Investment Banking and Underwriting Services
Request for Proposal (RFP) 4152

Proposals Due: August 12, 2019 by 3:00 p.m. Eastern Time*

The New York State Energy Research and Development Authority (NYSERDA) requests proposals from firms interested in providing investment banking and underwriting services related to the competitive or negotiated sale or private placement of bonds by NYSERDA, or the sale or financing of loans issued by NYSERDA, in connection with NYSERDA's Green Jobs – Green York (GJGNY) Loan Program, or for other clean energy financing program activities through its Clean Energy Fund. NYSERDA expects to award a contract to a single firm or a single contract to a teaming arrangement of firms. The contract term is anticipated to be five years. NYSERDA is requesting responses from firms interested in providing these services as a Senior Manager. NYSERDA will consider firms with an underwriting practice whose scope is either national and/or focused on the Northeast region. Firms must either be New York State (NYS)-certified minority-and women-owned business enterprises or must partner with a NYS-certified minority-and women-owned business enterprises as a Co-Senior Manager.

**Proposal Submission:** Online submission is preferable. Proposers may submit Word, Excel, or PDF files (file formats include: csv, doc, docx, gif, jpeg, jpg, pdf, png, ppt, pptx, pps, ppsx, tif, txt, xls, xlsx, and zip). Individual files should be 100MB or less in file size. Proposal PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility. Files should not be scanned. For ease of identification, all electronic files must be named using the proposer's entity name in the title of the document. NYSERDA will also accept proposals by mail or hand-delivery if online submission is not possible. For detailed instructions on how to submit a proposal (online or paper submission), click the link "Application Instructions and Portal Training Guide [PDF] " located in the "Current Opportunities" section of NYSERDA's website (https://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx).

No communication intended to influence this procurement is permitted except by contacting Heather J. Clark at (518) 862-1090, ext. 3253 or by e-mail heathersolicitations@nyserda.ny.gov. If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507 or venicesolicitations@nyserda.ny.gov. Contacting anyone other than the Designated Contacts (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

* **All proposals must be received by 3 p.m. Eastern Time on the date noted above. Late, faxed, or emailed proposals will not be accepted.** Incomplete proposals may be subject to disqualification. It is the proposer's responsibility to ensure that all pages have been included in the proposal. Please note: for online submission, there are required questions that you will have to answer in addition to uploading attachments and you should allot at least 60 minutes to enter/submit proposals. The online proposal system closes promptly at 3 p.m. Eastern Time, files in process or attempted edits or submission after 3 p.m. Eastern Time on the date above, will not be accepted. If changes are made to this solicitation, notification will be posted on the "Current Opportunities" section of NYSERDA's website (https://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx).

## I. Introduction

NYSERDA is a public benefit corporation created in 1975 under Article 8, Title 9 of the State Public Authorities Law through the reconstitution of the New York State Atomic and Space Development Authority.

NYSERDA is responsible for administering the GJGNY Loan Program which was authorized by Title 9-A of Article 8 of the Public Authorities Law of the State of New York, as amended (known as the Green Jobs-Green New York Act of 2009 and hereinafter referred to as the GJGNY Act) to establish a program to provide funding to support sustainable community development, create opportunities for green jobs, and establish a revolving loan fund to finance energy audits and energy efficiency retrofits or improvements, including solar energy and other renewable installations, for the owners of residential 1-4 family buildings, and owners, tenants or managers of buildings occupied by small businesses (100 employees or less) and not-for-profit corporations, or multifamily (5+ unit) buildings. To date, the GJGNY Loan Program Revolving Fund has been funded with approximately $123 million from funding acquired by auctioning carbon emission credits through the Regional Greenhouse Gas Initiative ("RGGI"). The legislation limits the amount of energy efficiency loans to not more than $13,000 for residential homes or $26,000 for small businesses/not-for-profits (these limits are increased to $25,000 and $50,000, respectively, for projects with a payback of 15 years of less), and NYSERDA program standards limit the loan amount for multifamily buildings at not more than $500,000 per building.

Residential unsecured consumer loans were launched in November 2010. Loans are issued by a not-for-profit program lender, Slipstream Group Incorporated, using loan underwriting standards established by NYSERDA. The loans are then serviced by a third-party loan servicer, Concord Servicing Corporation.

