year of remaining useful life of original project – MWh/year —
- For the Repowering Bid Facility:
 - Actual or anticipated Repowering Date – Month/Day/Year
 - Description of prime mover replacement, equipment, and other project specific details (Nameplate Capacity in MWac, Capacity Factor, etc.) as planned or completed
 - Projected generation for the repowered project for each year of remaining useful life (e.g., P(50) 8760, Resource Assessment and Energy Production Estimate in MWh)

The data provided in the third-party engineering report will assist NYSERDA in determining Tier 1 Eligible generation associated with Repowering Bid Facilities on a 12-month basis, starting the first of the month after the actual or anticipated Repowering date. Generation beyond what has been projected in the engineering report for each year of remaining useful life will be Tier 1 eligible. Once the useful life of the original project is met, all generation (100%) from the Repowering Bid Facility will be Tier 1 Eligible.

Bid Facilities that have not reached the end of their useful life may be eligible for a portion of their generation to be Tier 1 eligible prior to the end of the useful life based on the results of the required third-party engineering report. Prior to the end of the Bid Facility's useful life, the percentage increase in generation attributable to the Repowering will be Tier 1 eligible. Once the useful life of the original project is met, all generation (100%) from the Repowering Bid Facility will be Tier 1 Eligible. The Repowering must have the result that 80% of the GAAP tax basis from the completed Repowering Bid Facility (not including its property and tangible assets) is derived from capital expenditures made on or after the October 15, 2020 issuance of the CES Modification Order. An independent audit and verification will be required. Certification will be required and submitted at the time of the resource eligibility determination under Tier 1 of the RES. Proposers are encouraged to reference Section 7.6

Repowering Project of the [New York State Clean Energy Standard RES Tier 1 Certification Submission Instructions and Eligibility Guidelines](#) to review the full scope of requirements for Tier 1-eligible Repowering Bid Facilities and the requirements for third-party engineering reports needed to demonstrate provisional Tier 1 eligibility.

3.4 Maximum Contract Tenor

Information provided with the Bid Facility's PSoQ/SoQ and Step One Eligibility Application will be used to determine the Maximum Contract Tenor available to the Bid Facility. The Contract Tenor offered in Step Two for a Bid Facility will be limited by the term of the Maximum Contract Tenor.

For all Bid Facilities not in Commercial Operation as of the RFP Release Date, the Maximum Contract Tenor will be calculated as the lesser of:

- 1) 20 years, or
- 2) the Bid Facility's Useful Life.

For all Bid Facilities in Commercial Operation as of the RFP Release Date, the Maximum Contract Tenor applicable to the Bid Facility will be calculated as the lesser of:

- 1) 20 years (240 months) minus the number of years (months) between the year (month) of Commercial Operation and the RFP Release Date (rounded to the nearest full year), or
- 2) The Bid Facility's Useful Life minus the number of years (months) between the year (month) of Commercial Operation and the RFP Release Date (rounded to the nearest full year).

For a Return to Service generation unit, the date of Commercial Operation for purposes of calculating the Maximum Contract Tenor shall be the original date of Commercial Operation prior to the outage. The entire output of a Bid Facility that does not meet the Threshold Eligibility Date (TED) requirements (i.e., was placed into service prior to January 1, 2015) can qualify as a Return to Service generation unit and be eligible for Tier 1 if the applicant can demonstrate to NYSERDA that the project has not been in commercial operation for at least 48 consecutive months prior to the return to service date noted in the PSoQ or SOQ request. The applicant must submit written documentation of the applicable dates in and out of service, such as an engineering report, formal letter, and/or data from NYISO or the local utility.

For a Relocated Facility, the date of Commercial Operation for purposes of calculating the Maximum Contract Tenor shall be the first date of Commercial Operation in the original control area. A relocated project is a generation project whose prime mover was used on or before the TED to generate electrical energy outside of the New York Control Area.

For a Repowering Bid Facility, the maximum contract tenor shall be the 20 years from the date at which the Repowering Bid Facility re-enters commercial operation (i.e., not 20 years following the end of the original facility's Useful Life).

Proposers should consult the [New York State Clean Energy Standard RES Tier 1 Certification Submission Instructions and Eligibility Guidelines](#) for more information and detailed requirements regarding Upgrade, Return to Service, Relocated Facility, and Repowering Bid Facilities.

Table 6 lists the Useful Life by resource for use in the calculations of Maximum Contract Tenor for this RFP.

Table 6. Default Values for Useful Life used to determine Maximum Contract Tenor

Resource	Useful Life (years)
Fuel Cell (non-fossil fuel)	20
Hydroelectric (New or Upgrade)	50
Geothermal Electric	20
Geothermal Ground Source Heat	20
Solar PV	20
Tidal/Ocean	10
Wind	20

4 STEP TWO BID PROPOSAL REQUIREMENTS AND NON-PRICE EVALUATION

Proposers who receive a Notice of Qualification will be invited to submit a Step Two Bid Proposal which will require the Proposer to provide additional information including a Bid Price and more detailed information about the Bid Facility and the Proposer. All Step Two Bid Proposals must be submitted electronically via the [solicitation website](#). Instructions on how to submit a Step Two Bid Proposal will be provided to eligible Proposers that are issued a Notice of Qualification. Proposers will also be required to provide a Bid Fee payment for each Bid Facility. See Section 4.2 for additional details and instructions for submitting the Bid Fee.

Should a Proposer wish to submit a Step Two Bid Proposal which 1) modifies the Nameplate Capacity of the Bid Facility, and/or 2) utilizes the Inflation Risk Adjusted Bid Proposal mechanism, the Proposer should complete one Base Proposal and indicate in the Step Two Bid Proposal which of these two Alternate Bid Proposals they would like to submit. The Submission of Alternate Bid Proposals will require additional details to be entered in Attachment D. Bid Data Form. The submission of Alternate Bid Proposal(s) does not require multiple Bid Fee payments – only one Bid Fee is required for each Bid Facility.

Following the submission of a Step Two Bid Proposal, NYSERDA may request in-person and/or videoconference interviews with Proposers, to be scheduled at a mutually convenient time following the Step Two submission deadline.

Only those Proposers qualified through the Step One Eligibility Application process will be permitted to submit a Step Two Bid Proposal.

Under Step Two, NYSERDA will: (1) examine each Step Two Proposal to determine whether the Proposal demonstrates that the Bid Facility and Proposer meet all Minimum Threshold Requirements; and (2) for Proposals that meet those minimum requirements, NYSERDA and the TEP will conduct a full competitive evaluation based on price and non-price factors.

NYSERDA will contact Proposers regarding any instances where it is unclear if a Minimum Threshold Requirement has been achieved and may provide the Proposer with a one-time opportunity to cure the deficiency. Proposers that submit a Step Two Bid Proposal that does not meet all the Minimum Threshold Requirements will be removed from consideration and will not be eligible for an award.

A Proposer may not condition the acceptance of one Step Two Bid Proposal based on the withdrawal or acceptance of other Proposals.³⁶ A Step Two Bid Proposal may not be contingent on the receipt of any federal tax credits or incentives.

RESRFP23-1 is a competitive procurement. The Agreement is a legally binding document; it is recommended that Proposers consult with an attorney. The CES Framework Order, subsequent Implementation Plans and Orders, and NYS competitive procurement rules limit NYSERDA's ability to alter the terms of the Agreement issued with this RFP. However, as part of the Step Two Bid Proposal, Proposers may indicate terms of the Agreement that they wish to further discuss by providing an attachment in the form of a memorandum. The memorandum should specifically identify any terms and

³⁶ NYSERDA will award at most one Bid Proposal per Bid Facility.

conditions that the Proposer wishes to clarify or negotiate prior to execution. When constructing the memorandum, please identify the Section in the Agreement and state the nature of the issue to be discussed. Should the Bid Facility receive an award, NYSERDA will contact Proposers to schedule a discussion regarding the terms identified in the memorandum.

The indication by a Proposer that it wishes to negotiate the terms of the Agreement will have no impact on the scoring or evaluation of the Bid Proposal.

The complete Step Two Bid Proposal package must be **received** by NYSERDA no later than **3:00 p.m. ET on Wednesday, January 31, 2024**, via the [solicitation website](#). **NYSERDA strongly recommends that Proposers reserve ample time to address the requirements for each Bid Facility. The Step Two Bid Proposal package must be completed and submitted online, before the deadline.**

All electronic signatures must be provided as indicated. Failure to provide any attachments or information requested may result in the Step Two Bid Proposal package being declared non-responsive and rejected. NYSERDA may request additional information and materials at any time. Step Two Bid Proposal packages become the property of NYSERDA. NYSERDA recommends that Proposers use Google Chrome when accessing the solicitation website to complete a Step One Eligibility Application and Step Two Bid Proposal. Unnecessary attachments or lengthy responses beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal.

NYSERDA recommends that Proposers mark materials provided to NYSERDA as Confidential as needed (see Section 9.1). All Proposers will be required to submit their Step Two Bid Proposals via the [solicitation website](#) and will be required to use the forms shared by NYSERDA following eligibility determinations that will be shared via the Notice of Qualification, such as Attachment C. Bid Data Form.

The information and supporting documentation provided with the Step Two Bid Proposal will be evaluated by NYSERDA to determine whether the Minimum Threshold Requirements have been met and/or exceeded.

4.1 Step Two Bid Proposal Form

A completed Step Two Bid Proposal must include, but is not limited to, the information in the following sections, and must be submitted via the solicitation website prior to the Step Two Bid Proposal deadline. All required fields must be populated, and all required documents uploaded prior to submission. Documents required to be uploaded include:

- 1) Payment and proof of the provision of a Bid Fee, such as a receipt of transfer confirmation;
- 2) Non-Disclosure Agreement;
- 3) Binding Bid Price and Bid Quantity, submitted via Attachment D. Bid Data Form;
- 4) Step Two Bid Proposal Minimum Thresholds Narrative (Attachment F);
- 5) Supporting documentation associated with the Project Viability and OpFlex categories described in Section 4.3, including Attachment D. Bid Data Form;
- 6) Public-facing documents to be posted to NYSERDA's website following the receipt of bids, including:
 - a. Attachment B. Public Release of Bid Facility Information;
 - b. Community Engagement Plan;
- 7) If applicable, supporting documentation to substantiate claims of Incremental Economic Benefits to New York State; and

- 8) Other information required by NYSERDA as referenced in the Step Two Bid Proposal Form.

Bid Facility, Site, and Generating Equipment Descriptions

The Proposer must provide a complete description and overview of the Bid Facility, describing the area included in and surrounding the generation site, a description of the local zoning, and other applicable ordinances and municipal laws, existing land use (*e.g.*, woodlands, brownfield, agriculture, other) and setting (*e.g.*, rural, urban, suburban, other) and describe what the site(s) has been used for in the recent past. Include and describe the status and development stage of Bid Facility (development, construction, or operation). Include information about the specific technology or equipment considered or selected, major equipment to be used, manufacturer or vendors considered or selected, equipment acquisition status, and equipment contract/equipment agreement status. Certain non-binding resource-specific details may be requested by Proposers (*e.g.*, planned module and inverter, expected production increase from bifacial/tracking modules, *etc.*).

The Proposer must identify potential fatal flaws and most critical impacts for the Bid Facility. Risks should be ranked by priority and level of impact to the Bid Facility site viability to proceed under the proposed schedule.

Bid Quantity, Price, and Contract Tenor

The Bid Quantity, Bid Price, and Contract Tenor section includes fields for the Proposer to calculate the annual number of Tier 1 RECs (Bid Quantity) to be offered to NYSERDA and the Contract Tenor, subject to the following restrictions:

- 1) Proposers may submit bids for any Contract Tenor of a minimum of one year and a maximum of the Maximum Contract Tenor (see Section 3.44).
- 2) For wind, solar, and hydroelectric resource types, the Expected Annual Eligible Production and Bid Quantity shall not exceed the P(50) long-term Energy Production Estimate provided under the Step Two Bid Proposal. The P(50) Energy Production Estimate must align with the 8760 hourly profile provided that is representative of the production at the Bid Facility over the proposed Contract Tenor.
- 3) The Bid Quantity Percentage shall be no less than thirty percent (30%) and no greater than one hundred percent (100%) of the Expected Annual Eligible Production, which is equal to the P(50) Energy Production Estimate multiplied by the annual Tier 1 eligibility percentage as determined in the PSoQ and entered in Attachment E (default value of 100% except in the case of Upgrade and Repowering Bid Facilities). In the case of Upgrade and Repowering Bid Facilities, see Section 3.3 for applicable guidelines.

Proposers will be responsible for submitting one Bid Price offer, using either the Fixed REC or Index REC structure, with each Bid Proposal.

- 1) For the Fixed REC structure, the Bid Price consists of a fixed REC price for the term of the Contract Tenor.
- 2) For the Index REC structure, the Bid Price consists of a Strike Price that will be entered into the calculation outlined in Section 5.1.2.

Bid Facility Interconnection Description and Preliminary Cost Estimate

The Proposer must identify the proposed interconnection point(s) and provide a complete description and overview of the preferred interconnection route of the Bid Facility from the generation site, including what rights the Proposer has to the interconnection point(s), what type(s) of real property agreement(s) or land agreement(s) the Proposer has entered to gain interconnection site control, and any rights that must be obtained by the Proposer or interconnecting utility for the interconnection. The Proposer will be required to provide a thorough description of the interconnection assumptions for the Bid Facility and the rationale that lead to the proposed point of interconnection configuration (e.g., usage of a ‘single line tap’ vs. a ‘three-breaker station’ connection POI configuration).

Proposers must provide a preliminary estimate regarding the expected cost, pursuant to the applicable OATT Interconnection Procedure, to interconnect the Bid Facility. Estimated costs should be separated into the following categories: expected costs to obtain Energy Resource Interconnection Service (“ERIS”) rights, expected costs to obtain Capacity Resource Interconnection Service (“CRIS”), and any other associated interconnection costs (e.g., Headroom payments, elective system upgrade facilities, etc.) not captured in the previous categories and total aggregate of estimated interconnection costs.

