Renewable Portfolio Standard Program Purchase of Renewable Energy Attributes
Request for Proposals (RFP) No. 2389

Application Packages Due: Thursday, October 13, 2011 by 5:00 pm Eastern Time*

APPROXIMATELY $150 MILLION AVAILABLE

The New York State Energy Research and Development Authority (NYSERDA) seeks to procure the environmental attributes created by eligible generation resources under the Renewable Portfolio Standard Program (RPS Attributes). While not required, NYSERDA encourages entities interested in participating in this procurement to submit the attached Notice of Intent to Bid Form (Attachment F) as soon as possible. Those entities filing a Notice of Intent to Bid Form will be notified by email of any changes to this RFP.

NYSERDA was created in 1975 by the New York State Legislature as a public benefit corporation. As designated in the Public Service Commission (PSC) *Order Regarding Renewable Portfolio Standard*, issued and effective September 24, 2004, NYSERDA acts as the Central Administrator of the RPS program. RFP 2389 will be implemented through a two-step process, consisting of (1) an application step that will prequalify bidders, and (2) a competitive Bid Proposal submission step. **Only those bidders found prequalified through the Step One application process will be permitted to submit Bid Proposals or otherwise participate in Step Two.**

NYSERDA seeks to purchase, under the terms and conditions of RFP 2389, RPS Attributes associated with electricity generated from eligible Bid Facilities that enter Commercial Operation after January 1, 2003 and on or before December 31, 2012 (unless extended to September 30, 2013; see Section XIII).

Application Package Submission: Bidders must submit an original and three (3) copies of the Application Package with a completed and signed Application Package Checklist (Attachment A to the RFP) attached to the front of each copy. Application Packages must be **received** by NYSERDA by 5:00 p.m. Eastern Time* on October 13, 2011. Application packages must be clearly labeled and submitted to:

Roseanne Viscusi, RFP 2389
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

Program questions should be directed to **rps@nyserda.org** (no phone calls).
Contractual questions should be directed to **Nancy Marucci, ext.** 3335, e-mail nsm@nyserda.org

No communication intended to influence this procurement is permitted except by contacting ***Kevin Hale at (518) 862-1090, ext. 3266 or kch@nyserda.org (Designated Contact)***. Contacting anyone other than the Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer and (2) may result in the proposer not being awarded a contract.

*Late packages will be returned and those lacking the appropriate completed and signed package Checklist may be returned. **Faxed or e-mailed packages will not be accepted**. Packages will not be accepted at any NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's web site at www.nyserda.org. Please check the website immediately before submitting an application package.

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I. BACKGROUND ON THE NEW YORK STATE RENEWABLE PORTFOLIO STANDARD

The New York State Public Service Commission (Commission) adopted the Renewable Portfolio Standard (RPS) program to address the energy, economic, and environmental objectives of New York State by procuring the rights to the environmental attributes created by diverse, environmentally responsible energy technologies. *See* Case 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, and the various orders issued under that proceeding (Orders).

The Orders designate the New York State Energy Research and Development Authority ("NYSERDA") as the Central Procurement Administrator of the RPS Program. Under this RFP, and in future offerings, NYSERDA seeks to accomplish the RPS objectives by contracting with suppliers, on a competitive basis, for the environmental attributes created by eligible generation resources under the Renewable Portfolio Standard (RPS Attributes). The most recent Order, issued and effective December 3, 2010, authorized NYSERDA to issue this Request for Proposals (RFP). The December 3 Order further directs NYSERDA to conduct competitive solicitations at least annually, and, with the concurrence of the Department of Public Service, as frequently as is deemed necessary and advisable in pursuit of achieving the 2015 program goals.

Information regarding future solicitations can be found at:
http://www.nyserda.org/rps/PastSolicitations.asp

The RPS Orders can be accessed at the Commission's RPS webpage at
http://documents.dps.state.ny.us/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=03-e-0188
All Bidders are strongly advised to review the Orders before participating in this RFP.

II. OBJECTIVE OF THIS RFP

NYSERDA seeks to purchase, under the terms and conditions of RFP 2389, RPS Attributes associated with electricity generated from eligible Bid Facilities that enter Commercial Operation after January 1, 2003 and on or before December 31, 2012 (unless extended to September 30, 2013; see Section XIII). To accomplish this objective, NYSERDA has designed this procurement as a two-step process, consisting of (1) an application step that will prequalify bidders, and (2) a competitive Bid Proposal submission step. **Only those bidders found prequalified through the Step One application process will be permitted to submit Bid Proposals or otherwise participate in Step Two.**

CAPITALIZED TERMS AND ABBREVIATIONS USED IN THIS RFP ARE DEFINED IN SECTION XXV (DEFINITIONS). BIDDERS SHOULD REFER TO SECTION XXV WHEN READING THIS DOCUMENT.