In August 2011, the Power NY Act of 2011 was enacted authorizing NYSERDA loans issued through the GJGNY Loan Program to use an on-bill recovery mechanism to allow loans to be repaid through a charge on the customer's electric or gas utility bill. In March of 2012, NYSERDA began to issue on-bill recovery loans for residential loans.

GJGNY Loan Financing - Residential

Following is a comparison of the terms and conditions for residential loan financing to be offered through the GJGNY Loan Program:

| LOAN TERMS | | |
|---|---|---|
| **Loan Type** | **Smart Energy Loan** | **On-bill recovery financing loan** |
| **Borrower Eligibility** | An applicant who owns a 1-4-unit residential building, or who leases or manages such building and who has the authority to contract for energy efficiency improvements in the structure. | An applicant who owns a 1-4-unit residential building and who is named on the utility account of one of the following participating utilities: Central Hudson, Con Edison, Long Island Power Authority, National Grid (upstate), New York State Electric and Gas Corporation, Orange & Rockland, Rochester Gas and Electric |
| **Repayment Terms** | - Repaid directly to NYSERDA's loan servicer through monthly statement billing or monthly electronic (ACH) payment<br>- If you sell or transfer your property, you remain responsible for the outstanding balance of the loan and the loan may not be assigned | - Repaid through NYSERDA Loan Installment charge on utility bill<br>- Nonpayment subject to termination of utility service<br>- Remaining monthly installments transferred to new utility account holder upon sale or transfer unless satisfied; requires notice to be provided to purchaser; the initial borrower is responsible for any amounts billed on the utility account up to the date of transfer<br>- Requires a declaration to be executed by the property owner and filed with the County Clerk in the county in which the installation property is located. |
| **Improvements Eligible for Financing** | Eligible energy efficiency improvements to a 1-4-unit residential building by a participating BPI-accredited Home Performance with ENERGY STAR contractor. The cost of the financed improvements must be less than the estimated energy savings over the anticipated life of the improvements. | |
| **Loan Term** | 5, 10, or 15 years; term may not exceed expected useful life of measures | Same as Smart Energy Loan.<br>In addition, monthly loan installment payment amount may not exceed 1/12$^{th}$ of estimated annual energy savings |
| **Interest Rate *** | Borrowers with household income less than or equal to 120% of county median income = 3.49%<br>Borrowers with household income greater than 120% of county median income = 6.99% | |
| **Fees** | Lender processing fee ($150), may be included in amount financed<br>$10 late payment fee; $20 fee for returned payments | Lender processing fee ($150), may be included in amount financed<br>Utility late payment charge of 1.5%; utility reconnection charge |

* Subject to change, based on Area Median Income (AMI). On-Bill Recovery Loans and Smart Energy Loans repaid by Automatic Clearing House (ACH) payment receive a .5% interest rate reduction; if paid by check/statement billing, the interest rates are 3.99% and 7.49%.

Following are residential loan underwriting standards used in the program:

| LOAN UNDERWRITING STANDARDS | | |
|---|---|---|
| **Standard** | **"Tier 1" Loans** | **"Tier 2" Loans** |
| **Minimum FICO or alternate** | 640 | 540 |
| **Max Debt-to-Income ratio** | No limit for credit score 780+<br>Up to 50% for credit score 640-779 | - Up to 80% for credit score 680-779<br>- Up to 75% for credit score 600-679<br>- Up to 70% for credit score 540-599<br><br>Regardless of credit score:<br>- Up to 100% for energy efficiency project where the borrower is income-eligible for Assisted Home Performance with ENERGY STAR® ("AHPwES") incentives (up to $4000/50% of project cost). |
| **Mortgage payment history** | None | If 640+ credit score and no other violation causes loan to be Tier2, no mortgage payment history is needed.<br><br>Otherwise, current on all mortgage payments, if any (as reported on the credit report), for the past 12 months. No mortgage payments more than 60 days late during the past 24 months. |
| **Bankruptcy** | No bankruptcy within last 7 yrs | No bankruptcy within last 2 yrs |
| **Judgments** | No outstanding collections, judgments or tax liens > $2,500 | |

As of 3/31/2019, NYSERDA has issued 24,873 residential unsecured consumer loans totaling approximately $291.3 million in capital and with a current loan balance of $203.9 million. Following are summary statistics of the current loan portfolio:

| | |
|---|---|
| Weighted average FICO score | 742 |
| Weighted average term | 174.2 months |
| Weighted average interest rate | 3.81% |
| Average loan amount | $11,711 |
| Average loan balance | $8,196 |

Summarized information and anonymized loan-level details on the attributes and payment performance history on the residential program loan portfolio is available on NYSERDA's website and the OpenNY platform at: https://www.nyserda.ny.gov/Researchers-and-Policymakers/Green-Jobs-Green-New-York/Data-and-Trends.