Table 7 provides average interconnection costs by project types based on a non-exhaustive sample of interconnection costs as published in publicly available NYISO studies.³⁷

Table 7. Average Interconnection Costs by Project Type

Facility Type / kV Level of POI	Sample Size	Average Nameplate Capacity (MW)	Average Interconnection Cost per MW (\$000) ³⁸
Small Generator, Local Low Voltage (13.8-46 kV)	8	19	\$103
Small Generator, Local High Voltage (69-115 kV)	23	20	\$153
Large Generator, Local High Voltage (69-115 kV)	25	101	\$124
Large Generator, Bulk Transmission (230-345 kV)	13	214	\$111
Total/ Average	69	86	\$129

If land needed to access the interconnection point(s) is not controlled, provide a detailed plan and timeline for the acquisition of any additional rights necessary for the right-of-way to the interconnection point(s). Identify and describe the individual land parcels associated with the interconnection and any rights of way needed. If applicable, fully describe the relationship of the site to other adjacent infrastructure, including preferred or alternate point(s) of interconnection (POI). Please indicate whether there are known risks or uncertainty associated with the preferred POI. If the Proposer is planning on using an adjacent parcel or if the right of way is controlled by or assignable to the

³⁷ Costs available via <https://www.nyiso.com/regulatory-viewer>. Interconnection costs are for benchmarking purposes only- individual project interconnection costs may vary significantly from these average costs based on project- and point-of-interconnection-specific characteristics. Proposers are strongly encouraged to consult with the NYISO and connecting transmission owner (CTO) prior to estimating a Bid Facility’s interconnection costs and submitting a bid to RESRFP23-1.

³⁸ Highly variable dependent upon the project location, electrical topology (e.g., single line tap, three breaker ring bus, five breaker ring bus), and voltage level of the POI. In addition to consulting with the NYISO and CTO, additional resources including each CTO’s electrical service bulletin for the applicable generator type may be of service to Proposers.

interconnecting utility that will own the interconnection facilities, clearly explain this in the description. Proposers should specify and describe the current or new interconnection facilities (lines, transformers, switching equipment, system control protection, *etc.*) that the Proposer owns or is intending to construct or have constructed in order to deliver the proposed energy (including costs), and identify the closest Bulk Power Transmission Facility (BPTF) to the Bid Facility site.

Impacts on Disadvantaged Communities Description

The Proposer must provide a complete description of the benefits and burdens associated with the development of the Bid Facility on any host communities or proximate communities designated as Disadvantaged Communities.

Department of Commerce Antidumping/Countervailing Duty Investigation (if applicable)

Proposers bidding Solar Bid Proposals must describe how the U.S. Department of Commerce investigation³⁹ has affected the timing and expected costs of equipment for their Bid Facility. This description should include what equipment Solar bidders intend to use, and whether their original procurement plan has changed after the announcement of the U.S. Department of Commerce investigation and in what ways their procurement plan has changed. For the avoidance of doubt, the content of this section of the Proposal is informational only and will not affect the scoring of the Bid Proposal.

Bid Facility Project Schedule

If the Bid Facility is under development, the Step Two Bid Proposal package must populate a complete Bid Facility Project Schedule, detailing key development milestones. Proposers must provide all project schedule details on Project Schedule tab, Section VI of Attachment D. Bid Data Form.

Proposers shall include a narrative that describes each segment of the process, the required permit or approval, the status of the request or application and the basis for project success by the milestone date provided. If the Bid Facility is Operational, a completed Project Schedule is not required.

Confidentiality

All Proposers will be required to submit an executed Non-Disclosure Agreement as part of the Step Two Bid Proposal. The Non-Disclosure Agreement will be provided to eligible Step Two Proposers and will require confidentiality during any pre-award contracting discussions commenced at NYSERDA's sole discretion during the period of time between the Step Two Bid Proposal submission and award notifications. In the event that the Proposer receives an award for a Bid Facility, this Non-Disclosure Agreement will also cover the period of time between award notification and contract execution.

The Step Two Bid Proposal allows the Proposer to indicate whether the Proposer wishes to have the information in the Bid Proposal package treated as proprietary or confidential trade secret information. NYSERDA is subject to and must comply with the requirements of New York's Freedom of Information

³⁹ Department of Commerce, International Trade Administration, [A-570-979, C-570-980], "[Antidumping and Countervailing Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Scope Determination and Final Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam](#)"

Law (“FOIL” see Public Officers’ Law Article 6). Information in any tangible form including any document that Proposer wishes to be protected from disclosure to third parties including any information provided as a part of a proposal must be marked “Confidential” or “Proprietary” at the time such information is provided to NYSERDA.

NYSERDA reserves the right to publish the Agreements executed with awardees, including relevant terms within the Agreements. Prior to such publication, NYSERDA will redact any critical electric infrastructure information (CEII) contained in the Agreements, if any, including in the exhibits thereto, and will consider requests to redact confidential business information; provided, however that NYSERDA will not entertain any request to redact price information contained in this Agreement, specifically the Bid Price.

4.2 Bid Fee Instructions

Each Step Two Bid Proposal must be accompanied by a non-refundable Bid Fee, in the form of electronic wire (preferred) or certified funds, in an amount determined by the Nameplate Capacity of the Bid Facility. **The Bid Fee is due by Tuesday January 30, 2024** (see Section 1.3). Proposers must indicate that they have submitted a Bid Fee with their Step Two Bid Proposal and attach proof of the provision of a Bid Fee, such as a receipt or transfer confirmation.

A separate Bid Fee is not required for each Step Two Bid Proposal in instances of Alternate proposals for the same Bid Facility. If a Proposer wishes to submit one or more Alternate Step Two Bid Proposals for the same Bid Facility (for example, with a different Bid Capacity), only one Bid Fee is required. A separate Bid Fee is not required for each Alternate Step Two Bid Proposal.

Bid Fees will not be refunded to Proposers, except in instances of Bid Fees submitted for late or incomplete Bid Proposal submittals which are not evaluated. Waivers will not be provided for Bid Fees. Funding received from an entity like New York Green Bank will not suffice as a Bid Fee payment. Required Bid Fee amounts are shown in Table 888 based on the highest Nameplate Capacity in megawatts (MWac) submitted for the eligible generator.⁴⁰

Table 88. Bid Fees by Nameplate Capacity

Nameplate Capacity (MWac)	Bid Fee
Less than 5.00 MW	\$5,000
5.00 – 19.99 MW	\$20,000
20.00 – 49.99 MW	\$50,000
50.00 MW or more	\$100,000

Full Bid Fee submission instructions with account and routing information can be downloaded after registering as a Proposer on the solicitation website. All Bid Fees must be clearly labeled with a unique identifier comprised of the Bid Facility’s NYGATS ID and the RFP Tracking Number, in the format: GENXXXXX_RESRFP23-1, or PROXXXXX_RESRFP23-1, or IMPXXXXX_RESRFP23-1. Bid Fees provided via electronic wire must have this unique identifier included within the Payment Details/Description. Bid

⁴⁰ The Nameplate Capacity is determined by the Tier-1 eligible generation in the NYGATS PSoQ or SoQ and does not include Energy Storage. Nameplate Capacity is measured in AC capacity (MWac).

Fees provided via cashier’s check must have this unique identifier clearly labeled within the Memo or elsewhere on the check.

4.3 Project Viability, Operational Flexibility and Peak Coincidence

This category is intended to reward renewable resources that are more advanced through project development, demonstrate project feasibility/a high likelihood of bringing the project to commercial operation, provide grid services that contribute to cost minimization and/or grid reliability by addressing integration issues resulting from increased penetration of intermittent renewables, better match generation to load, and dispatchable resources to balance the electric system, optimize generation dispatch, minimize operating reserve requirements, and address grid congestion and constraints.⁴¹

Using Attachment F, available on the solicitation website, the Proposer must provide narrative descriptions detailing how the Bid Facility meets and/or, if applicable, exceeds the Minimum Threshold Requirements in each applicable category as described in this section. In addition to providing narrative descriptions detailing how the Bid Proposal meets the Minimum Threshold Requirements, the Proposer should provide any additional information that supports the viability of the Bid Proposal, including, to the extent not described elsewhere in the Bid Proposal, justification for any economic or regulatory assumptions and identification of economic, permitting and/or regulatory risks and mitigation plans. Proposers should characterize their analysis of basis risk and shape risk to estimate what the Bid Facility will receive for energy revenue relative to the Reference Energy Price.

Bid Proposals that demonstrate progress exceeding the Minimum Threshold Requirements will be eligible to receive points under the 20% Project Viability, Operational Flexibility and Peak Coincidence category (Viability & OpFlex), as shown in Table 999. Points will be awarded in selected subcategories. As an example, for Interconnection, the Minimum Threshold Requirement is Facilities Study (or equivalent) in progress. Evaluation points are available to the extent that the Bid Proposal is at a more advanced step of the interconnection process such as the Facilities Study completed.

Table 99. Project Viability, Peak Coincidence and Operational Flexibility Subcategories

Subcategory	Use in Evaluation
Interconnection	Minimum Threshold and Evaluation
Permitting Viability	Minimum Threshold and Evaluation
Energy Deliverability	Minimum Threshold and Evaluation
Peak Coincidence	Minimum Threshold and Evaluation
Agricultural and Forested Land	Minimum Threshold and Evaluation
Project Development, Financing and Creditworthiness	Minimum Threshold and Evaluation
Site Control	Minimum Threshold Only
Community Engagement	Minimum Threshold Only
Resource Assessment and Energy Production Estimate	Minimum Threshold Only
Emissions and Embodied Carbon	Minimum Threshold Only
Climate Resiliency	Minimum Threshold Only

⁴¹ See the CES Final Phase 1 Implementation Plan: <https://www.nyscrda.ny.gov/-/media/Project/Nyscrda/Files/Programs/Clean-Energy-Standard/2017-03-24-Phase-1-Implementation-Plan.pdf>.

A full description of the Minimum Threshold Requirements and the considerations upon which the TEP may award evaluation points are detailed below by subcategory. The supporting documentation for each Minimum Threshold Requirement should be uploaded as attachments as described in detail below. **If a Bid Facility exceeds the Minimum Threshold Requirement in any category, documentation should be provided.**⁴²

Operating Facilities will only need to demonstrate that the Minimum Threshold Requirement for the Energy Deliverability, Peak Coincidence, Resource Assessment and Energy Production Estimate sub-categories have been met and will otherwise receive full non-price evaluation points for the remaining scored sub-categories.

4.3.1 Interconnection

Submission Requirements: The Proposer must demonstrate that the Bid Facility meets the Minimum Threshold Requirements for interconnection progress by providing a summary and other evidentiary documentation from the Interconnecting entity confirming the extent of interconnection activities. Evidentiary documentation can include:

For Bid Facilities proceeding through the FERC-jurisdictional NYISO interconnection process or an equivalent process, evidence that the Facilities Study (or equivalent) for the Bid Facility is in progress. Proposers are advised that CEII-confidential information may not be submitted to NYSERDA as part of the Step Two Bid Proposal to demonstrate that the Bid Facility has achieved the Interconnection Minimum Threshold Requirements.

Proposers must provide the anticipated interconnection cost for the Bid Facility, including utility system improvements. An estimate must be provided for each Alternate Bid Proposal associated with the Bid Facility.

If applicable and/or available, the Proposer should provide the following documents:

- Copies of associated study and/or interconnection agreements or other evidence supporting the claimed level of progress as listed above.
- If available, a deliverability study or other analyses performed by the Proposer to demonstrate or evidence that the output of the Bid Facility is energy deliverable. See Section 4.3.3.
- If available, a one-line diagram.

Minimum Threshold: The Proposer must have a valid, submitted Interconnection Request with NYISO or the Bid Facility's interconnecting control area or utility and have a Facilities Study (FS), or equivalent, for the Bid Facility in progress with the NYISO or equivalent system operator.

Documentation provided to NYSERDA by the Proposer of the Bid Facility's interconnection status must be consistent with the Bid Facility as proposed. Documentation that does not reflect the Bid Facility as

⁴² For example, for the Interconnection requirements for a 20 MW Bid Facility subject to NYISO jurisdiction, the documentation required to demonstrate achievement of the Minimum Threshold Requirement consists of a draft SRIS/SIS or equivalent in progress. If for example a Facilities Study has been executed, attach a copy and provide confirmation of associated fees paid. The study will satisfy the Minimum Threshold Requirement and will also be considered as a part of the evaluation conducted by the TEP.

proposed may be rejected.⁴³ For Bid Facilities interconnecting to NYISO, the NYISO Zone of the Bid Facility should align with the zone being studied by NYISO as a planned point of interconnection.

Exceeding the Threshold: Evaluation will be based on the demonstration of progress in the relevant interconnection process beyond the Minimum Threshold Requirements, as evidenced through documentation from NYISO, Utility or other applicable interconnection authority, such as a completed Facilities Study, or evidence that an interconnection agreement (IA) has been furnished and/or executed. Bid Proposals that have advanced to more mature stages of the applicable interconnection process will be preferentially evaluated compared to earlier stage Bid Proposals.

Proposals that can describe all interconnection and transmission upgrade costs required to ensure full energy dispatch, including transmission upgrades that may need to occur beyond the point of interconnection, will be preferentially evaluated by the TEP based on the reasonableness of the costs provided and modeled assumptions.

4.3.2 Permitting Viability

Submission Requirements: The Proposer must demonstrate that the Bid Facility meets the Minimum Threshold Requirements and submit other information for the Bid Facility that includes the following components:

For all Bid Facilities:

- 1) Evidence that the application for the Key Permit for the Bid Facility have been submitted and such application is either under review by, or has been issued by, the applicable jurisdictional permitting authority.
- 2) Regardless of expected permitting process and status of Key Permit, Proposers should specify the local official(s) associated with the Authority Having Jurisdiction (AHJ) for the towns, counties and/or school districts in which the Bid Facility is sited, such as the town supervisor or planning/zoning board lead/chair.
- 3) For solar Bid Facilities: If the Bid Facility overlaps with mineral soil groups (MSG classifications 1-4), the Proposer may be responsible for making an agricultural mitigation payment to a designated fund. Proposers of solar Bid Facilities must also detail how they plan to comply with the Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands document (Guidelines, Exhibit E to the Agreement). All solar Bid Facilities seeking permits through the Office of Renewable Energy Siting (ORES) will be required to comply with all ORES requirements.
- 4) If applicable, include any initial review of any physical and economic impacts that the Bid Facility's development may have on Disadvantaged Communities.

If applicable and/or available, the Proposer should provide the following documents:

⁴³ The Bid Facility's Bid Capacity must be at maximum the capacity submitted with the Interconnection Request.