III. INTENT TO BID

Submittal of a Notice of Intent to Bid Form (Attachment F) is optional but encouraged, as it will enable communication of any changes in process or documents to prospective Bidders. Notification of such change(s) will be posted on the RPS website and sent via email to those parties who have submitted a Notice of Intent to Bid Form.

IV. BIDDERS' TELECONFERENCE

NYSERDA will conduct a teleconference on **Monday, October 3, 2011 at 3:00 p.m. Albany, NY time.** On the teleconference, NYSERDA will review the bid process, the Application Package requirements, the Bid Proposal Requirements, and the RPS Standard Form Contract. Questions will be taken and, to the extent possible, responses will be provided during the conference. **Bidders who intend to participate must send an email indicating such to rps@nyserda.org, by 12:00 noon on Thursday, September 29, 2011, with the subject line "Bidders' Teleconference."** Respondents will be provided with a teleconference dial-in number and pass code. Those parties who submit an Intent to Bid form (Attachment F to this RFP) will automatically be provided with the teleconference number and pass code.

V. SCHEDULE

The schedule for this RFP process is established to provide an expedited process for proposals, evaluations, and contract execution. The time-line for RFP 2389 is as follows:

RFP Release	Monday, September 19, 2011
Notice of Intent to Bid Form (optional) due	Immediately
Bidders' Teleconference	Monday, October 3, 2011
Deadline to submit Application Packages and Provisional Certification Applications (Step 1)	Thursday, October 13, 2011
NYSERDA notifies Qualified Bidders	Friday, October 28, 2011
Deadline to submit Bid Proposals (Step 2)	Wednesday, November 16, 2011
NYSERDA notifies winning Bidders (on or about)	Friday, December 16, 2011

Please note that the above dates are subject to change. Submittal of the Notice of Intent to Bid Form (Attachment F) is optional but encouraged, as it will enable communication of any changes in the RFP process or documents to prospective Bidders. Notification of such change(s) will be posted on the RPS website and sent via email to those parties who have submitted a Notice of Intent to Bid Form (Attachment F to this RFP).

VI. NYSERDA'S RPS FUNDING

The contracts awarded through this RFP will be funded through the non-bypassable "RPS surcharge" which is levied on the delivery portion of the electricity bills of all New York retail customers who pay the System Benefits Charge ("SBC"). The RPS surcharge is collected by the

State's investor-owned utilities, pursuant to the Orders. The September 24, 2004 Order directed each of the State's investor-owned utilities to collect a fixed dollar amount through the rate surcharge on an annual basis, in varying amounts for calendar years 2006 through 2013, and to make the fixed dollar payments set forth at Appendix E of the September 24, 2004 Order to NYSERDA on a quarterly schedule beginning in 2006 and continuing through 2013. In an order dated April 2, 2010, the Commission established a new schedule of payments to NYSERDA for funding of the RPS program that, in the aggregate, total approximately $3 billion through 2024.[1] This collection process and the surcharge pass-through transfer payments to NYSERDA are similar to the process that has been used successfully for SBC funds since 1998. As directed by the Orders, each of the five investor-owned utilities has entered an agreement with NYSERDA to make transfer payments of the RPS surcharge funds through 2024.

NYSERDA funds are maintained by the New York State Commissioner of Taxation and Finance, NYSERDA's fiscal agent pursuant to the Public Authorities Law (Section 1859); the RPS surcharge funds are maintained in a segregated account. The RPS revenues and expenditures are separately reported in NYSERDA's annual financial statements, which are public and subject to annual independent audit. The RPS funds cannot be used for any purpose other than the funding of the RPS Program.

VII. ELIGIBILITY/CERTIFICATIONS

A. Eligibility

Each Bid Facility designated in an Application Package for the supply of RPS Attributes under this RFP must qualify as an eligible resource under the "Main Tier Eligible Electric Generation Sources" rules, as set forth at Appendix B of the September 24, 2004 Order as amended by the attachment to the June 28, 2006 "Order on Customer Sited Tier Implementation," and as further defined and clarified within the body of the Orders.