GJGNY Loan Financing – Small Commercial, Not-for-Profit and Multifamily Buildings

In June 2011, NYSERDA began offering loans through the GJGNY Loan Program for energy efficiency improvements in buildings for small businesses, not-for-profits, and multifamily buildings. These loans are made by participating lenders, who originate, fund, and service the loans. NYSERDA enters into a participation agreement through which NYSERDA provides a portion of the lender's loan amount (up to 50% of the loan, up to $26,000/$50,000 for small businesses and not-for-profits, and up to $500,000 for multifamily buildings) at no interest, with the lender and NYSERDA sharing on a pro-rata basis on any loan defaults. NYSERDA's share of these loans are funded from the GJGNY revolving loan fund. NYSERDA began offering loans for these borrowers through an on-bill repayment mechanism in July of 2013. As of 3/31/2019, NYSERDA has issued 108 loans for small businesses, not-for-profits, and multifamily buildings totaling approximately $6.2 million in capital and with a current loan balance of $2.0 million.

As a means of leveraging the GJGNY Loan Program's initial revolving loan funding capital, particularly for the residential loans, NYSERDA has issued six series of bonds in an aggregate amount of $176.4 million, consisting of three series of Residential Energy Efficiency Revenue Bonds, two series of Residential Solar Loan Revenue Bonds, and the most recent issue consisting of both Residential Energy Efficiency and Solar Loan Revenue Bonds. NYSERDA will continue to access the secondary markets for best execution, using various execution approaches, including but not limited to securitization, back-levered, whole-loan sales, and participation certificates and syndication (Secondary Market Execution) to leverage the GJGNY Loan Program funding capital for the residential loans and possibly for loans issued by NYSERDA for small business, not-for-profits and multifamily buildings repaid through utility installment charges. Each series of program bonds is issued under a separate bond resolution and is secured by repayment income on loans made through the GJGNY Loan Program, funds held under the bond resolution as security for that series of program bonds, as well as funds and accounts held under the resolution as security for all program bonds.

NYSERDA may also issue additional bonds, notes and other obligations, the proceeds of which are used to promote activities in the Clean Energy Fund.

For a more detailed description of the GJGNY Loan Program, please visit NYSERDA's website at https://www.nyserda.ny.gov/All-Programs/Programs/Residential-Financing-Options or https://www.nyserda.ny.gov/Researchers-and-Policymakers/Green-Jobs-Green-New-York.

For the final ratings report for NYSERDA's Residential Solar and Energy Efficiency Financing Green Revenue Bonds, Series 2019A please visit https://www.krollbondratings.com/show_report/16539. For the official statement for Series 2019A please visit https://emma.msrb.org/IssueView/Details/ER389369.

Senior and Co-Senior Manager will be expected to provide comprehensive "book-running" services related to the structuring, marketing, selling, and underwriting of NYSERDA's GJGNY Secondary Market Execution. This shall include, but may not be limited to, the services listed below. Note that if the bonds are sold through a private placement, or through some other form of sale or financing of the loans issued, this Scope of Services would be modified accordingly.

- Identify opportunities in the market for NYSERDA;
- Develop and analyze potential financing structures and advising, in consultation with NYSERDA's financial advisor and bond counsel, on the development of the overall financing plan;
- Run "Best Execution" analysis for market execution using industry standards analytics, approaches and modeling assumptions – possibly using Intex, T-REX, or other analytical tools for arbitrage pricing and bond sizing to maximize proceeds and reduce cost of capital / funding, marketing and underwriting;
- Creating an overall marketing plan and pricing strategy for each bond sale;

- Provide relevant market and economic data, pricing views, comparable prices, and pricing proposals prior to pricing;

- Preparation of strategy for presentations to rating agencies, credit enhancers, and investors, as necessary and assist the Authority and its financial advisors in obtaining ratings;

- Follow Authority policies, either oral or written, for liability, designation and retention, pricing procedures and the process of selling debt obligations;

- Underwrite the bonds; and

- Post-pricing support; including:

    - Fulfillment of orders and allotments, upon approval of Authority;

    - Market support for underwritten bonds; and

    - Provide all relevant pricing information to Authority, including orders (retail, member, priority), debt service schedule, rates, yields, true interest cost, information related to comparable transactions.