- Documentation filed with or received from the local governmental authority confirming that a request for a zoning change or variance has been initiated and/or the local approval process is underway.
- If applicable, evidence that the Lead Agency for the SEQR process has been designated.
- If available, applications for construction permit(s) and/or road use permit(s) that have been submitted to local authority(ies) with approval jurisdiction.
- If available, any applicable field studies (*e.g.*, Environmental Site Assessment⁴⁴ Phase 1, Archaeological Phase 1, Geotechnical) and surveys (*e.g.*, ALTA, topography, water bodies/wetlands, or other), and/or the status of un-started/not yet commenced or ongoing field studies and surveys.
- For hydroelectric facilities only, include the Bid Facility's FERC license expiry date or provide evidence that FERC licensing process has been initiated and notice of intent has been filed.⁴⁵

Minimum Threshold: Proposers must provide proof that the application for the Key Permit for the Bid Facility has been submitted and such application is either under review by, or has been issued by, the applicable jurisdictional permitting authority. If the Bid Facility is not fully permitted, the Proposer must demonstrate that the Bid Facility can be fully permitted within a 12-month timeline by populating Part II of the Attachment D. Bid Data Form with the remaining permits and their anticipated date of completion.

Exceeding the Threshold: Evaluation will be based on the Bid Facility's demonstrable progress through its applicable permitting process and the completeness and credibility of the Proposer's schedule for successfully obtaining necessary permits within the proposed development schedule. Bid Facilities that are fully permitted or have secured relatively more permits needed to construct and operate, have performed more exhaustive permitting activities, and/or have greater knowledge of the Bid Facility site, its permitting requirements, and any planned and/or required mitigation activities will be preferentially evaluated by the TEP.

NYSDERDA may coordinate with the NYS DEC, acting as a specialist reviewer to inform the evaluation, under which proposals for Bid Facilities that have not yet secured their Key Permits, but are identified as having a more feasible pathway to securing all necessary permits to construct the Bid Facility may be preferentially evaluated compared to proposals that have more material challenges that have not yet been addressed with planned mitigation measures.

4.3.3 Energy Deliverability

Submission Requirements: All Proposers must submit key proposed interconnection data for the Bid Facility and a P(50) 8760 delivered energy profile consistent with the contract tenor proposed in the

⁴⁴ ASTM International, formerly known as American Society for Testing and Materials, published a standard for conducting Phase I Environmental Site Assessments. See ASTM E1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, ASTM International, West Conshohocken, PA, 2013, <http://www.astm.org/cgi-bin/resolver.cgi?E1527-13>.

⁴⁵ If applicable, identify program eligibility under FERC minor environmental effects, *e.g.*, projects that involve little change to water flow and use and are unlikely to affect threatened and endangered species. If applicable, please identify the NYS DEC classification for the dam associated with the Bid Facility, available online at the New York State Dams Inventory Database. See <https://www.dec.ny.gov/lands/4991.html> for a full dataset of NYS Dams, the NYS DEC Dams Inventory.

form requested by NYSERDA for evaluation purposes. Proposers should indicate whether the P(50) 8760 delivered energy profile is normalized based on historical output from a given weather year.

Proposers are strongly encouraged to familiarize themselves with all ongoing work to identify areas of current and future congestion on the electric grid, including the DPS and NYSERDA [State Power Grid Study](#), inclusive of Distribution and Local Capital Plans and a Bulk Transmission Investment Plan, the [NYISO 2022 System and Resource Outlook Report study and outputs](#),⁴⁶ the Final Climate Action Council Scoping Plan,⁴⁷ [Appendix G. Resource Integration Technical Supplement](#),⁴⁸ and other similar studies conducted by the state, NYISO, and/or the transmission owners. Proposers are encouraged to discuss this topic in meetings with the NYISO and/or the Connecting Transmission Operator during their interconnection process to understand the current and expected future state of the grid and the relevant impacts on the Bid Facility's local and regional transmission infrastructure.

Minimum Threshold: The Proposer must provide all required interconnection data as part of the Step Two Bid Proposal to enable NYSERDA to coordinate with the NYISO, Distribution Utilities, and other subject matter experts to assess each Bid Facility's estimated energy deliverability potential for the current grid and future states of the grid based on reasonable assumptions of a 70x30 electric grid. Required interconnection data to be provided via the electronic Step Two Bid Proposal form will include the Bid Facility's:

- Point of Interconnection (POI) name and voltage
- POI location, physical address (if available) and latitude/longitude
- Nameplate Capacity (MWac and MWdc)
- Expected Annual Generation (MWh) and Bid Quantity (MWh)
- Net Capacity Factor
- Maximum Net Export Capability at POI (MW)
- Assumed Operating Power Factor
- 20-year 8,760 hourly generation profile, provided via Attachment E. P(50) 8760 Template

As part of the Resource Assessment and Energy Production Estimate submitted with the Step Two Bid Proposal, any generation bid to NYSERDA under Step Two of RESRFP23-1 must be substantiated by the Proposer as deliverable. Proposers are encouraged to review the [Utilities' Revised Headroom Calculations](#), filed in NYPSC Case No. 20-E-0197 on August 1, 2023.⁴⁹

Exceeding the Threshold: In this category, the TEP will evaluate Bid Proposals based on the benefits afforded and risks avoided to the electric grid by the proposed Bid Facility in light of the CES goals to expand the share of renewable energy as a portion of total energy consumed in New York State to 70 percent by the year 2030 ("70x30"), including benefits to address grid congestion and delivery constraints, and the extent to which a Proposer can demonstrate that the Bid Facility can deliver firm power (e.g., Bid Quantity as proposed to NYSERDA) to the electrical system without adversely impacting

⁴⁶ See the meeting materials for NYISO's Electric System Planning Working Group at <https://www.nyiso.com/espwg>.

⁴⁷ <https://climate.ny.gov/Our-Climate-Act/Draft-Scoping-Plan>

⁴⁸ <https://climate.ny.gov/-/media/Project/Climate/Files/Draft-Scoping-Plan-Appendix-G-Integration-Analysis-Technical-Supplement.pdf>

⁴⁹ <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7031B289-0000-C33E-8330-2AE34FC790A0}>

the generation of large-scale renewable projects currently operating, at an advanced stage of development (i.e., meets the NYISO inclusion rules per the NYISO Reliability Planning Process), and/or under contract to deliver energy for end use in New York State.

Proposers should familiarize themselves with NYISO's proposed energy deliverability metric that has been approved by FERC in tariff updates to enhance the Economic Planning Process. The energy deliverability metric "will provide information about the ability of each Resources, individually and taken collectively with other Resources, to be able to deliver its fully energy capability to the system and the degree of, and the conditions that are expected to lead to, any curtailment thereof."⁵⁰

In consultation with subject matter experts, NYSERDA and the TEP will evaluate Bid Proposals based on the estimated benefits to the grid and future estimated energy deliverability potential based on reasonable assumptions of a 70x30 electric grid. Bid Facilities that will interconnect to the electric grid in areas where congestion and curtailment is less likely to occur will be preferentially evaluated compared to Bid Facilities that plan to interconnect to the electric grid where congestion and curtailment of renewable generators is more likely to occur on a 70x30 electric grid. The TEP may also consider interconnection studies and/or any deliverability studies provided by Proposers as part of their Step Two Bid Proposals, if provided by the Proposer.

NYSERDA may employ analyses to identify potential impacts that proposed Bid Facilities may create on the energy deliverability of renewable energy projects that are operating, at an advanced stage of development (i.e., meets the NYISO inclusion rules per the NYISO Reliability Planning Process), and/or under contract to deliver energy for end use in New York State, including curtailments or direction from the NYISO or Scheduling Coordinator that forces a renewable generator to reduce output. These potential impacts may be assessed in part based on current conditions and in part based on forecasted grid limitations that may materialize for future states of the grid. NYSERDA may coordinate with NYISO, the distribution/transmission owners, and/or third parties to employ relevant analyses to estimate potential congestion and curtailment impacts resultant from the portfolio of bids submitted to RESRFP23-1. These analyses may also inform the decision to employ Portfolio Risk Factors authorized under the CES Modification Order (See Section 6.2).

Proposers are encouraged to demonstrate with currently available knowledge that their proposed point of delivery into the NYCA, along with their proposed interconnection and transmission and/or distribution upgrades, is sufficient to ensure full energy dispatch of the Bid Facility's expected generation output to provide the binding Bid Quantity (in Megawatt-hours) bid to NYSERDA. Please note that this includes energy and is not limited to capacity. Proposers are also encouraged to submit a deliverability study or other third-party assessment of the Bid Facility's interconnection and deliverability potential as part of their Step Two Bid Proposal submission(s) to demonstrate the energy deliverability of a Bid Facility. Bid Facilities that can exhibit to NYSERDA that the project is energy-deliverable under clear and reasonable assumptions may be preferentially evaluated by the TEP.

Proposers are also encouraged to familiarize themselves with all ongoing work to identify areas of current and future congestion on the electric grid, including the DPS and NYSERDA [New York Power Grid Study](#), inclusive of Distribution and Local Capital Plans and a Bulk Transmission Investment Plan, the

⁵⁰See NYISO tariff section 31.3.1.3.5.7 as filed and approved in FERC Docket No. ER21-1074-000.

[System & Resource Outlook study](#) and outputs,⁵¹ and other similar studies conducted by the state, NYISO, and/or the transmission owners. NYSERDA and the TEP will use the most recent and pertinent available data and modelling assumptions available for evaluation purposes to assess energy deliverability. Updated assumptions and outputs published by DPS, NYSERDA, NYISO, and other parties may become available during the course of this solicitation, including outputs published under the Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act (AREGCBA).⁵²

Bid Facilities located outside of the NYCA or NYISO Market Zone (External Facilities) are not eligible for evaluation in this category.

4.3.4 Peak Coincidence

Submission Requirements: See Energy Deliverability submission requirements in Section 4.3.1.

Minimum Threshold: The Proposer must provide all required interconnection data as part of the Step Two Bid Proposal as noted for the Energy Deliverability Minimum Threshold Requirements.

Exceeding the Threshold: The TEP will evaluate Bid Proposals based on how closely the Bid Facility's expected generation profile matches future estimates of NYISO load net of the portfolio of already operating and contracted, under development renewable and zero-emissions generation in New York State. Future expected load shapes (e.g., 2030, 2040) for evaluation purposes will be based on the most recent available NYISO Resource & System Outlook Study. Bid Facilities that complement the existing portfolio of operating/under development projects more significantly will be preferentially evaluated compared to Bid Facilities that do not afford the same level of complementary generation compared to future load.

4.3.5 Agricultural and Forested Land

Submission Requirements: Proposers must include a description in their Bid Proposal of any agricultural land that the planned project footprint of their Bid Facility is sited on. This description should include owned, rented, or leased farmland. Proposers must also include a description of any recent agricultural activity occurring on the planned project footprint in the five years prior to the release of RESRFP23-1.

Proposers of Solar facilities must complete and submit the NYSERDA Agricultural Mitigation Payment Estimate Calculator, which will calculate the estimated mitigation payment required for the Bid Facility based on the Facility Area overlap with MSG 1-4. An Agricultural Mitigation Payment will not be required if the Facility Area of the as-built Bid Facility overlap with MSG 1-4 is less than 30 acres.

Proposers of Solar facilities must also complete and submit the [Appendix 2. RESRFP23-1 Smart Solar Siting Scorecard](#), which will score projects based on their expected impacts to active agricultural land

⁵¹ The System & Resource Outlook study is the new name for the CARIS Phase 1 study under the proposed changes to NYISO's Economic Planning Process.

⁵² Matter 20-00905, Case Number 20-E-0197, Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act; <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=20-E-0197&submit=Search>

and Mineral Soil Groups 1 through 4 (MSG 1-4) and additional measures. NYSERDA is not intending to use the Scorecard as a screening tool to preclude Proposers from receiving a NYSERDA award based on agricultural impacts, nor contractually require avoidance and/or minimization measures submitted via the Scorecard, however NYSERDA will make the Scorecards for awarded projects publicly available such that the applicable permitting body may reference the Scorecard as part of the permitting process for the project.

Projects that include co-utilization measures will be viewed favorably in proposal evaluation. Proposers that intend to pursue such agricultural co-utilization are required to (1) describe such agricultural co-utilization in their Scorecard, and (2) submit a completed Agricultural Mitigation Payment Deferral Request Form with their Step Two Bid Proposal. For more details on agricultural co-utilization practices, deferred Agricultural Mitigation Payment requirements, and agricultural co-utilization plans, please see the Scorecard and Section 6.11 of the Agreement.

Minimum Threshold: Proposers must include in their Bid Proposal a description of any agricultural land that the planned project footprint of their Bid Facility is sited on. This description should include owned, rented, or leased farmland. Proposers will also include a description of any recent agricultural activity occurring on the planned project footprint in the five years prior to the release of RESRFP23-1. Non-Solar Bid Facilities will be awarded full points for the Agricultural and Forested Land category.

Proposers of Solar facilities will be required to complete and submit the Appendix 2 RESRFP23-1 Smart Solar Siting Scorecard, which will allow NYSERDA to score Bid Proposals based on the Bid Facilities expected impacts to active agricultural land and Mineral Soil Groups 1 through 4 (MSG 1-4), forested land, and additional measures. NYSERDA is not intending to use the Scorecard as a screening tool to preclude Proposers from receiving a NYSERDA award based on agricultural impacts, nor contractually require avoidance and/or mitigation measures submitted via the Scorecard, however NYSERDA may make the Scorecards for awarded projects publicly available such that the applicable permitting body may reference the Scorecard as part of the permitting process for the Bid Facility.

For solar Bid Facilities inclusive of parcels located in a New York State Agricultural District, Proposers are also required to provide preliminary information to estimate an Agricultural Mitigation Payment based on the Bid Facility impacts described in the Scorecard.

NYSERDA will allow Proposers to request deferral and reduction or elimination of an otherwise applicable Agricultural Mitigation Payment requirement if the Proposer is awarded under this RESRFP23-1 and elects to incorporate active agricultural uses into the operation of the Bid Facility in accordance with Section 6.11 of the Agreement and this RESRFP23-1. Regardless of Proposers' intent to submit an Agricultural Mitigation Payment Deferral Request Form, any Proposers that intend to pursue such agricultural co-utilization will be required to (1) describe such agricultural co-utilization in their submitted Scorecard, and (2) if applicable, submit a completed Agricultural Mitigation Payment Deferral Request Form (Attachment H to RESRFP23-1) with their Step Two Bid Proposal. For more details on agricultural co-utilization practices, deferred Agricultural Mitigation Payment requirements, and agricultural co-utilization plans, please see the Scorecard and Section 6.11 of the Agreement.