Pursuant to the Commission's "Order Approving Petition with Modifications," issued and effective November 22, 2010, clean wood separated from construction and demolition debris at approved material reclamation facilities is eligible for use as biomass fuel, provided that all of the requirements listed within the November 22, 2010 Order (see Order pp. 16-17) are fulfilled.

To be eligible for an award under RFP 2389, a Bid Facility must have first commenced Commercial Operation on or after January 1, 2003, or must produce new, incremental RPS-eligible Attributes from new Bid Capacity above a historical baseline, as established through the Provisional Certification process.

B. Eligibility Limitations

State/Local Investments. Offers of RPS Attributes produced by projects or Bid Facilities that have collected New York State System Benefits Charge ("SBC") funding or incentives, grants, financial guarantees, or debt financing support for investment in any electric or gas plant, as such

[1] See "Order Authorizing Customer-Sited Tier Program Through 2015 and Resolving Geographic Balance and Other Issues Pertaining to the RPS Program," issued and effective April 2, 2010, Appendix, Table 16.

terms are defined under Section 2 of the New York State Public Service Law, except for equipment or appurtenances designed to measure, assess or lessen the environmental impact of such facilities in a manner or to an extent not already required under law, regulation or an existing permit, are ineligible for participation in RFP 2389.

RPS Attributes produced by External Bid Facilities that have been the basis or subject of any award of provincial, state and/or local-based SBC-like payments or incentives, grants, financial guarantees, or debt financing support are also ineligible for RFP 2389. If selected under RFP 2389, Bidders offering RPS Attributes produced by an External Bid Facility will be required to certify on an annual basis that the Bid Facility(s) have received no such support with regard to the facility or project associated with such bid. Bidders offering RPS Attributes from External Bid Facilities which accept such support or assistance at any time during the Contract Delivery Term will become ineligible at such time, and associated RPS contracts will be subject to contract termination.

No facility or project may simultaneously collect both RPS incentive payments and production-based incentives or subsidy payments from any other state or local source for the Quantity Obligations created as the result of a Standard Form Contract executed under RFP 2389.

All Bid Facilities are subject to the Bid Facility electricity delivery requirements as set forth at Section XIX. RPS Attributes that are the subject of a current award or contract from a previous RFP are not eligible for RFP 2389.

C. Provisional Certification

In addition, each Bid Facility must meet all of the requirements of the Provisional Certification process. Provisional Certification affirms that a project can meet the RPS Program's eligibility criteria. Only after the project is provisionally certified may it be considered for the award of an RPS contract. Such certification will be made through the Provisional Certification process, as outlined on NYSERDA's website at http://www.nyserda.org/rps/appIntroProcess.asp

Bidders must include in their Provisional Certification submissions to NYSERDA data pertaining to facility and fuel characteristics, as appropriate to the resource, in sufficient detail to enable a full evaluation regarding eligibility. After analyzing the submissions, NYSERDA will forward the results of its analyses and recommendations to the Director, Office of Energy Efficiency and Environment ("OEEE"), Department of Public Service, who will make a determination regarding Provisional Certification and notify each Bidder of such determination.

It is strongly recommended that Bidders visit this website and apply for Provisional Certification in advance of the Application Package due date. Please note that facilities granted Provisional Certification under a previous RFP must reapply for Provisional Certification in order to participate in RFP 2389.

D. Operational Certification

Operational Certification verifies that the Bid Facility has been constructed and/or will operate in accordance with the Bid Proposal as submitted, for which Provisional Certification was granted. Operational Certification must be applied for in writing to NYSERDA and must be granted by the Department of Public Service before payments under the RPS Standard Form Contract will be made by NYSERDA. Seller must promptly notify NYSERDA's Project Manager of the date upon which the Bid Facility enters Commercial Operation (See Section XII).

In applying for Operational Certification, Seller must submit to NYSERDA information and documentation necessary for NYSERDA to verify that the Bid Facility is operating as proposed and for which Provisional Certification was granted, including the size of the Bid Facility, the date under which it entered Commercial Operation as proposed, and any deviations from the as-proposed configuration and/or operations. Any deviations in the size of the Bid Facility, configuration, and/or operations may result in contractual adjustments referenced in Section XVII.