- Provide support and service in selling existing loan portfolios.

## II. Proposal Requirements

Both Senior Manager and, if applicable, Co-Senior Manager shall complete the proposal requirements.

Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. To be considered, the proposals must respond to the questions and requests listed below. Failure to respond to the questions or provide information as requested may be deemed unresponsive. Proposals should not exceed twenty (20) pages, excluding required attachments and signed cover letter. NYSERDA will not be responsible for any costs or expenses incurred by respondents responding to this RFP, including the cost of preparing the initial response, providing any additional information and traveling for an oral presentation. Proposals and attachments should be uploaded as individual documents.

Each page of the proposal should state the name of the proposer, the RFP number, and the page number. The proposal must be in the following format:

### Section 1. Background Information

1. **Cover Letter**. Cover letter shall be signed by a person authorized to commit the firm to the terms of the response and to be held primarily responsible for the veracity of statements made in the response.

2. **Description of Firm**. Provide a brief description of your firm, its capabilities and organizational structure. Please describe how your firm's selection would benefit NYSERDA and why your firm should be appointed as a senior manager, including a description of the firm's strengths and any other factors that should be considered in the selection process.

3. **Approach to Services Requested**. Present your firm's approach to complete the services requested in Section I above. Describe your firm's in-house technical and analytical abilities.

4. **Key Personnel**. Identify and describe the qualifications of key personnel and team members that will be involved in underwriting NYSERDA's debt, including their role and the extent of their participation, their capabilities and relevant experience. Please limit this list to those who will actively work on NYSERDA's account. The respondent should include resumes and all NYSE/NASD registration information for all key personnel in an appendix (appendix will not be counted against page limit). The respondent should also include information relating the position and importance of the public finance department within the firm as well as current staffing levels and any known or proposed changes to those staffing levels. Please be specific for the following duties (if applicable), providing telephone and fax numbers, mailing address and e-mail address for each individual:
    (a) primary contact/day-to-day responsibilities,
    (b) financial analysis,
    (c) new products,
    (d) marketing and sales,
    (e) underwriting.

5. **Capital/Liquidity**. Attach your firm's most recent quarterly financial statements. Please discuss your firm's capital structure including its total capital, equity capital, and excess net capital for each of the last three (3) years, and in accordance with SEC Rule 15c3-1. The bidder should demonstrate its capacity to successfully underwrite NYSERDA's tax-exempt or taxable debt, including the firm's ability to distribute bonds nationally. Discuss your firm's capital structure including total capital, equity capital, and uncommitted excess capital. Indicate how much of your firm's uncommitted excess capital is allocated to municipal finance and provide recent examples of how the firm has used that capital to support the sale and market distribution of tax-exempt or taxable municipal bonds. Provide the minimum and maximum bond par amounts that your firm would be comfortable with as a senior manager. The respondent should identify any commitments or other restrictions which may limit its ability to underwrite NYSERDA's debt. Please include the name, address, email address, phone number, and fax number of the contact person who is authorized to answer questions and negotiate final terms and conditions on behalf of your firm.

6. **Relevant Experience and Past Performance**: Describe recent underwriting work which best illustrates the firm's most relevant experience, ability, and expertise, including your firm's experience underwriting Asset Backed Securities and your strategy for issuing these bonds in conjunction with a pooled loan program. Provide a brief history and a general description of underwriting practices, highlighting particular experience with New York based clients, asset-backed issuers and pooled financings. Please summarize your firm's negotiated underwriting experience with leveraged pooled transactions from 2016 to date. For each issue please list your firm's role (Senior Manager, Co-Senior Manager, or Co-Manager), the issuer, the overall size of the issue, the related pricing date, the orders placed by your firm and the amount of bonds allotted to your firm.