Exceeding the Threshold: Proposed Bid Facilities will be evaluated based on their verified Scorecard total score, with respect to expected impacts to active agricultural land, Mineral Soil Groups 1 through 4 (MSG 1-4), and forested lands, as well as any avoidance, mitigation, and/or co-utilization measures that the Proposer is willing to commit to in their Step Two Bid Proposal. Projects that commit to co-

utilization measures in their Scorecard, and Agricultural Mitigation Payment Deferral Request Form will be preferentially evaluated by the TEP. Project sites that demonstrate extensive forested land conversions as part of pre-development, such as clearing a portion of the proposed Facility Area while under site control prior to obtaining the appropriate permits, may be viewed less favorably in evaluation.

4.3.6 Project Development, Financing and Creditworthiness

Submission Requirements: The Proposer must demonstrate it meets the Minimum Threshold Requirements for Project Development, Financing and Creditworthiness by providing the following documentation:

- An organizational chart for the Bid Facility that lists the participants and identifies the corporate structure, including general and limited partners and financial arrangements to the Proposer’s parent company or affiliate.
- A management chart that lists the key personnel dedicated to the Bid Facility.
- A list of up to 15 specific projects successfully developed and/or financed, specifying the nameplate capacity, technology,⁵³ commercial operation date, and location using Attachment D. Bid Data Form, including the largest project developed and the largest project developed in New York State using the same technology.
- A Financing Plan that demonstrates the financial capability to complete construction by the proposed commercial operation date. The Financing Plan should be limited to 25 pages and contain if available and applicable:
 - A description of the business entity, organizational structure, and legal form, with an organization chart showing the relationship among the different equity partners, and parents;
 - A detailed description of the anticipated financing arrangements, including equity, pre-construction and development expenditures, Contract Security, construction debt, mezzanine / subordinated debt, and permanent debt;
 - A list of all committed and potential equity partners;
 - The Bid Facility development and operating responsibilities of each equity partner, and their respective funding obligations, *e.g.*, joint and several funding responsibilities, if applicable;
 - Evidence that the Proposer or its equity participant(s) possess an investment grade Credit Rating. If an equity participant does not have such Credit Rating, *e.g.*, a subsidiary, it shall provide (i) written evidence of a corporate commitment, for example, a “comfort” letter or “keepwell” agreement, to support the development and financing from its parent company and (ii) evidence of an investment grade Credit Rating from that parent company;
 - In addition to the Credit Ratings, any credit alerts or rating upgrade or downgrade for the equity partners, or their parent companies in the past three years;
 - If available, written expressions of interest from potential debt lenders sufficient to fund the full anticipated amount of project development, construction and permanent debt capitalization;
 - The anticipated total capital expenditures for the Bid Facility, including to the extent

⁵³ Resource and prime mover, *e.g.*, solar or wind. Not meant to distinguish between different solar technologies, for example.

- possible the anticipated capital expenditures for:
- Solar Bid Facilities: photovoltaic modules, inverters, racks and mounting hardware, electrical collection system / transformers;
 - Wind Bid Facilities: turbines and towers / foundations;
 - All Bid Facilities: site acquisition, substation / switchyard construction, transportation / delivery, installation / labor costs, site survey and civil work, tree clearing costs, agricultural mitigation and any other installation costs;
- The total anticipated Engineering, Procurement and Construction cost for the Bid Facility;
 - For solar Bid Facilities, the module unit price assumption, whether panels have been procured and how the Proposer plans to provide the panels at the pricing assumed;
 - Inflation rate assumptions, if not an inflation-adjusted Bid Proposal;
 - The anticipated construction and long-term capital structure for the Bid Facility ownership entity, including the Bid Facility's projected balance sheet at year-end for every construction year and at COD;
 - Description of the evolution of division between shareholder equity and debt from the development period through the construction period;
 - Details of the expected construction loan and permanent loan, including terms of repayment, (amount, tenor, interest rate, etc.), the amount each lending institution is prepared to commit (subject to credit committee approval), their debt service requirements (interest, rate swaps, letters of credit, guarantees, etc.), with all fees indicated clearly;
 - Describe all available federal, state, and local available tax credits, financial incentives, and subsidies (e.g., NY Green Bank financing), and how these will be utilized in the Financing Plan. Explain why any available tax credit, financial incentive, or subsidy will not be utilized;
 - Details of any events of default or other credit/financial issues associated with all projects (other than those under contract with NYSERDA) in which the Proposer (and other equity partners), its parent company, its affiliates, and directors, officers, and senior managers of those entities, participated over the past three years;
 - Disclosure of any criminal and civil lawsuits, litigation, and settlements associated with the Proposer's prior project development and commercial efforts over the last three years;
 - Information concerning the Proposer's (and other equity partners) financial condition and evidence of creditworthiness; and
 - If available, for the most recent accounting period and prepared in accordance with GAAP or IFRS: 1) A copy of its annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year, and 2a) for SEC reporting companies, access to financial statements certified in accordance with all applicable laws, including applicable SEC rules and regulations, or 2b) for non-SEC reporting companies, certification from the chief financial officer, controller, treasurer or any assistant treasurer of a Proposer/Seller or any employee of a Proposer/Seller designated by any of the foregoing, as being fairly stated in all material respects (subject to normal year-end audit adjustments). If a Party's financial statements are publicly

available electronically on the website of that Party or the SEC, then the Party shall be deemed to have met the requirements of this section.

- The Proposer should provide the following Financial statements, if applicable and available, via PDF or summary documents with links to publicly available PDFs (**links to all publicly available SEC filings are preferred as opposed to the submission of full SEC filings**):
 - Audited financial statements for the three most recent fiscal years;
 - Audited financial statements from Proposer's parent, if Proposer does not have such financial statements and the parent is providing a corporate funding commitment; or
 - Unaudited financial statements for its three most recent fiscal years if being provided for a private corporation, with an attestation from the CEO or CFO that such information is materially accurate and complete; or
 - An explanation if the information above cannot be provided, and provision of alternate information to demonstrate Proposer's financial capacity to develop and bring the proposed Bid Facility to commercial operation.
- A declaration of intent to use the Production Tax Credit (PTC) or Investment Tax Credit (ITC) and any available adders made available as part of the Inflation Reduction Act of 2022. Proposers should include their assumption of the percentage of their energy production or project costs that will be compensated under the PTC or ITC and how the Bid Facility will qualify for the PTC or ITC.

Minimum Threshold: Proposers must demonstrate that they have experience in developing renewable generation facilities. Specifically, the Proposer or the principals in its development team must have developed at least one renewable generation facility of similar or larger scale to commercial operation. NYSERDA will not consider aggregated portfolios of generation facilities as a project under this criterion. For the purposes of this criterion, similar scale is defined as follows:

- A project of at least 33% of the proposed Bid Facility capacity, in MWac; or
- A project of at least 10% of the proposed Bid Facility capacity, in MWac, if the Proposer has also successfully completed the same interconnection process in the same State or Jurisdiction as the proposed Bid Facility.

The Proposer or the principals in its development team must have the required experience successfully developing at least one renewable generation project. Experience of vendors or contractors to the Proposer or the principals in its development team do not count towards this experience requirement.

Proposers must submit a detailed Financing Plan demonstrating a sufficient degree of planning and due diligence on how the Bid Facility is to be financed. Proposers must describe a plan to finance the proposed Bid Facility including construction and term financing. **Error! Reference source not found.** Proposers should include a description of their intention to own and operate the Bid Facility, or if the Proposers intends to sell the Bid Facility to another party.

Proposers must declare whether and to what extent they intend to utilize Production Tax Credit (PTC) or Investment Tax Credit (ITC) as part of their project financing. Proposers should include their assumption of the percentage of their energy production or project costs that will be compensated under the PTC or ITC, including any expanded tax credit eligibility afforded under the Inflation Reduction Act of 2022.

Exceeding the Threshold: Evaluation will be based on the relative level of project development and financing experience demonstrated, particularly with respect to facilities of comparable scale⁵⁴ and similar technology⁵⁵ and location.⁵⁶ Proposals for Bid Facilities that are similar to those projects provided and successfully brought to commercial operation by the Proposer will be preferentially evaluated by the TEP. Aggregated portfolios of generation facilities will not be considered as a “project” under this category. Proposers with relatively higher credit ratings or with relatively more assets (or higher asset/debt ratio) will be preferentially evaluated by the TEP.

4.3.7 Site Control

Submission Requirements: The Proposer must provide the following documents:

- Detailed map of site plan/layout indicating the project and parcel boundaries, to scale, with parcel designation by owner. At a minimum, the map should include the preliminary layout of the Bid Facility within the parcel boundaries, including the major generating equipment and limits of disturbance. The map should indicate the (anticipated) interconnection route and the (anticipated) interconnection point(s). If applicable, indicate the relationship of the site to other adjacent infrastructure, including planned or alternate points of interconnection and proximate generators or other existing infrastructure.
- Fully populated Description of Control Status by Parcel with parcel designation within Attachment D. Bid Data Form, aligned with the submitted site map. Proposers are encouraged to carefully read all instructions contained within Attachment D.
- For solar Bid Facilities, a GIS Data Mapping Files capturing the Bid Facility parcel boundaries, the Bid Facility Area boundary, and the Bid Facility array footprint, and if applicable, the preliminary proposed site layout for any agricultural co-utilization measures.

For all Bid Facilities, the Proposer must also provide a GIS Data Mapping File. Applications that do not provide complete GIS files for the Bid Facility will be deemed incomplete. The GIS data file must be in .shp or .kmz format, and .shp files are preferred. Please provide one file or separate and distinct files for each of the following:

- The parcel boundaries that the Bid Facility will occupy;
- The Bid Facility Area boundary/impact area; and
- The Bid Facility array footprint (solar), Bid Facility site plan (other technologies).

If applicable and/or available, the Proposer should also provide the following documents:

- If available, a more detailed concept site plan including the locations of the generation unit, all major equipment and facilities, access roads, site work and other project components, along with existing physical features of the site (*e.g.*, wetlands, streams, topographical features, buildings, *etc.*).

⁵⁴ Comparable scale is 50% or more of the proposed capacity.

⁵⁵ Similar technology is the same resource and prime mover, *e.g.*, solar, wind. It is not meant to distinguish between different solar technologies, for example.

⁵⁶ Similar location is the same interconnecting entity.

- If available, GIS data containing the parcel boundaries that the project will occupy (SHP file preferred, KML/KMZ files permitted).

Minimum Threshold for Generation Facility: The Proposer must demonstrate an executed exclusivity agreement, letter of intent, executed binding option, executed lease, and/or easement with the site owner(s) for the Bid Facility site. The exclusivity agreement(s), letter(s) of intent, or other method(s) of site control must comprise at least 50% of the site's acreage.

Minimum Threshold for Interconnection Right of Way: The Proposer must demonstrate full site control of the point of interconnection for the Bid Facility and demonstrate any necessary rights of way associated with reaching the POI. The Proposer must demonstrate the POI is accessible via an exclusivity agreement(s) and/or executed right of way agreement(s) for the necessary rights of way (if the generator lead facilities will be merchant-owned), or (iii) that the right of way is controlled by or assignable to the interconnecting utility that will own the interconnection facilities, or (iv) that the Proposer owns, has executed lease for, easement for, or executed binding option for the Bid Facility's point of interconnection.

4.3.8 Community Engagement

The public and local governments play an important role in the process of evaluating and advancing renewable energy project siting in New York State, and in shaping developments that may be permitted in their communities. Proposers are responsible for planning and implementing a Community Engagement Plan that supports an open and inclusive public process and encourages feedback throughout the development and construction of proposed Bid Facility. An effective Community Engagement Plan reflects an understanding of local interests and concerns, provides high-quality and well-timed public education opportunities, demonstrates a commitment to partnering with the elected officials in proposed host communities, respectfully responds to opposition, and elicits input from the public and affected agencies.

Prior to and following the submission of Step Two Bid Proposals, NYSERDA's Clean Energy Siting team will schedule and meet with local officials in the proposed host communities, in person and/or via teleconference. These meetings will be conducted without Proposer participation, but NYSERDA will notify the Proposer regarding the schedule for such meetings and provide a brief synopsis of such meetings after they conclude. NYSERDA intends to share the submitted Community Engagement Plans and Attachment B. Public Release of Information Form with local officials interested in learning more about the project's development.

Submission Requirements: The Proposer must provide documentation that it has been in contact with the host AHJ(s) regarding the proposed Bid Facility and has informed the AHJ(s) local elected officials (restricted to primary executive *e.g.*, Town Supervisor, City Mayor, Planning Board Chair, Zoning Board Chair, Code Enforcement Officer, Town Clerk) about the Bid Facility's participation in RESRFP23-1. Documentation can include, but is not limited to,

- Correspondence between the Proposer and host AHJ(s);
- Publicly records of Town/Planning/Zoning Board meeting minutes and/or presentations;
- Communications with local elected and/or administrative officials; and/or
- Letters of Support provided by representatives of the host AHJ(s).

Documentation provided by the Proposer must be definitively demonstrate that the Proposer is communicating with the host AHJ(s) regarding the proposed Bid Facility. Proposers are encouraged to submit as much documentation as available to fulfill this eligibility requirement and are encouraged to work with all applicable stakeholders at the local level.

All Proposers will also be required to complete and submit Attachment B. Public Release of Bid Facility Information to be published alongside the Bid Facility's Community Engagement Plan. A blank version of Attachment B is available for download from the [RES Solicitations webpage](#) and the [solicitation website](#).

All Proposers must provide a complete Community Engagement Plan, limited to 25 pages, including planned engagement activities associated with the Bid Facility as described below.