Verification by NYSERDA that the Bid Facility has entered Commercial Operation and is eligible for Operational Certification may be based in part on documentation, audits, site visits, and attestations. For Fuel-Based Bid Facilities, the Seller will be required to provide additional information as outlined in Exhibit F to the Fuel Based Bid Facility Standard Form Contract (Attachment H to this RFP).

Once Operationally Certified, NYSERDA will make payments for Attributes associated with energy generated by the Bid Facility beginning with the commencement of the Contract Delivery Term, based on monthly invoicing, in accordance with the terms of the RPS Standard Form Contract.

For more information on the Operational Certification process see
http://www.nyserda.org/rps/operationalcertification.asp

E. Subsequent Changes

Bid Proposals and/or Bid Facilities selected under this RFP will not be subject to subsequent changes in RPS eligibility rules; however, in the event that the Bid Facility fails to maintain eligibility consistent with the RPS requirements as they existed on September 19, 2011, such ineligibility will extend to the RPS Attributes associated with the Bid Facility's production during the period in which the Bid Facility fails to maintain eligibility.

VIII. PARTICIPATING IN THIS RFP

NYSERDA has designed this procurement as a two-step process, consisting of (1) an application step that will prequalify bidders, and (2) a competitive Bid Proposal submission step. **Only those bidders found prequalified through the Step One application process will be permitted to submit Bid Proposals or otherwise participate in Step Two.**

IX. STEP ONE – APPLICATION PACKAGES

A. Submitting an Application Package

To be considered for qualification to participate in Step Two (Bid Proposal), Bidders must provide NYSERDA with one complete original Application Package and three (3) copies for each Bid Facility from which RPS Attributes may be used for performance under a Standard Form Contract. NYSERDA will review each Application Package and make determinations as to qualification for participation in Step Two. It is anticipated that all bidders will be notified of such determinations no later than Friday, October 28, 2011.

A complete Application Package consists of:

1. Signed Application Package Checklist (Attachment A hereto); **(Application Packages lacking a completed and signed Checklist may be rejected.)**
2. Disclosure of Prior Findings of Non-Responsibility Form (Attachment B hereto);
3. Bid Deposit, as specified below;
4. Provisional Certification Application Form or copy of proof of certification. Bidders must have applied for or have been granted Provisional Certification for the proposed Bid Facility(ies). Applications for Provisional Certification can be obtained on NYSERDA's website at http://www.nyserda.org/rps/appIntroProcess.asp. **It is strongly recommended that Bidders visit this website and apply for Provisional Certification as soon as possible. Please note that facilities granted Provisional Certification under a previous RFP must reapply for Provisional Certification.**

Bid Deposit. Each Application Package must include a Bid Deposit, in the form of electronic wire deposit or certified funds, in an amount determined by the Nameplate Capacity of the Bid Facility. Electronic deposit information and instructions can be obtained by emailing rps@nyserda.org

The amounts are as follows:

Nameplate Capacity:	**Bid Deposit Required:**
Less than 5.00 MW	$1,000
5.00 – 19.99 MW:	$20,000
20.00 – 49.99 MW:	$50,000
50.00 MW or more:	$100,000

Bid Deposits will be refunded to Applicants who elect not to submit a Bid Proposal under Step 2, or are deemed unqualified by NYSERDA to participate in Step 2, within approximately 15 business days of the deadline to submit Bid Proposals. Bid Deposits will be refunded to Bidders whose Bid Proposals have not been selected for an award, if not before, immediately upon the expiration of the time during which the Bid Proposal remains an open offer (45 days from submittal. See Section X).

Bid Deposits will be refunded to Bidders whose Bid Proposals have been selected by NYSERDA upon execution of the RPS Standard Form Contract (Attachment G or H) and NYSERDA's receipt of the Contract Security as described in Section XIV; A (Contract Security) and as required under the RPS Standard Form Contract. No interest will be paid on any Bid Deposit.

Deadline for Submitting an Application Package: One (1) original and three (3) copies of each Application Package must be **received** by NYSERDA no later than 5 p.m. on Tuesday, October 13, 2011. All information must be provided; all information provided must be legible. All signatures must be provided and notarized as indicated. Failure to provide any information requested may result in the Application Package being declared non-responsive and rejected. Additional information and materials beyond those requested may be submitted only if necessary for clarification. Additional information and materials beyond what is identified in this RFP may be requested by NYSERDA. Application Packages become the property of NYSERDA.

