



Commercial New Construction Program Opportunity Notice (PON) 3609

\$14,135,940

NYSERDA reserves the right to extend and/or add funding to the Solicitation should other program funding sources become available.

Applications accepted 01/01/2021 through 01/31/2022 by 3:00 PM Eastern Time*

Program Summary:

NYSERDA offers technical support and financial incentives to Applicants and/or their design teams to identify and install energy efficiency, electrification, and carbon reduction opportunities to achieve **Carbon Neutral Ready** levels of performance in non-residential and mixed-use new construction, change of use, and substantial renovations to existing buildings. Applicants may select a Primary Energy Consultant from a list maintained by NYSERDA or may use the services of a provider of their choice, subject to NYSERDA approval. NYSERDA also offers **Carbon Neutral Portfolio Support** through this funding opportunity.

Applicants whose projects are in a Potential Environmental Justice Area may be eligible for enhanced support. Refer to the New York State Department of Environmental Conservation (DEC) county maps available at <https://www.dec.ny.gov/public/911.html>.

Application Submission:

Applicants must complete the Consolidated Funding Application (CFA) online at: <http://www.nyserda.ny.gov/Funding-Opportunities/Consolidated-Funding-Application.aspx>.

Assistance to answer questions on the Consolidated Funding Application is available at 1-866-NYSERDA (toll free), or via email at cfa@nyserda.ny.gov. Please reference Consolidated Funding Application for the Commercial New Construction Program.

No communication intended to influence this procurement is permitted except by contacting Stephen Finkle (Designated Contact) at (518) 862-1090, ext. 3505 or by e-mail StephenNC@nyserda.ny.gov (for technical questions). If you have contractual questions concerning this solicitation, contact Venice Forbes (Designated Contact) 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 applications must be received by 3:00 PM 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 completed/included in the application. 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 applications. The online application system closes promptly at 5pm, files in process or attempted edits or submission after 3:00 PM 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.nysesda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities.aspx>).

I. Introduction:

NYSERDA offers technical and financial support to Applicants and/or their design teams to identify and install energy efficiency, electrification, and carbon reduction opportunities to achieve **Carbon Neutral Ready** levels of performance in non-residential and mixed-use new construction, change of use, and substantial renovations to existing buildings. Applicants may select a Primary Energy Consultant from a list maintained by NYSERDA or may use the services of a provider of their choice, subject to NYSERDA approval. NYSERDA also offers **Carbon Neutral Portfolio Support** through this funding opportunity.

Applicants whose projects are in a Potential Environmental Justice Area may be eligible for enhanced support. Refer to the New York State Department of Environmental Conservation (DEC) county maps available at <https://www.dec.ny.gov/public/911.html>.

Technical support is offered on a first-come, first-served basis, subject to funding availability. Financial support is formally committed at the time NYSERDA issues a written pre-approval of the financial offer.

II. Program Requirements:

APPLICANT ELIGIBILITY

State, federal and local governments, businesses, not-for-profit and private institutions, public and private schools, colleges and universities and health care facilities that are electricity customers of a participating utility company, and that pay, or will pay, into the electric System Benefits Charge at the site receiving benefits are eligible for support.

Customers whose projects are in a Potential Environmental Justice Area may be eligible for enhanced support. Refer to the New York State Department of Environmental Conservation (DEC) county maps for Potential Environmental Justice Areas.

To ensure eligibility to participate NYSERDA requests that applications be submitted at the schematic design phase or earlier.

Applicants may not obtain financial support for the same energy efficiency measure through other NYSERDA programs or from programs offered by their local utility.

ELIGIBLE PROJECTS

The Commercial New Construction Program is available for eligible customers to design and build projects that achieve Carbon Neutral Ready levels of performance in new construction, substantial renovations and change of use for commercial, industrial and institutional buildings in New York State.

New Construction - defined as a **Carbon Neutral Ready** project involving a new building or a new addition, or space within a new building, for which a registered architect or professional engineer has prepared and certified building plans.

Substantial Renovations – also referred to as “gut” renovation; and defined as one of the following types of **Carbon Neutral Ready** projects where a registered architect or professional engineer has prepared and certified building plans for:

- Change of use and reconstruction of an existing building or space within;

- Reconstruction of a nature requiring that the building or space within be out of service during construction; or
- Reconstruction of a vacant structure or space within.

III. Application Requirements

APPLICATION MANAGEMENT

At no cost to the Applicant, a NYSERDA representative will be assigned to the project to assist Applicants. The representative will interface with the Primary Energy Consultant (see below), review scopes of work and studies, and be available to answer questions from the Applicant.

TECHNICAL SUPPORT

NYSERDA provides technical support to help Applicants and their design teams assess and determine appropriate Carbon Neutral Ready, energy efficiency and electrification opportunities for the building. Applicants may select a Primary Energy Consultant from a list maintained by NYSERDA or may utilize the services of a provider of their choice, subject to NYSERDA approval. Additional technical support is available for Applicants who incorporate Integrated Project Delivery, Smart Building, COVID-responsive, and Embodied Carbon features and systems in the project design and construction.