- 1) Identify the Authority Having Jurisdiction (AHJ) and taxing School District, including local elected officials' names, contact information and tenure.
- 2) Detail outreach strategies and activities the Proposer has implemented to date and will use to engage stakeholders and interested parties, including affected agencies, and to encourage public involvement throughout the pre-award, development, construction, and operation phases (consistent with the Project Milestone Schedule), including methods of communication and specific channels the Proposer intends to use to disseminate Bid Facility information.
- 3) Applicability of the Climate Act goals regarding benefits to Disadvantaged Communities that would be realized with the development and construction of the Bid Facility.
- 4) Planned frequency of public events and the anticipated duration, in years, of the public engagement events of community outreach, and strategies to ensure that public engagement events are widely attended by a representative cross section of host community residents.
- 5) Details of the direct benefits to the community the Proposer will advance, which may include a local ownership stake in the facility, reduced energy bills for those with homes or businesses in the Bid Facility's vicinity, and/or other direct benefits.
- 6) Details on past/planned engagement regarding payments in lieu of taxes (PILOT) agreements or host community agreements (HCAs).
- 7) Describe local interests and concerns, including identifying plans to thoughtfully build support for and respectfully responding to any opposition to the Bid Facility.
- 8) Identify strategies the Proposer will use to mitigate concerns raised by the public regarding the Bid Facility. This may include visibility and viewshed Impact mitigation efforts, accommodations to co-locate agricultural activities, or other issues of importance to the host communities.
- 9) Method for soliciting feedback and input from the public and affected agencies and the process for sharing feedback and responses publicly.

The Community Engagement Plan will be published on NYSERDA's website following receipt of the Step Two Bid Proposal.

Minimum Threshold: Proposers must demonstrate that they have been in contact with the local officials for the towns the Bid Facility is sited within regarding the Bid Facility's development. The Proposer must identify the host Authorities Having Jurisdiction AHJ(s) regarding the Bid Facility and ensure local officials are informed of the Bid Facility's participation in RESRFP23-1. Proposers will also be responsible for submitting a complete Community Engagement Plan as described above to be publicly posted following the receipt of Step Two Bid Proposal packages.

4.3.9 Resource Assessment and Energy Production Estimate

Submission Requirements: The Proposer must provide a Resource Assessment and Energy Production Estimate that responds to all required information identified in Appendix 1. The Proposer must also provide a narrative description of any assumed level of curtailment built into the resource assessment and any projected impacts on the Bid Facility’s energy and/or capacity deliverability. The Proposer will be required to detail the full extent of the curtailment assessments performed to demonstrate the deliverability of the Bid Facility and clarify explicitly what the curtailment and degradation assumptions are for the equipment proposed for the Bid Facility.

Detailed instructions regarding the supporting documentation required to meet the Minimum Threshold Requirements for a Resource Assessment and Energy Production Estimates, by technology, are provided in Appendix 1.

Minimum Threshold: Proposers are required to provide a Resource Assessment and an Energy Production Estimate for the Bid Facility. The Resource Assessment must approximate the renewable resource typically available on an annual basis to power the Bid Facility. The Energy Production Estimate must estimate the Bid Facility’s ability to convert the renewable resource to electric power at the P(50)⁵⁷ level. Detailed technology-specific requirements and evaluation criteria for the Resource Assessment and Energy Production Estimate are presented in [Appendix 1 – Resource Assessment and Energy Production Estimate Requirements](#).

The Resource Assessment and Energy Production Estimate must be consistent with and representative of the Bid Facility, long-term conditions at the site, as proposed to NYSERDA. The Bid Quantity may not exceed the P(50) long-term Energy Production Estimate. The Resource Assessment and Energy Production Estimate must detail the full extent of the curtailment assessments performed to demonstrate the deliverability of the Bid Facility and clarify explicitly what the degradation assumptions are for the equipment proposed for the Bid Facility. System loss factors must be detailed, and include auxiliary and parasitic loss, availability loss, curtailment, and operational loss due to Utility or Transmission Operator requirements (e.g., deliverability limitations, VAR/Power Factor support, or other losses) and grid-mandated curtailments due to congestion or emergency. If applicable, the expected efficiency as a result of bifacial panels must be detailed.

For Eligible Upgrades, provision of the Resource Assessment and Energy Production Estimate submitted to obtain a PsoQ or SoQ and the associated Tier 1 certification is sufficient to meet the minimum requirements outlined in Appendix 1 based on the resource type.

4.3.10 Carbon Emissions and Embodied Carbon

Submission Requirements: The Proposer should describe the efforts that have or can be undertaken to understand the “embodied carbon” impact of renewable development and minimize the Bid Facility’s embodied carbon intensity. To the extent discernable at the current stage of development, Proposers

⁵⁷ P(50) represents a level of resource projection or production estimate with a 50% likelihood of being exceeded in any future year. The P(50) value shall be the expected value (*i.e.*, the mean) based on the Proposer’s Resource Assessment diligence in accordance with the minimum requirements listed in the section herein for the respective renewable technology.

should describe and explain the anticipated carbon intensity in Bid Facility design, sourcing, construction, operation, and maintenance.

Proposers should also describe and explain any available process by which the Proposer will be able to account for embodied carbon on an ongoing basis through development, construction, and operation of the Bid Facility. This could include the sourcing and manufacturing of primary components such as modules, inverters, turbines, towers, other prime movers, cables, substations, and other electric equipment, but should also consider associated activities such as construction, Operation & Maintenance (O&M), and decommissioning. This could also include opportunities to support carbon mitigation efforts in collaboration with New York State manufacturing sources.

Minimum Threshold: Proposers must describe how the Bid Facility will actively support the outcomes envisioned by the Climate Act, including a description of the efforts that have or can be undertaken, including any tools or methodologies used, to better understand and consider carbon intensity in design, sourcing and construction, and the steps that have been taken to minimize carbon emissions, including embodied carbon, from the Bid Facility. To the extent discernable at the current stage of development, Proposers should describe and explain the anticipated carbon intensity in Bid Facility design, sourcing, construction, operation, and maintenance.

The Proposer should also propose the methodology by which such reduction activities will be considered and integrated into the Bid Facility's design as the project evolves. Proposers should describe and explain the proposed process by which the Proposer will account for embodied carbon on an ongoing basis through development, construction, and operation of the Bid Facility. This could include the sourcing and manufacturing of primary components such as modules, inverters, turbines, towers, other prime movers, cables, substations, and other electric equipment, but should also consider associated activities such as construction, Operation & Maintenance (O&M), and decommissioning. This could also include opportunities to support project component equipment recycling and/or carbon mitigation efforts in collaboration with New York State manufacturing sources.

The evaluation will not consider avoided emissions associated with the Bid Facility itself.

4.3.11 Climate Resiliency

Submission Requirements: The Proposer should describe the efforts that have or can be undertaken to understand the climate resiliency of the Bid Facility and minimize the Bid Facility's risk of being impacted by climate impacts. To the extent possible, Proposers should include additional detail on cascading impacts as a result of a climate event and a change management strategy in the event that climate science evolves over the course of project development.

Minimum Threshold: Proposers will demonstrate how the impacts of climate change have been considered and incorporated into the reliability (the extent to which the system provides output and avoids temporary disruptions) and expected performance (ability of the system to provide expected output of energy over its useful life) of the Bid Facility.

- **Reliability:** The Proposer must explain how climate change adaptation and resilience is incorporated into the Bid Facility's siting, design, technology selection, construction, and operation. The Proposer must identify the Bid Facility's climate hazard exposure and clearly describe the adaptation and resilience measures that will be incorporated to mitigate risk.

- **Performance:** The Proposer will identify anticipated impact, if any, on the Bid Facility's performance (energy output) that may result from climate impacts projected to occur within the Bid Facility's useful life (for example, potential reduction in solar efficiency during anticipated increased number of heat waves and higher ambient temperatures in 2040). Proposers should identify how this anticipated impact on the Bid Facility's performance has been incorporated into the Resource Assessment and Energy Production Estimate. Proposers will demonstrate how the Bid Facility will maintain expected performance over the full useful life and identify, as needed, the design or operational measures incorporated beyond current codes and standards to achieve this performance.

The level of exposure to climate hazards will be project specific. Main climate hazards in NYS include extreme storms including hail, sea level rise, extreme heat and cold, increased temperature, and increased rainfall. Proposers can reference existing resources for climate risk and resiliency assessment and adaptation, including NYSERDA's Responding to Climate Change in New York State (ClimAID), NYS DEC Flood Risk Management Guidance, NYS DOH Heat Vulnerability Index, NYS Future Coastal Floodplain Mapper, Northeast Regional Climate Center intensity-duration-frequency curves for heavy precipitation, Columbia's Hudson River Flood Map, NYSIO's Climate Change Impact and Resilience Study and others.

4.3.12 Non-Viability Determination

The CES Modification Order authorizes NYSERDA to reject a Bid Proposal based upon a unanimous determination by the TEP that the project is not presently viable. If a Bid Proposal is rejected based on the evaluation of viability, NYSERDA will notify the Proposer of the determination following the submission of the Step Two Bid Proposal and the receipt of responses to any clarifying questions and provide an explanation. Proposers with Bid Proposals that are rejected in this manner will remain eligible to re-apply in future RES solicitations and will be evaluated again without prejudice. Reasons for a determination of non-viability may include:

- 1) The Bid Proposal is immature to such an extent that it would be impossible to ascertain whether it is viable;
- 2) The Bid Proposal is predicated on unrealistic economic or regulatory assumptions; or
- 3) The Bid Proposal is subject to serious economic, permitting and/or regulatory risks without a sufficient mitigation plan.

Examples of why a Bid Proposal could be determined to be non-viable include, but are not limited to, failing to meet one or more Minimum Threshold Requirements, a Bid Facility at an early stage of development with a Bid Price that is determined to be insufficient to cover project costs, an unfounded interconnection or permitting mitigation cost estimate and/or a materially high risk of not receiving permits due to the Bid Facility's site impact on natural resources.

NYSERDA may seek additional information from any Proposers deemed to have submitted a non-viable Bid Proposal prior to removing the Bid Proposal for consideration. Non-viability determinations will only be recommended for a clear, objective case that the Bid Facility is non-viable based upon the consensus of NYSERDA, TEP, and Specialist Reviewers' assessment of the Bid Facility. If NYSERDA raises a potential non-viability concern for a Bid Facility, the Proposer will be given the opportunity to respond. The time to respond will depend on the nature of the potential non-viability determination but will not be less than five business days.

4.4 Incremental Economic Benefits to New York State Including Disadvantaged Communities

Incremental Economic Benefits expected to accrue to New York because of the development, construction/modification, and operation of the Bid Facility will be evaluated as another non-price evaluation component. Incremental Economic Benefits are those that a Proposer can demonstrate: (1) will accrue after the Release Date of the first CES RFP, June 2, 2017, and (2) would not have accrued but for the issuance of the CES solicitations or award of a contract under this RFP.

The TEP will evaluate and award up to 10 points to Bid Proposals based on the degree to which each Bid Proposal demonstrates that Incremental Economic Benefits will accrue to New York because of the development, construction/modification, and operation of the Bid Facility. Incremental Economic Benefits may be claimed in two categories:

- 1) Long-Term Economic Benefits to New York State; and
- 2) Short-Term Economic Benefits to New York State.

The TEP will award a maximum of 10 points between the two sub-categories. Within each category, points will be awarded in proportion to the level of eligible claims, normalized across all Bid Facilities by dividing each Bid Facility's eligible claims by that Bid Facility's Bid Capacity (\$/MW). Only direct Incremental Economic Benefits within these categories, as entered in Attachment D. Bid Data Form will be considered. In no instance will NYSERDA or its TEP consider any indirect benefits or those created by any "multiplier effect" or other attribution method under which the creation of peripheral spending and jobs might be credited to direct capital infused into the economy.

Claims associated with MWBE and SDVOB will receive greater weight in scoring. Claims associated with Disadvantaged Communities will also receive greater weight in scoring, particularly to the extent that they are included in the Disadvantaged Community Commitments recorded in Section 6.10 of the Agreement.

All other New York Economic Benefits will receive a baseline scoring weight (total value of eligible claims, normalized by dividing each Bid Facility's eligible claims by that Bid Facility's Bid Capacity (\$/MW)). If a specific claim falls under multiple criteria, such as a MWBE/SDVOB claim benefitting a Disadvantaged Community or a MWBE/SDVOB claim occurring after the third year of the Contract Delivery Term, both weights will be applied.

For this RFP, as discussed in Section 2.6.4, NYSERDA requires a minimum value of iron or steel purchased for the Bid Facility to be manufactured in the United States. The amount of Expected U.S. Iron and Steel Dollars that will be entered in the Agreement will be calculated based on the minimum value per MW of Offer Capacity that corresponds to the Bid Facility technology type: \$58,000/MWac for onshore wind and \$32,000/MWdc for solar. For Upgrades and Repowering Bid Facilities of utility-scale solar PV and onshore wind, the Expected U.S. Iron and Steel Dollars/MW will be determined by NYSERDA in cooperation with Proposers prior to the Step Two Bid Proposal deadline. For Bid Facilities that utilize technology other than utility-scale solar PV or onshore wind, and have yet to be constructed, NYSERDA will determine the compliance obligation in cooperation with Proposers in advance of the Step Two Bid Proposal deadline.

Note that all laborers, workmen and mechanics, within the meaning of NYS Labor Law Article 8, performing construction activities with respect to the Bid Facility must be paid at least the applicable

Prevailing Wage applicable in the area where the Bid Facility will be situated, erected and used, as published by the [NYS Department of Labor](#) (DOL) or at least the equivalent Prevailing Wage requirements of the jurisdiction where the Bid Facility is located.

Proposers are encouraged to work with the AHJs hosting the Bid Facility to determine if there are economic benefits opportunities that could be uniquely afforded to the town/city/county/school district/census tract.

Proposers interested in exploring new opportunities for investments/commitments to local economic and workforce development benefits are also encouraged to consult with the New York State Empire State Development (ESD) Cleantech and Renewable Energy program, which may provide other resources and information as to potential opportunities in the Proposers' region of interest. Interested Proposers are encouraged to reach out directly to ESD at: CleanTech@esd.ny.gov.

4.4.1 Disadvantaged Communities

Through this solicitation, NYSERDA seeks to actively support investments that will provide benefits to and reduce burdens on Disadvantaged Communities, in accordance with the 2020 CES Modification Order. Proposers and their contractors/sub-contractors/other partners are strongly encouraged to pursue sourcing of laborers, workmen, mechanics, and operations and maintenance workers from Disadvantaged Communities throughout New York State as defined by the Climate Action Council in accordance with the Climate Act.⁵⁸ Only incremental economic benefits to Disadvantaged Communities that meet the final Disadvantaged Communities criteria set by the Climate Justice Working Group will be eligible for RESRFP23-1.