B. Application Package Evaluation

NYSERDA will evaluate Application Packages for completeness and against the qualification criteria specified in Section IX; A (Submitting an Application Package). All Bidders will be contacted by NYSERDA on or before Friday, October 28, 2011 with determinations as to the qualification of Bid Facilities identified in Application Packages. Bidders deemed qualified to submit a Bid Proposal as a result of this review will be assigned a "Bidder Number" and invited to submit one or more Bid Proposals according to instructions that will be provided.

X. STEP TWO – BID PROPOSALS

At the time that Bidders are notified of their qualification status, qualified bidders will be provided with Bid Proposal forms, Bid Price forms, and relevant instructions, and will be invited to submit one or more Bid Proposals. Each Bid Proposal must designate a single Bid Facility. Up to four (4) alternative Bid Proposals, none of which shall be for a Bid Quantity Percentage less than 30% or more than 95%, may be submitted for a single Bid Facility, only one of which can be awarded.

The submittal of a Bid Proposal will constitute a binding offer to contract under the RPS Standard Form Contract terms (attached hereto as Attachments G and H) and such offer must remain open for a period of at least forty-five (45) days from the deadline for submittal or such time as designated by NYSERDA at the time of notification of qualification for Step Two. All Bid Proposals become the property of NYSERDA.

NYSERDA RETAINS THE RIGHT TO ACCEPT ANY OR ALL BIDS, TO REJECT ANY OR ALL BIDS, TO SOLICIT RE-BIDS, AND TO MAKE COUNTEROFFERS TO SUCH BID(S) AS IT DEEMS APPROPRIATE.

A. Submitting a Bid Proposal

Bid Proposals packages, including each alternative Bid Proposal, must contain the following forms and information, without exception, and must be organized as indicated below. Bid Proposals lacking sufficient detail may be deemed non-responsive and ineligible for further evaluation or award.

1. Section 1: Cover Letter
2. Section 2: General Description of the Bidder and Bid Facility including a fully completed Project Schedule Form (Attachment C to this RFP).
3. Section 3: Economic Benefits to New York State Created by the Bid Facility
   a. Long Term Jobs created in New York State
   b. Payments to New York State and/or its Municipalities
   c. Royalties and/or Payments for Fuel and Resource Access
   d. In-State Purchases or Consumption of Goods
   e. Short Term Employment of New York State Workers
4. Verification Plan
5. Completed Bid Proposal Form (see Sample Form, Attachment D to this RFP)
6. Completed Bid Price Form (see Sample Form, Attachment E to this RFP) (submit as part of package but in separate envelope, one copy only).

Bid Proposals should be concise and clearly organized in the format listed above. Bid Proposals should be no longer than 20 pages in length, not including the Bid Proposal Form and Bid Price Form. Information may be provided either single or double-sided, but a page is considered one side of an 8-1/2" x 11" piece of paper. The font size should not be smaller than 11 point.

Bidders must submit one original and nine (9) copies of each Bid Proposal. Bid Proposals must be received by NYSERDA by 5:00 pm Eastern Time on Wednesday, November 16, 2011; this date will be confirmed at the time Bidders are notified that they have qualified for participation in Step Two (expected October 28, 2011). Bidders will not be reimbursed by NYSERDA for any costs associated with the preparation of their proposals. Bid Proposals become the property of NYSERDA.

Section 1: Cover Letter (1 page) The cover letter must include all signatures necessary to approve and submit the Bidder's Proposal by a representative having the authority to contractually commit the Bidder for Bidder's offer provided in the Bid Proposal. The cover letter must also include the following declaration:

[Insert legal name of Bidder] (the "Bidder") hereby acknowledges receipt of the NYSERDA's 2011 Request for Proposals 2389 (the "RFP") and acknowledges that it has read and agrees to be fully bound by, all of the terms, conditions and other provisions set forth in RFP 2389 and the RPS Standard Form Contract. Additionally, the Bidder hereby makes the following representations to NYSERDA:

1. *all of the statements and representations made in this proposal are true to the best of the Bidder's knowledge and belief;*
2. *the Bidder has sufficient rights in title to the RPS Attributes emanating from the Bid Facility identified in the Bid Proposal to perform under the RPS Standard Form Contract;*
3. *the Bidder has obtained all necessary corporate authorizations, approvals and waivers that will enable the Bidder to commit to the terms provided in this proposal;*
4. *In accordance with Section 2878 of the New York State Public Authorities Law, Bidder warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition.*
5. *The proposal constitutes a firm and binding offer, for a period of at least 45 days from the date Bid Proposals are due.*