7. **Credit Ratings**. Please discuss your approach to assisting NYSERDA rate a transaction similar to Residential Solar Loan Revenue Bonds or Residential Energy Efficiency and Solar Loan Revenue Bonds comparable to NYSERDA's last two bond issues sold in 2018 and 2019. Include a discussion of which rating agencies should be used between Moody's, Standard and Poor's, Fitch, and Kroll.

8. **Marketing**. Please provide your firm's distribution capabilities. What would your firm propose as an investor outreach plan? How would you suggest NYSERDA market Residential Solar Loan Revenue Bonds or Residential Energy Efficiency and Solar Loan Revenue Bonds comparable to NYSERDA's last two bond issues sold in 2018 and 2019? How would you maximize investor participation? How do you suggest NYSERDA structure the bonds to focus sales to sophisticated investors? Discuss any potential limitations on suggested approaches and the impact that this may have on investor participation. Discuss whether the bonds should be structured/designated as municipal bonds or corporate bonds and how this is expected to impact investor interest and orders.

9. **Bond Structuring and Sale**. What is your underwriting desk's approach to structuring and pricing a transaction similar to Residential Solar Loan Revenue Bonds or Residential Energy Efficiency and Solar

Loan Revenue Bonds comparable to NYSERDA's last two bond issues sold in 2018 and 2019? Include the following in your discussion:

- What software or structuring application does your firm use? What type of access is given to NYSERDA and its financial advisor?
- How your firm would structure the bonds to minimize NYSERDA's required equity contribution and maximize the advance rate (In its most recent Series 2019A bonds, based on the characteristics of the pledged loan portfolio and Kroll's CPR and stress case loss assumptions, the structure resulted in bond principal equal to about 73% of pledged loan principal, requiring an equity contribution equal to about 27% of pledged loan principal; NYSERDA seeks to minimize its equity funding contribution while still allowing a financing product with attractive terms to encourage consumer access, particularly to support broadening access to financing to lower income and lower credit consumers).;
- What call and redemption provisions would provide for an optimal structure and result in the best pricing for NYSERDA;
    - If the suggested structure includes a supersinker term bond, how can NYSERDA achieve the lowest rate and spread on this bond at pricing?

- What would be your firm's major contribution to the structuring, marketing, pricing and distribution of NYSERDA's debt?
- Would you recommend an approach for financing the portfolio through a structure other than bond issuance? (e.g. whole loan sales) If so, provide a summary of the structure that you would propose including advantages and disadvantages of the approach.
- What is your firm's experience in arranging "Whole-loan" sales, including Reps & Warranties, Back-leveraged financing, participation, private rating or syndication structures?
- Has your firm developed a stochastic model for Solar loan / Lease Prepayments Projection (understanding the universe of solar loan performance) and a Default Projection model?
- Has your firm done any work on Solar Plant Performance modeling – Irradiance modeling, degradation modeling, and cell performance?

10. **Technical and Innovative Capabilities**. Please describe (no more than 3) transactions that your firm has senior managed for leveraged pooled transactions, demonstrating the technical and innovative capabilities of your firm. Describe how your firm assisted the issuer(s) in optimizing the benefits of the transaction. For each transaction listed, please provide the issuers name, issue date, amount involved, issuer contact and telephone number. Also, please discuss the benefits of using a privately placed sale instead of a public offering, and whether there would be any limitations with using this method.

**Section 2. NYSERDA Financial Strategy**

1. Programmatic/Structuring Changes. Describe any significant innovations your firm has made in the area of pooled or structured finance bond issues. What approach would you recommend for the GJGNY program?

2. Compensation. The proposal must include the underwriter's proposed fees on a per-bond basis. All proposers should submit fees that would be charged if the proposer were to serve as lead underwriter on NYSERDA's financing transaction. NYSERDA anticipates an annual financing transaction of approximately $15 million.

In compliance with §139-j and §139-k of the State Finance Law (see Section V, General Conditions below for additional information), proposers will be required to answer questions during proposal submission, which will include making required certification under the State Finance Law and to disclose any Prior Findings of Non-Responsibility.

## III. Proposal Evaluation

Proposals that meet Proposal requirements will be reviewed by a Scoring Committee based on the following areas of consideration, with the percentage weight of each category shown in parentheses. Oral presentations may be required of the top ranked Proposers. Presentations will be held at NYSERDA's offices located in Albany, New York at a date and time to be determined by NYSERDA.