FINANCIAL SUPPORT

NYSERDA may provide financial support for Carbon Neutral Ready projects (see Attachment D: Commercial New Construction Support). Financial support is based upon the project achieving anticipated energy and carbon performance of the building relative to a designated baseline. Additional financial support may be available to applicants of PEJA Projects (see definitions below).

DEFINITIONS

- **Carbon Neutral Ready** - projects which meet both of the following thresholds for performance:
 - The predicted energy savings for regulated loads exceed the designated baseline on a Source Energy basis by at least 15%.
 - The project excludes all fossil fuels from the building systems and equipment.
 - Building systems and equipment refers to building heating, ventilating and air conditioning (HVAC), domestic hot water (DHW), kitchen, laundry and other appliances.
 - Projects which rely on a fossil fuel fired generator for emergency use only, and/or projects which are served by an offsite fossil fuel fired central heating plant may qualify as **Carbon Neutral Ready** if fossil fuels are excluded from all other building systems and equipment.
 - NYSERDA will consider exemptions to the **Carbon Neutral Ready** rule for industrial and process loads on a case-by-case basis.
- **Designated Baseline** - ASHRAE 90.1-2016 Appendix G (as amended) or the version of ASHRAE 90.1 Appendix G under which the project is permitted, whichever is most recent.
- **Integrated Project Delivery (IPD)** - as defined and described in Integrated Project Delivery – An Updated Working Definition, Version 3 Updated 7/15/14, published by the American Institute of Architects California Council. Copies are available through the California Council at www.aiacc.org.
- **Smart Building** - An intelligent building which interconnects HVAC, lighting, plug loads, fire & life safety, security & access, people movement, analytics & management and smart metering to transform efficiency,

comfort and safety for people and assets (source: Intel Corporation, Continental Automated Buildings Association Board Member).

- NYSERDA offers a separate opportunity for Real Time Energy Management (RTEM) through NYSERDA Program Opportunity Notice PON 3689. Applicants planning to participate in the RTEM opportunity should confirm that their proposed Smart Building equipment and systems will meet the RTEM program requirements.
- **Substantial Renovations** – also referred to as “gut” renovation; and defined as one of the following types of projects where a registered architect or professional engineer has prepared and certified building plans for:
 - Change of use and reconstruction of an existing building or space within;
 - Reconstruction of a nature requiring that the building or space within be out of service during construction; or
 - Reconstruction of a vacant structure or space within.
- **PEJA Project** – a project site located in a Potential Environmental Justice Area (PEJA) as shown on the New York State Department of Environmental Conservation (DEC) county maps available at <https://www.dec.ny.gov/public/911.html> .

NYSERDA will provide written pre-approval of projects achieving Carbon Neutral Ready level of performance if qualified for financial support prior to measure installation. The pre-approval will be in the form of an Offer Letter. NYSERDA will not provide financial support if installation of the measures achieving the carbon performance for the incentive are installed prior to NYSERDA issuance of the Offer Letter. Upon NYSERDA review and approval of the completed installation and supporting documents, a check or electronic transfer will be issued to the Applicant.

SUPPORT LEVELS

Support levels are categorized according to project size and complexity. Refer to Attachment D for descriptions and opportunities associated with each support level.

PROJECT INSPECTION, MEASUREMENT AND VERIFICATION

For projects receiving financial support, upon project completion NYSERDA may require photographic documentation, copies of submittals and/or a field visit to confirm installation of the decarbonization measures. Financial support payments may be adjusted if carbon and energy performance were not installed or were installed in a way where predicted energy and carbon performance is not achieved, or if project designs do not achieve stipulated performance targets.

All Applicants must provide site access to NYSERDA staff or its contractors after project completion for the measurement and verification.

CARBON NEUTRAL PORTFOLIO SUPPORT

Applicants may also participate in the Carbon Neutral Portfolio Support through this funding opportunity. For eligibility, description and opportunities refer to Attachments E, F and G. Applicants must submit a separate application to access Carbon Neutral Portfolio Support from any application supporting a specific project.

IV. GENERAL CONDITIONS

GENERAL CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your application. Review should include whether it is critical for evaluating an application, 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

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 two years with options to renew 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 application should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA may at its discretion elect to extend and/or add funds to any project funded through this solicitation. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement (attached to this solicitation as Attachment A, B and C collectively) to those specifically identified in the checklist questions. Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. NYSERDA expects to notify Applicants in approximately (30) weeks from the receipt of an application whether your application 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 reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Agreement (attached to this solicitation as Attachment A, B and C collectively). 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.

V. Attachments:

Solicitation

Summary of Revisions

How It Works

Attachment A – Commercial New Construction Program Terms and Conditions

Attachment B – Standard Terms and Conditions for all NYSERDA Agreements

Attachment C – NYSERDA Prompt Payment Policy

Attachment D – Commercial New Construction Support

Attachment E – Carbon Neutral Portfolio Support

Attachment F – Carbon Neutral Portfolio Support Project Pipeline Worksheet

Attachment G – Carbon Neutral Portfolio Support Applicant Scope and TWO

Owner Data Release Form

Tenant Data Release Form