All Proposers are required to fully detail the benefits and burdens associated with the impacts of the Bid Facility's development on any hosting and/or proximate Disadvantaged Communities, as identified through engagement with Disadvantaged Communities, and in accordance with the most recent relevant guidance per the [Climate Justice Working Group](#). Benefits of Bid Facility development may include establishment of education and training opportunities, the hiring of residents from Disadvantaged Communities, or other investments identified as priorities for the community.

It is incumbent upon Proposers to clearly identify which Economic Benefits claims and to what extent the benefits will be realized by Disadvantaged Communities, how these claims meet the criteria for Disadvantaged Communities, and how the Proposer will substantiate that any Incremental Economic Benefits claimed as being directed to Disadvantaged Communities have accrued to those communities via interim reporting requirements and a final audit of the Proposers' Incremental Economic Benefits claims following the third of year of commercial operation of the Bid Facility. Commitments made by Proposers to benefit Disadvantaged Communities will be incorporated into the Agreement for awarded Proposers. See Section 6.10 of the Agreement. Proposers are also strongly encouraged to work with their development partners, including NYSERDA and the NYS Department of Labor, to prioritize the hiring of laborers, working persons, mechanics, other specialized labor, and long-term operations and maintenance staff from Disadvantaged Communities.

⁵⁸ The Climate Act directs the [Climate Justice Working Group](#) (CJWG) to establish criteria for defining Disadvantaged Communities. On March 27, 2023, the CJWG voted to finalize Disadvantaged Communities criteria. Additional resources for identifying Disadvantaged Communities are located on the [New York Climate Act website](#).

Proposers are also encouraged to consult the following resources maintained by NYSERDA, the New York State Department of Labor (DOL), and other entities in New York State that are actively supporting the development and sourcing of trained workforce participants (including laborers, workmen, mechanics, electricians, and operations and maintenance workers) from Disadvantaged Communities.

- NYSERDA [On-the-Job Training \(OJT\) program](#) for clean technology businesses seeking to recruit new hires.
 - Browse [examples of previously supported training projects](#), including multiple partnerships that have trained workers from Disadvantaged Communities to prepare the clean energy workforce.
 - For questions, contact PONOJT@nyserda.ny.gov
- [NYSERDA Clean Energy Training Services](#) is available to contractors seeking to provide targeted training and workforce development resources.
 - For questions, contact wfinfo@nyserda.ny.gov
- [NYSERDA Internship & Pre-Apprenticeship Program](#)
- [DOL Apprenticeship Program](#)
 - For questions, contact the appropriate [local apprenticeship representative](#) or contact ATCO@labor.ny.gov
- [DOL Career Center Events & Recruitment program](#) also supports regularly scheduled job fairs where employers can actively source workforce participants from Disadvantaged Communities.

The TEP will preferentially evaluate Bid Proposals that demonstrate that the associated Incremental Economic Benefits to New York State will be realized in part or in full by Disadvantaged Communities. Proposers that commit to directing economic benefits to Disadvantaged Communities will be materially preferred during the evaluation of Incremental Economic Benefits.

4.4.2 MWBE and SDVOB

Proposers and their contractors/sub-contractors/other partners are strongly encouraged to pursue partnership with MWBE and SDVOB. Proposers are required to state the amount of Incremental Economic Benefits that will accrue to MWBE and SDVDB contractors and subcontractors in Categories 1 and 2. It is incumbent upon Proposers to clearly identify which Economic Benefits claims and to what extent the benefits will accrue to MWBE and SDVOB and how the Proposer will substantiate that any Incremental Economic Benefits claimed as being directed to MWBE and SDVOB have accrued to those entities via interim reporting requirements and a final audit of the Proposers' Incremental Economic Benefits claims following the third year of commercial operation of the Bid Facility.

The TEP will preferentially evaluate Bid Proposals that demonstrate that the associated Incremental Economic Benefits to New York State will be realized in part or in full by New York State certified MWBE and SDVOBs⁵⁹ in the renewable energy industry and clean energy economy. Commitments made by Proposers to benefit MWBE and SDVOB will be incorporated into the Agreement. See Sections 5.02 (f) and 18.14 of the Agreement.

In evaluating proposals, the TEP will favorably consider programs that invest in the development of local businesses and provide quantifiable metrics to assess the Proposer's capacity building efforts, including

⁵⁹ Businesses certified by entities other than New York State will not warrant preferential evaluation.

number and value of contracts completed, number of employees, wages/salaries paid, increase in trade specialties, customer base, and increased revenue.

4.4.3 Long-Term Economic Benefits to New York State (Category 1)

The Proposer should describe the degree to which the development, construction, and operation of the Bid Facility will directly create (add) long-term jobs and/or accrue long-term payments to the New York State economy, its municipalities and/or residents. Payments that will provide long-term royalties, production-based payments, land lease or land use payments or other forms of compensation are also eligible in this category. Payments for non-renewable fuels (*e.g.*, natural gas) are not eligible for consideration in this category or in any Economic Benefits category. Eligible claims can include:

- 1) Employment of workers in New York in the form of long-term jobs (jobs lasting longer than three years). These can include, but are not limited to, jobs associated with operations and maintenance, plant management, long-term project development, or similar;
 - Employment of workers from Disadvantaged Communities will be given materially greater weighting in evaluation of long-term benefits. All Proposers siting projects in or near Disadvantaged Communities are strongly encouraged to explore what employment resources are available to establish targeted hiring practices to support residents of Disadvantaged Communities.
- 2) Establishment of a project office in New York State, including pre-development activities, leases/purchases, and related employment not claimed as jobs associated with operations and maintenance, plant management, long-term project development, or similar;
- 3) New or increased local property tax payments to school districts, cities, towns, or other taxing jurisdictions;
- 4) Payments in Lieu of Taxes (PILOT) agreements or other alternative taxing mechanisms and forms of compensation;
 - New or increased tax payments and/or PILOT agreements that will clearly benefit Disadvantaged Communities will be given materially greater weighting in evaluation of long-term benefits.
 - A percentage of new or increased tax payments and/or PILOT agreement payments will be credited in evaluation as providing incremental economic benefits to Disadvantaged Communities in proportion to the percentage of land parcels located in Disadvantaged Communities.
- 5) Host community payments, Community Benefits agreements (separate from PILOT or Host Community Benefit utility bill credit payments), mitigation/conservation payments, or other funds that will directly benefit the host community for more than three years, such as Proposer-funded projects that will not be linked to the Bid Facility (*e.g.*, new building or infrastructure improvements to the host town(s), other capital projects indicated as desirable by the host town, funds established in the host town to benefit local residents, *etc.*);
 - Programs established in host towns or proximate communities to specifically direct benefits to Disadvantaged Communities will be given materially greater weighting in evaluation of long-term benefits.
- 6) Land purchase payments and payments for leases of land in New York associated with securing rights to a Bid Facility site. Land purchase payments will be pro-rated for evaluation purposes to reflect the eligible time period for Economic Benefits claims.

Proposers are encouraged to work with the AHJs hosting the Bid Facility to determine if there are long-term economic benefits that could be uniquely afforded to the town/city/county/school district/census tract.

4.4.4 Short-Term Economic Benefits to New York State (Category 2)

The Proposer should describe the degree to which both local and statewide economic activity will increase as a result of in-state purchases and short-term jobs. These can include:

- 1) Employment of workers in New York in the form of short-term jobs (jobs lasting less than three years). These can include construction, rail and port workers, contractors and laborers, engineering or environmental service providers, consultants, financial service advisors, and legal service providers in New York associated with the development and construction/modification of the Bid Facility;
- 2) Employment of workers in New York for ongoing operations and maintenance expenses which are anticipated through the first three (3) years of Commercial Operation;
- 3) Employment of workers in New York in the form of short-term jobs (jobs lasting less than three years) that will support the establishment of a project office in New York state and that are not already claimed as long-term economic benefits;
- 4) Purchases and/or consumption of local goods and services, such as, but not limited to, food, lodging, vehicles, equipment, and/or fuel;
- 5) Other funding that will directly benefit the host community for less than three years, such as Proposer-funded projects that will not be linked to the Bid Facility (*e.g.*, a renewable energy career fair, sponsorship of a community event, etc.);
 - Programs established in host towns or proximate communities to specifically direct benefits to Disadvantaged Communities will be given materially greater weighting in evaluation of short-term benefits.
- 6) Purchases of materials sourced from within New York such as, but not limited to, gravel, steel, concrete and similar materials, purchases and use of equipment and products manufactured or assembled within New York, and/or the use of rental equipment or similar supplies sourced from within New York. Bid Facility components (*e.g.*, wind turbines, solar panels) not manufactured within New York are not eligible for consideration in this category or in any Economic Benefits category.

Proposers are encouraged to work with the AHJs hosting the Bid Facility to determine if there are short-term economic benefit opportunities that could be uniquely afforded to the town/city/county/school district/census tract.

4.4.5 Independent Audit and Verification of Incremental Economic Benefits

Independent audit and verification of the actual Incremental Economic Benefits of the Bid Facility and comparison to the level of claimed Incremental Economic Benefits will be required after the first three years of the Contract Delivery Term where the Proposer will submit an economic benefits report prepared by a New York State certified, independent certified public accountant, demonstrating the actual Incremental Economic Benefits that resulted from the construction and operation of the Bid Facility under the categories and within the eligibility requirements listed in the RFP. The Economic Benefits Report will be funded at the Bidder's expense. Should the Bidder fail to reasonably demonstrate that the total dollar amount of Incremental Economic Benefits divided by Installed Bid

Capacity, is at least 85% of Expected Dollars/MW, NYSERDA may at its option upon Notice to Seller, modify the Agreement by reducing the Bid Price payable for the remainder of the Contract Delivery Term.

5 PRICE EVALUATION & BID PRICE STRUCTURE

5.1 REC Products Pricing

Each Step Two Bid Proposal must conform to either the Index REC or Fixed REC pricing structure. Offer prices for each Bid Proposal are all-inclusive; that is, for all components of the Bid Facility.

For both forms of pricing, only level nominal dollar pricing will be accepted. Proposals will be accepted with Contract Tenors of a minimum of one year and a maximum of the Bid Facility's Maximum Contract Tenor, determined by the Bid Facility's technology and vintage.⁶⁰

While all Bid Proposals must employ a single pricing structure, Bid Proposals are permitted to employ different pricing structures for materially different Bid Proposals. For example, if a Proposer submits a Bid Proposal for a Bid Facility of a certain Bid Capacity and a Bid Proposal for the same Bid Facility with a different Bid Capacity, the two Step Two Bid Proposals may employ different pricing structures, either fixed or index.

NYSDA cannot adjust the binding Fixed or Index REC Bid Price submitted by awarded Proposers. Bid Proposals should be appropriately priced to reflect all interconnection and transmission upgrade costs required to ensure energy dispatch that is consistent with the Bid Proposal's proposed generation output profile, including transmission and/or distribution network upgrades that may need to occur beyond the point of interconnection.

5.1.1 Fixed REC Pricing

Under the Fixed REC pricing, the Monthly REC Price is equal to the Fixed REC Price.

$$\text{Monthly REC Price} = P^{\text{Fixed}}$$

where:

$$P^{\text{Fixed}} = \text{Fixed REC Price (\$/MWh)}$$

Each month's Fixed REC Price shall be as offered in the Bid Proposal for the relevant Contract Year, with the same Fixed REC Price applied for all months within the Contract Year. The Fixed REC Price shall also be the same for all Contract Years.

5.1.2 Index REC Pricing

Under the Index REC pricing, the Monthly REC Price varies monthly during the Contract Delivery Term and is calculated:

$$\text{Monthly REC Price} = SP^{\text{Index}} - REP - (RCP \times MF)$$

where:

⁶⁰ See Section 3.4.

SP^{Index} = Index REC Strike Price (\$/MWh)

REP = Reference Energy Price (\$/MWh)

RCP = Reference Capacity Price (\$/MWh)

MF = Mitigation Factor (%), defined in Section 4.01 of the Agreement

Each month's Index REC Strike Price shall be as offered in the Bid Proposal for the relevant Contract Year, with the same Index REC Strike Price applied for every month of the Contract Tenor.

For Bid Facilities in New York State, each month's Reference Energy Price shall be a simple average of the hourly NYISO Day-Ahead Market (DAM) locational based marginal pricing (LBMP) for the NYISO Zone in which the Bid Facility's Delivery Point is physically located.⁶¹ For Bid Facilities in external control areas, each month's Reference Energy Price shall be a simple average of the hourly NYISO Day-Ahead Market (DAM) locational based marginal pricing (LBMP) for the Proposer-identified NYISO Zone which the Bid Facility will be injecting into.

Each month's Reference Capacity Price will be based on the conversion of a Reference Unforced Capacity (UCAP) Price, equal to the spot auction price in \$/kW-month for the NYISO Zone in which the Bid Facility is located as published by NYISO.⁶² For Bid Facilities in external control areas, each month's Reference Capacity Price will be based on the conversion of a Reference Unforced Capacity (UCAP) Price, equal to the spot auction price in \$/kW-month for the Proposer-identified NYISO Zone which the Bid Facility will be injecting into.

The Reference Capacity Price is converted to its \$/MWh equivalent through the following equation:⁶³

$$RCP = \frac{RUP \times IC \times 1,000 \times CAF}{\text{Total RECs} \times BQP}$$

where:

RUP = Reference UCAP Price (\$/kW-month) described in Section 4.01(a).

⁶¹ Historical daily NYISO DAM LBMPs can be downloaded from the NYISO website at <http://mis.nyiso.com/public/> or <https://www.nyiso.com/custom-reports>.

⁶² Historical monthly capacity spot auction prices can be downloaded from the NYISO website at http://icap.nyiso.com/ucap/public/auc_view_spot_detail.do or <https://www.nyiso.com/installed-capacity-market>. NYISO UCAP prices are not reported by Zone, but instead by capacity locality. Capacity localities include New York Control Area (NYCA), Southeast New York (or the G-J Locality), New York City (NYC) and Long Island (LI). Nested capacity localities, for example, New York City inside the G-J Locality, can have the same or a higher price as the capacity locality they are located within. For Zones A through F, refer to the NYCA UCAP price. For Zones G through I refer to the G-J Locality UCAP price. For Zone J, refer to the NYC UCAP price. For Zone K, refer to the LI UCAP price.

⁶³ Because the Relative UCAP Production Factor (rUPF) value will be set to 1 for the duration of the contract tenor, no reference to the rUPF is needed.