1. Demonstrated Experience (25). Demonstrated experience as underwriter to complex, multiple participant revolving loan financings, in particular, programs similar in nature to the GJGNY Loan Program. Demonstration of the firm's commitment to providing a high level of responsive client service, including positive references for such experience.

2. Understanding of and Ability to Perform Scope of Services (20). Demonstrated understanding of the structure of GJGNY Loan Program, the ongoing work required by the scope of services and any additional services necessary for the success of the bond issuance.

3. Personnel (15). Demonstrated assignment of sufficient, qualified, and experienced professional personnel, with preference given to personnel experienced in providing services such as those contemplated by this RFP.

4. Underwriting Ability (15). Demonstrated ability of firm to underwrite and commit capital toward the underwriting of bond issuances.

5. Fees (25). The basis for the cost proposal evaluation rankings will be the fee compensation, on a per bond basis assuming a bond issue of $15 million, received from each proposer. The total price offers will be ranked with the low bid awarded the maximum of 25 points. The remaining proposals will be assigned scores based on the following formula:

$$\frac{\text{Total Fees for Lowest Bidder}}{\text{Total Fees Proposed by Bidder}} \times 25$$

If partnering with a NYS certified minority-and women-owned business enterprises firm as Co-Senior Manager, fee structure should include proposed compensation split between Senior and Co-Senior Manager, with a minimum of thirty (30) percent allocated to the NYS certified minority-and women-owned business enterprises Co-Senior Manager

NYSERDA reserves the right to accept or reject proposals based on the following factor(s):

- The degree to which pricing and hourly rates are in line with the rest of the market.

## IV. GENERAL CONDITIONS

**Proprietary Information** - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 https://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

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

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

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

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

**New York Executive Law Article 15-A** - NYSERDA is required under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of NYSERDA contracts. The MWBE participation goals and obligations of the selected Contractor are set forth in Attachment A.

**Diversity Practices** - NYSERDA has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practice of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement shall be required to include as part of their response, as described in Section III herein, Attachment B , Diversity Practices Questionnaire.

**New York State Executive Law Article 17-B**, NYSERDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified service-disabled veteran-owned business enterprises (SDVOB) in the performance of NYSERDA contracts. Executive Law Article 17-B and its associated regulations require, among other things, that NYSERDA establish goals for maximum feasible participation of New York State Certified SDVOBs in the performance of New York State contracts. The SDVOB participations goals and obligations of the selected Contractor are set forth in Attachment C.

**State Finance Law sections 139-j and 139-k** - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx. Proposers are required to answer questions during proposal submission, which will include making required certification under the State Finance Law and to disclose any Prior Findings of Non-Responsibility (this includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years).

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

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

**Contract Award** - NYSERDA anticipates making multiple, awards under this solicitation. NYSERDA anticipates a contract duration of five (5) years, unless NYSERDA management determines a different structure is more efficient based upon proposals received. A contract may be awarded based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each proposal should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA may at its discretion elect to extend and/or add funds to any project funded through this solicitation. NYSERDA expects to notify proposers by October 10, 2019 whether your proposal has been selected to receive an award. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

**Accessibility Requirements** - If awardees from this solicitation will be posting anything on the web, or if the awardee will produce a final report that NYSERDA will post to the web, the following language must be included. NYSERDA requires contractors producing content intended to be posted to the Web to adhere to New York State's Accessibility Policy. This includes, but is not limited to, deliverables such as: documents (PDF, Microsoft Word, Microsoft Excel, etc.), audio (.mp3, .wav, etc.), video (.mp4, .mpg, .avi, etc.), graphics (.jpg, .png, etc.), web pages (.html, .aspx, etc.), and other multimedia and streaming media content. For more information, see NYSERDA's Accessibility Requirements.

**Limitation** - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest. NYSERDA reserves the right to disqualify proposers based upon the results of a background check into publicly available information and the presence of a material possibility of any reputational or legal risk in making of the award.

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

**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, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

**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. NYSERDA 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. NYSERDA shall have the right to terminate any contract at any time if any work performed is in conflict with any of the Ethics Requirements.

## V. Attachments:

Attachment A- Article 15-A (MWBE) Solicitation Provisions (non-construction)
Attachment B - Diversity Practices Questionnaire
Attachment C - Article 17-B (SDVOB) Solicitation Provisions (non-construction)
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