IC = Installed Capacity (MW)

Total RECs = Total amount of Tier-1 RECs produced by the Bid Facility in the subject month.

BQP = Bid Quantity Percentage

1,000 = kW to MW conversion factor

CAF = Capacity Accreditation Factor for the Selected Project's CARC⁶⁴

5.2 Pricing for Alternate Bid Proposals

5.2.1 Inflation Risk Adjusted Bid Proposal

For Alternate Bid Proposals in which Proposers opt to include an Inflation Adjusted Bid Proposal, the Index REC Strike Price or Fixed REC Price will be adjusted to account for inflation between the Bid Proposal Submission Deadline and the commencement of Construction Activities related to the Bid Facility. This adjustment, governed by the formula below and Exhibit L of the Agreement, will be based on the PPI All Commodities index.⁶⁵ The Index REC Strike Price or Fixed REC Price for the Inflation Adjusted Bid Proposal will be calculated as:

$$REC_{adj} = REC_{bid} \times \left(0.25 + 0.75 \times \frac{Index_T}{Index_B} \right)$$

where:

REC_{adj} is the Index REC Strike Price or Fixed REC Price after inflation adjustment

REC_{bid} is the Index REC Strike Price or Fixed REC Price as submitted with the Bid Proposal

$Index_B$ is the value of the PPI All Commodities index established and published by NYSERDA prior to the Bid Proposal Submission Deadline

$Index_T$ is the value of the PPI All Commodities index established at the commencement of Construction Activities

0.75 is the share of the Index REC Strike Price or Fixed REC Price to which the inflation adjustment will be applied. The remainder of the Index REC Strike Price or Fixed REC Price (25%) will not be adjusted.

⁶⁴ For Upgrade Bid Facilities and Repowering Bid Facilities, the total amount of Tier-1 RECs produced by the Bid Facility, as used in this instance, is adjusted to reflect the Actual Eligible Production.

⁶⁵ U.S. Bureau of Labor and Statistics (<https://www.bls.gov/data/>), Series ID WPU00000000, PPI Commodity data for All commodities, not seasonally adjusted.

$Index_B$ will be the average of the last six months or two quarters of published data available prior to the Bid Proposal Submission Deadline, which will be published by NYSERDA at least 15 business days prior to the Bid Proposal Submission Deadline. For informational purposes only, as of the date of RESRFP23-1 issuance, this value is 255.560. NYSERDA will publish the final $Index_B$ value that will be used in the Agreement on or before January 3, 2024.

$Index_T$ will be calculated as the average of the monthly or quarterly values for the six-month period comprising the three months prior to and following the commencement of Construction Activities. REC_{adj} will therefore be calculated when the published monthly prices or indices become available, but no earlier than 6 months after the commencement of Construction Activities.⁶⁶

If a Bid Proposal using the Fixed REC price structure is submitted with inflation adjustment, the adjustment will be applied based only on the Fixed REC price.

5.3 Settlement Mechanism

NYSERDA will calculate the Reference Energy Price and Reference Capacity Price for each month according to the calculation outlined in the Agreement. The Monthly REC Price will be calculated during a settlement period following the conclusion of each month. Proposers should reference Article IV. Pricing and Payment of the RESRFP23-1 Standard Form Agreement for the full settlement mechanism.

5.4 Bid Price Evaluation

A quantitative method will be applied to all bids in order to screen and rank the pricing bids using a uniform cost metric. For evaluation purposes, bid prices will be converted to a Levelized Net REC Cost (LNRC) in base year \$/MWh for both the Fixed REC Price and Index REC Strike Price bids. The LNRC price measure allows for an equitable comparison among Proposals with different pricing structures, REC quantities, and Contract Tenors. Strike prices will be converted into expected annual REC values by subtracting a forecast of expected Reference Energy Prices and Reference Capacity Prices from the strike prices, based on NYSERDA's forecasts of energy and capacity prices. Neither the price forecasts nor details of the modeling procedures will be disclosed to Proposers.

For evaluation purposes, regardless of the proposed Commercial Operation Date, Bid Proposals for Bid Facilities not yet under operation will be evaluated with a Contract Delivery Term commencement month of January 2026 therefore a $COMD_p$ of January 2026, and Bid Proposals for Bid Facilities currently operating will be evaluated with a Contract Delivery Term commencement month of July 2024 and therefore a $COMD_p$ of July 2024.

The LNRC for Proposal p using pricing form f is the quotient of the cumulative present value of the annual net REC costs over the proposed Contract Tenor, divided by the cumulative present value of the projected annual number of RECs produced from Actual Eligible Production multiplied by the Bid Quantity Percentage over the same period. The annual quantities are discounted at a real discount rate. The resulting quotient is expressed in base year dollars per REC or MWh.

⁶⁶ There is a lag of two months or more from the end of a month to the issuance of a BLS PPI index. The PPI indices are considered preliminary and may be updated by BLS up to four months after publication. The adjusted Index REC Strike Price or Fixed REC Price will not be finalized until the final PPI values are published by BLS.

$$LNRC_{p,f} = PVNRC_{p,f} / PVRQ_p$$

where:

$PVNRC_{p,Fixed}$ = PV of Net REC Cost for Proposal p , pricing form Fixed (\$ PV)

$$= \sum_{y=COMD_p}^{y=COMD_p+CT_p} \left\{ \sum_{m=1}^{m=12} P_{p,m,y}^{Fixed} \times RQ_{p,m,y} \times BQP_p \right\} \div (1 + NDR)^{(y-Y_b)}$$

$PVNRC_{p,Index}$ = PV of Net REC Cost for Proposal p , pricing form Index (\$ PV)

$$= \sum_{y=COMD_p}^{y=COMD_p+CT_p} \left\{ \sum_{m=1}^{m=12} (SP_{p,m,y}^{Index} - RPE_{m,y}^{Pred} - RPC_{m,y}^{Pred}) \times RQ_{p,m,y} \times BQP_p \right\} \div (1 + NDR)^{(y-Y_b)}$$

$PVRQ_p$ = PV of REC delivery quantities for Proposal p (MWh)

$$= \sum_{y=COMD_p}^{y=COMD_p+CT_p} \left\{ \sum_{m=1}^{m=12} RQ_{p,m,y} \times BQP_p \right\} \div (1 + RDR)^{(y-Y_b)}$$

$RQ_{p,m,y}$ = REC delivery quantity for Proposal p applicable to month m of calendar year y (REC or MWh), as provided in Attachment E – P(50) 8760 Template

$RPE_{m,y}^{Pred}$ = Predicted Reference Energy Price index for month m in calendar year y (nominal \$/MWh)

$RPC_{m,y}^{Pred}$ = Predicted Reference Capacity Price index for month m in calendar year y (nominal \$/MWh)

BQP_p = Bid Quantity Percentage for Proposal p

$COMD_p$ = Calendar month associated with the expected Contract Delivery Term commencement date for Proposal p

CT_p = Contract Tenor for Proposal p

NDR = Nominal Discount Rate (decimal)

INF = Inflation Rate (decimal)

$RDR = (1 + NDR) / (1 + INF) - 1$ = Real Discount Rate

Y_b = Base year for cost and PV

A nominal discount rate of 7.25% per year and a long-term inflation rate assumption of 2.36% per year will be used in the LNRC calculation procedure.⁶⁷

For the Index REC form of pricing, strike prices will be converted into expected annual REC values by subtracting a forecast of expected Reference Energy Prices and Reference Capacity Prices from the strike prices, based on NYSERDA's forecasts of energy and capacity prices. Neither the price forecasts nor details of the modeling procedures will be disclosed to Proposers.

For evaluation of Alternate Bid Proposals that include Inflation Adjustment, a multiplier representing NYSERDA's expectation of the inflation for the identified indices between the Bid Proposal Submission Deadline and the estimated date of Notice to Proceed for a Bid Facility with a *COMD_p* of 2024 or 2026 (depending on whether the Bid Facility is existing or new) will be applied to the Index REC Strike Price or Fixed REC Price to determine the total price used in the evaluation.

5.5 Bid Price Scoring

For purposes of cost containment, Benchmark LNRCs will be derived for both the Index REC and the Fixed REC. NYSERDA retains the right to reject any and all Proposals that exceed the applicable Benchmark LNRC. Use of the Benchmark LNRCs will support a reasonable balance between encouraging investment in new renewable projects and protecting ratepayer interests from the incurrence of any deadweight costs associated with accepting a Proposal at any price.

All bids, including both Index REC bids and Fixed REC bids, will be sorted in ascending order per LNRC. The lowest bid per the LNRC will receive the maximum points available for the Bid Price component (70 points) and higher LNRCs will receive lower scores (less than 70 points). NYSERDA will implement a method designed to cause the scores of higher LNRCs to be sufficiently dispersed below the maximum of 70 points such that the final score aggregating Bid Price, Project Viability and OpFlex, and Incremental Economic Benefits retains the intended scoring emphasis on the LNRC to a reasonable extent.

⁶⁷ The discount rate (DISCO Discount Rate or DDR) and inflation rate for Bid Price evaluation were established by the DPS Office of Accounting, Audits and Finance, revised February 8, 2023.

6 PRELIMINARY RANKING, PORTFOLIO EVALUATION, AND FINAL AWARD GROUP

6.1 Preliminary Rank Order

A preliminary final ranking of Bid Proposals will be established based on the sum of the consensus TEP scores for each non-price category (Project Viability and OpFlex and Incremental Economic Benefits), and the points awarded for the Levelized Net REC Cost as a result of the Bid Price evaluation.

6.2 Portfolio Risk Factors

Following the development of the preliminary rank order, NYSERDA may recommend modifying the award group, in consultation with DPS, to make adjustments to the final recommended award group. NYSERDA may consult with subject matter experts, including DPS Staff, NYISO, and the distribution utilities to assess the portfolio of received bids to inform the potential employment of a Portfolio Risk Factor(s).

NYSERDA, in consultation in DPS, may recommend adjustments to the final award group to (1) remove Bid Proposals from the final award group to avoid material risks to the portfolio (as described in factors 1-4 below), and/or (2) add Bid Proposals to the final award group that provide material benefits to the portfolio (as described in factors 1-4 below). Any additions will be made in accordance with the order of the initial preliminary ranking. NYSERDA, in consultation with DPS, may make such adjustments if the adjustments result in:

- 1) A decrease in a heavy concentration of renewable generation in a location within the award group and/or among previously contracted projects;
- 2) A decrease in a heavy concentration of any one technology comprising the award group;
- 3) A portfolio that results in lesser estimated levels of physical curtailment to itself and/or the existing portfolio of contracted renewable projects to New York State and/or to other proposed RESRFP23-1 awardees, and/or that includes projects/project configurations that reduce incremental curtailment and/or electric systemwide production costs; and/or
- 4) A portfolio that results in materially lesser risk of project attrition that includes projects/project configurations with low permitting feasibility risk.

These modifications may be made if comparable projects based on price and non-price factors are available in the preliminary ranking of Bid Proposals and material benefits or avoidance of material risks to the final award group are identified.

6.3 Final Award Group

After determining whether any of the Portfolio Risk Factors should be employed to modify the final rank order, NYSERDA and DPS will arrive at a final award group. NYSERDA and DPS may also establish a waitlist of Bid Facilities in rank order for Bid Facilities ranked below those Bid Facilities offered an initial award. The submission of a Step Two Bid Proposal will constitute a binding offer to contract under the terms of the Agreement; such offer must remain open for a period of at least one hundred and twenty (120) days from the Step Two Bid Proposal deadline.

NYSERDA reserves the right to reject or accept any or all bids. NYSERDA may consider information provided by a Proposer in response to requests for additional information in accordance with Section 9

or otherwise obtained by NYSERDA as to indictments, convictions, enforcement proceedings, investigations, and significant character or ethical questions in accepting or rejecting a bid. NYSERDA also reserves the right to solicit revised Bid Prices and/or to make counteroffers as it deems appropriate. Notification of a re-bid, counteroffer or selection will be made by voice communication and via the solicitation website to the Proposer's Project Sponsor(s). Proposer's Project Sponsor(s) must be authorized to respond and to commit to counteroffers on behalf of Proposer.

NYSERDA will then notify Proposers with Bid Facilities contained in the final award group both by voice and written communication to Proposers' Project Sponsor(s) and Authorized Representative(s). In accordance with the Non-Disclosure Agreement submitted by Proposers in the Step Two Bid Proposal, Proposers awarded a REC Agreement under RESRFP23-1 will be required to maintain the confidential nature of the award prior the public announcement of the RESRFP23-1 final award group. The date upon which NYSERDA provides such written notification shall be the Award Notification Date. Once selected for an award, Proposers must negotiate a final version of the Agreement with NYSERDA. As a reminder, NYSERDA cannot adjust the Fixed or Index REC Bid Price and other settlement-related terms submitted by Proposers following the notification of an award, either upon award or during the Contract Tenor, unless such adjustment is explicitly defined in the RESRFP23-1 Standard Form Agreement. NYSERDA will not entertain requests for material modifications to the Standard Agreement.

7 POST-AWARD PROCESS

7.1 Award Notifications and Confidentiality

The Proposer shall not distribute any press release or contact the media until after the contract is executed by both parties and any New York State press releases regarding the awards have been issued. Proposers will be required to execute a Non-Disclosure Agreement as part of the Step Two Bid Proposal, covering the period of time between award notification and contract execution. If the Proposer wishes to contact the press regarding the award, the Proposer must collaborate with NYSERDA's Large-Scale Renewables Team and the Director of Communications to prepare any press release and/or to plan for any announcement. NYSERDA will inform Proposers whether or not they are selected for award. Upon receipt of this notification, a Proposer may request to schedule a debrief on the selection process and the strengths and weaknesses of its Proposal by contacting res@nyserdera.ny.gov.

7.2 Provision of Contract for Execution

NYSERDA will prepare a conformed copy of the RES Standard Form Agreement (Attachment A) which will be delivered to the Proposer, in a manner to be agreed upon, for Proposer's execution and return.

NYSERDA may rescind awards to Proposers who fail to provide Contract Security within thirty (30) days of the Award Notification Date or who fail to execute the Agreement within a reasonable amount of time. If a Bid Facility is awarded a contract under RESRFP23-1 and the Proposer fails to execute NYSERDA's RES Standard Form Agreement within a reasonable time following notification of an award, the Bid Facility may not be eligible to participate in the next NYSERDA Tier 1 solicitation and may forfeit the initial Contract Security referenced in Section 7.3 below.

NYSERDA may publish the executed Agreements, and/or relevant terms within the Agreements, executed with awardees. Prior to such publication, NYSERDA will redact any critical electric infrastructure information contained in the Agreements, if any, including in the exhibits thereto, and will consider requests to redact confidential business information; provided, however that NYSERDA will not entertain any request to redact price information contained in the Agreement, specifically the Bid Price.

7.3 Provision of Contract Security

Unless otherwise agreed to by NYSERDA in writing, Contract Security in the amount of the product of the Bid Capacity (MWac) (or End of Useful Life Bid Capacity for Repowerings) and \$20,000 will be required within thirty (30) days of the Award Notification Date. NYSERDA accepts Contract Security in the form of cash, certified funds, or a Letter of Credit. The criteria for accepting a LOC includes:

- 1) the issuing bank is an owner bank of The Clearing House,⁶⁸ or
- 2) the issuing bank must have a credit rating of A or better by Standard and Poor's, A or better by Fitch, or A2 or better by Moody's; and
- 3) the issuing bank must be a United States bank, or a United States branch of a foreign bank, with a New York branch preferred.

⁶⁸ Please see the owner bank membership for The Clearing House available from <https://www.theclearinghouse.org/about/owner-banks>

NYSERDA has included a standard form of letter of credit in the RES Standard Agreement (Attachment A). If the issuing bank seeks modification to these terms, NYSERDA recommends that a draft letter of credit should be sent to NYSERDA for review and consideration prior to issuance.

7.4 Documents Required for Contracting Purposes

NYSERDA requires the following documents prior to contract execution:

- 1) Contracting Form, to be provided by NYSERDA to Seller, requesting information such as Legal Business Name, State of Incorporation, Tax Identification Number (EIN), and other contractual information; and
- 2) Pursuant to Tax Law Section 5-a, if not previously filed for the Seller, form Tax Law ST-220-TD is required. Please consult Publication 223, Questions and Answers Concerning Tax Law Section 5-1. If filing for the first time, please indicate the “Seller” under “Contractor name” on the form. This form is filed with the NYS Tax Department and NYSERDA does not need a copy. If previously filed for the Seller, a completed form Tax Law ST-220-CA. On this form, Sellers will indicate to NYSERDA that they have filed the ST-220-TD form or the Seller previously filed ST-220-TD with the Tax Department. As a reminder, please indicate the “Seller” under “Contractor name” on the form; and
- 3) Certificate of Incorporation; and
- 4) A certificate of an appropriate officer of the Seller, in form and substance certifying: (1) the names and signatures of the officers of the Seller authorized to sign any documents to be delivered to NYSERDA under the conformed RES Standard Form Agreement, and (2) the accuracy and completeness of resolutions of the Seller, authorizing and approving all matters in connection with the transactions contemplated in the conformed Agreement. NYSERDA does not have a preferred standard.
- 5) Updated EO 16 Certification and/or Vendor Responsibility Questionnaire, if applicable.

7.5 Department of Agriculture and Markets Section 305 Notice Information (NOI)

For awarded solar Bid Facilities with a Nameplate Capacity less than 25 megawatts and located in a New York State Agricultural District, Proposers may be required to provide to NYSERDA a report including all information required by Section 305(4)(b) of the Agriculture and Markets Law. NYSERDA reserves the right to expand this requirement to Bid Facilities greater than 25 megawatts and/or Bid Facilities sited outside of Agricultural Districts pending the applicable permitting processes in place at the time of award and contracting.

A map of the agricultural districts, by county, is available from New York State Department Agriculture and Markets (AGM).⁶⁹

7.6 Public Release of Bid Facility Information

If Bid Facility characteristics change between Bid Proposal and Award, Proposers are required to submit an updated Attachment B. Public Release of Bid Facility Information to NYSERDA within 10 business days of such change. The updated Attachment B will be made available to the public by NYSERDA. NYSERDA

⁶⁹ New York State Agriculture and Markets Agricultural Districts is available by county at <https://cugir.library.cornell.edu/?utf8=%E2%9C%93&q=nys+agriculture+districts>

will not redact any information provided on the updated Attachment B, in order to ensure transparency with the public.

7.7 Non-disclosure Agreement/Waiver for Interconnecting Authority

The Proposer shall waive confidentiality with the pertinent Interconnecting Authority after the RES Agreement has been executed.

7.8 In the Matter of a Renewable Energy Facility Host Community Benefit Program (Case Number 20-E-0197)

Upon Agreement execution, NYSEDA is required to inform impacted Utilities serving residential customers proximate to the Bid Facility's location and file with PSC in case 20-E-0249 pursuant to the PSC's Order in Case Number 20-E-0249. Prior to Agreement execution, Sellers will confirm the Utility(ies) for residential customers in the project area (i.e., City(ies) and Town(s)) where projects are located for the purpose of compliance with PSC Host Community Benefit Program in DPS DMM Case Number: 20-E-0249. NYSEDA will include the Facility Name, Nameplate Capacity (MWac), Utility, NYISO Queue Position, and Potential Host Community(ies) in the communication. Note that these towns are not AHJs, but the city(ies) and town(s) associated with the physical location of the project as bid to NYSEDA.

8 RES STANDARD FORM AGREEMENT

NYSERDA recommends that Proposers review the Standard Form Agreement (Agreement), Attached hereto as [Attachment A](#), and all associated Exhibits prior to participating in RESRFP23-1. Proposers that were previously awarded a Tier 1 REC Agreement are also recommended to closely review Section 2.2 of RESRFP23-1 and [Attachment I. Mutual Termination Agreement](#). The Agreement is a legally binding document; it is recommended that Proposers consult with an attorney prior to submitting a Step Two Bid Proposal. NYSERDA cannot adjust the binding Fixed or Index REC Bid Price or other settlement-related terms submitted by Proposers as part of a Step Two Bid Proposal.

8.1 Conditions/Contingencies

NYSERDA may include conditions and/or contingencies to address matters concerning any issues regarding the viability or siting of a Bid Facility, or where the build environment is contingent or conditional on governmental rescission, modification or change in local law, temporary or permanent.

8.2 Material Changes to Bid Proposal/Agreement Terms

NYSERDA will not make material adjustments or adjust any award to accommodate changes unforeseen by the developer, including the Index REC Strike Price or Fixed REC Price. Bid Facilities awarded under RESRFP23-1 that do not execute an Agreement may be barred from future participation in RES Solicitations. For Upgrades, Repowerings, Return To Service generation units and other special circumstances, depending on the scope of such Proposals, NYSERDA may require additional modifications to the Standard Form Agreement to assure consistency among the basic commercial terms contained therein.

9 GENERAL CONDITIONS

9.1 Proprietary Information

Consideration should be given before confidential information is submitted to NYSERDA as part of any Proposal. Proposers should consider and review whether information is critical for evaluation, and whether general, non-confidential information may be adequate for review and evaluation purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. The Public Officers Law includes exceptions to disclosure, including Section 87(2)(d) which 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." Additional information submitted to NYSERDA that 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 (<https://www.nyserda.ny.gov/about/new-york-state-regulations>).

However, NYSERDA cannot guarantee the confidentiality of any information submitted. NYSERDA reserves the right to make public, after the fifth anniversary of the award date, the Agreement executed with any awarded Proposal.

9.2 State Finance Law Sections 139-j & 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 <https://ogs.ny.gov/acpl>.

Proposer must certify that he/she will comply with State Finance Law Sections 139-j and 139-k and a provide disclosure statement regarding whether Proposer has been found non-responsible under Section 139-j of the State Finance Law within the previous four years.

9.3 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>.

9.4 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 Proposers, 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
30 South Pearl Street
Albany, NY 12245

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

Empire State Development
Minority and Women's Business Development Division
30 South Pearl Street
Albany, NY 12245

9.5 Disclosure Requirement

All Proposers shall disclose any indictment for any 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, investigation, enforcement proceeding, 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.

9.6 Press Releases and Media Contact

All Proposers shall not distribute any press release or contact the media until after the Agreement is executed by both parties and any New York State press releases regarding the awards have been issued. If Proposer wishes to contact the press regarding the award, Proposer must collaborate with NYSERDA's Designated Contacts and Director of Communications to prepare any press release and/or to plan for any announcement. NYSERDA reserves the right to make public, after the fifth anniversary of the Award Notification Date, the Agreement executed with any awarded Bid Facility.

9.7 Independent Entities/Limitation of Liability

Neither this RFP nor any other aspect of this solicitation shall create an agency, partnership, joint venture, or co-tenancy relationship among the members of the Evaluation Team, or any other individuals or entities involved in the development or administration of this RFP (collectively, the "RFP Parties"), nor any other relationship or liability beyond those (if any) explicitly adopted in writing and executed by authorized representatives of the applicable RFP Parties. None of the RFP Parties shall be

liable for any act or omission of any other RFP Party. Neither this RFP nor any other aspect of this solicitation creates or is intended to create third-party beneficiaries hereunder. In no event will an RFP Party be liable to any person for special, incidental, punitive, exemplary, indirect or consequential damages or lost profits, whether by statute, in tort or contract or otherwise.

9.8 Vendor Assurance of No Conflict of Interest or Detrimental Effect

The proposer shall disclose any existing or contemplated relationship with any other person or entity, including any known relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the proposer or former officers and employees of NYSERDA, in connection with proposer's rendering services as proposed. If a conflict does or might exist, please describe how your company would eliminate or prevent it. Indicate what procedures will be followed to detect, notify NYSERDA of, and resolve any such conflicts.

The proposer must disclose whether it, or any of its members, or, to the best of its knowledge, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, the "Commission on Public Integrity"), and if so, a brief description must be included indicating how any matter before the Commission on Public Integrity was resolved or whether it remains unresolved.

9.9 Public Officers Law

For any resulting awards, the Contractor and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). Proposers are reminded of the following Public Officers Law provision: contractors, consultants, vendors, and subcontractors may hire former NYSERDA employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of NYSERDA may neither appear nor practice before NYSERDA, nor receive compensation for services rendered on a matter before NYSERDA, for a period of two years following their separation from NYSERDA service. In addition, former NYSERDA employees are subject to a "lifetime bar" from appearing before any state agency or authority or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration during their tenure with NYSERDA.

Any awardee will be required to certify that all of its employees, as well as employees of any subcontractor, whose subcontract is valued at \$100,000 or more who are former employees of the State and who are assigned to perform services under the resulting contract, shall be assigned in accordance with all Ethics Requirements. During the term of any agreement, no person who is employed by the contractor or its subcontractors and who is disqualified from providing services under the contract pursuant to any Ethics Requirements may share in any net revenues of the contractor or its subcontractors derived from the contract. NYSERDA may request that contractors provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York

State Joint Commission on Public Ethics. NYSEERDA shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed would be in conflict with any of the Ethics Requirements. NYSEERDA shall have the right to terminate any contract at any time if any work performed is in conflict with any of the Ethics Requirements.

9.10 Due Diligence

NYSEERDA, at its discretion, may conduct broad due diligence to validate any or all elements of an application and to assess applicants' prospects of success, including gathering information to assess a proposal relative to any of the topics listed in evaluation criteria, whether or not such topic is explicitly addressed in a proposal. NYSEERDA may conduct due diligence on some or all proposals based on NYSEERDA's current guidelines at the time of a review. NYSEERDA staff may follow up with proposers to request additional information or clarification regarding applicant's proposal, including questions regarding applicant's business prospects and resources, whether or not those questions are specifically related to the elements of the proposal. Additionally, customized due diligence may be conducted by internal or external staff or contractors based on questions on any proposal raised by NYSEERDA staff and/or the Scoring Committee. Due diligence may include (but is not limited to): interviews of independent references and background checks of team members; assessment of prior business experience of any team member associated with a proposal; research on intellectual property claims; customer and partner reference checks; market research on the applicants' target market and any other related or possibly competitive technology or market area; research to validate any assumptions on current or future revenues, costs, capital needs, and financing prospects for proposers' business, including similar (or unrelated) technologies, processes, or competitive solutions; or any other research that could reasonably inform the evaluation of a proposal, or the prospects for commercial success of the proposers' business (whether directly related to, or unrelated to the specific elements in a proposal). Due diligence may include discussions with proposers' former and current business partners, employees, investors, customers, and competitors. Due diligence may be conducted by NYSEERDA personnel or contractors including members of the scoring committee, before, during, or after a scoring process, and prior to finalization of a contract award, any information gleaned in diligence may be used to score or re-score a proposal or apply a program policy factor.

9.11 Executive Order No. 16

Pursuant to Executive Order No. 16 (EO 16) issued on March 17, 2022, all vendors responding to bids or contracting with New York State must certify, using the form noted in Section 3, their status with regard to conducting business operations in Russia, and that any such business operations in Russia conducted on behalf of the vendor are determined to be permitted under any of the allowable exemptions. The term vendor is intended to encompass bidders prior to contract award, contractors who have received a contract award, contract assignees, or contractors for whom an extension to an existing contract is being pursued. Exemption decisions are in NYSEERDA's sole discretion and are final decisions. NYSEERDA reserves the right to solicit additional materials or information regarding the responses or materials provided by a vendor.

Pursuant to EO 16, all vendors will be vetted to ensure that they are not on the federal sanctions list at <https://sanctionssearch.ofac.treas.gov/>. There is no waiver or exemption process for vendors appearing on the federal sanctions list.

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case sanctions are lifted during a solicitation, or after award in the case of some solicitations.

9.12 Executive Order No. 192

As per Executive Order 192, NYSERDA is required to do business only with responsible entities. As a result, a Vendor Responsibility Review will be conducted for all RESRFP23-1 Step One Proposers. The Vendor Responsibility Checklist requires that the Proposer answer a series of questions regarding the Proposer, and the directors, employees and agents of Proposer and any affiliate of Proposer with respect to: (1) current investigation(s) by any governmental agency; (2) convictions or established liability for any act prohibited by State or Federal law in any jurisdiction involving conspiracy, collusion or other impropriety with respect to offering on any contract; or (3) any debarment action (detail any exceptions), within the last 4 years.

The Vendor Responsibility Checklist will also include the Proposer's attestation regarding the accuracy and truthfulness of the information and documentation provided by the Proposer. The NYSERDA Large-Scale Renewables program team will review the responses to the Vendor Responsibility Checklist and reserves the right to make a determination of vendor responsibility if a non-responsibility concern is noted.