Section 2: General Description of the Bidder and Bid Facility (up to 3 Pages) Each Bidder must **fully** address the following: Provide a profile of the Bidder's company and its parent company, if any. Describe the relationship between the Bidder and the investors, sponsors and owner(s) of the Bid Facility. Identify and explain any Federal grants or tax incentives that have been applied for or are expected to be applied for and fully describe the status of such applications. Provide the Bid Facility's location (State, address, county and town) including a State and/or county map with the Bid Facility's geographic location marked. Provide a description of the Bid Facility including resource type, expected fuel supply type, Nameplate Capacity, projected capacity factor, the status of major permits/approvals necessary to build and operate the Bid Facility, and the major equipment manufacturers/providers. Describe how it is expected that the electrical output of the Bid Facility will be delivered, sold and consumed, including identification of any power purchase or other sales agreement (see Sections VII and XIX). Also, provide a fully completed Project Schedule Form (Attachment C to this RFP).

Bidders who intend to satisfy the Bid Facility electricity delivery requirement through option A.2 of Section XIX must include documentation demonstrating that arrangements have been made with the local utility or interconnection authority for measurement, verification and tracking of the electricity associated with the Quantity Obligation.

Section 3: Economic Benefits Created by the Bid Facility (up to 12 Pages) For evaluation and scoring purposes, Bidders have an opportunity to claim and describe the economic benefits expected to accrue to New York as a result of the development, construction/modification, and operation of the Bid Facility.

Only those economic benefits falling within the categories defined below will be considered, and in no instance will NYSERDA or its Technical Evaluation Panel ("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. **Bidders are not permitted to apply escalation rates or cost of living adjustments**. Bidders not seeking credit for economic benefits in any category may leave the section blank. Any responses left blank will receive zero points for the applicable category.

Economic benefits previously claimed with respect to a Bid Facility that is subject to a pending award under a previous solicitation or that is the subject of a current RPS contract are not eligible for evaluation.

The following categories are listed in order of importance from the highest weighted category to the lowest weighted category.

a. **Long-Term NYS Jobs:** Describe the degree to which the operation of the Bid Facility will directly create (add) long term jobs (jobs lasting more than 3 years) in New York. Examples of such jobs include, but are not limited to, those associated with operations and maintenance, plant management, or similar. List and describe the type of jobs including the position title, specific role and responsibilities, and the expected duration of such jobs. Provide the number of jobs, in Full Time Equivalents (FTEs), and the expected average annual salary/and or total compensation and direct benefits (excluding overhead for normal operations) for all jobs. Provide expected total dollars for compensation/salaries and benefits **during the first three (3) Contract Years of operation** (Expected Total Dollars). Divide the Expected Total Dollars by the Bid Capacity, and provide the result.

b. **Payments to New York State and/or its Municipalities:** Describe the degree to which the operation of the Bid Facility will provide new or increased local property tax revenues to school districts, cities, towns or other taxing jurisdictions in New York, or alternatively, Payments in Lieu of Taxes (PILOT) or other alternative taxing mechanisms and forms of compensation. List and describe separately all tax payment, PILOT arrangements and/or "host" community payment agreements with all affected jurisdictions. Provide expected total dollars paid to all taxing jurisdictions and municipal entities through the first three (3) Contract Years of operation (Expected Total Dollars) Divide the Expected Total Dollars by the Bid Capacity, and provide the result. NYSERDA reserves the right to reduce, for evaluation purposes only, the amount of dollars reported by the amount of any benefits under any NYS Empire State Development sponsored business program.

c. **Payments for Fuels and Resource Access:** Describe the degree to which the operation of the Bid Facility will provide royalties, production-based payments, land lease or land use payments or other forms of compensation to residents and companies in New York, associated with securing rights to or directly acquiring fuel or access to wind resources for the Bid Facility (e.g., wind, biomass, biogas). Examples include payments for leases of land in New York, payments associated with the production of electricity, fuel purchases of biomass sourced or harvested in New York, and purchases for landfill gas produced in New York. Provide total dollars expected to be paid through the first three (3) Contract Years of operation (Expected Total Dollars). Divide the Expected Total Dollars by the Bid Capacity, and provide the result.

d. **In-State Purchases or Consumption of Goods:** Describe the degree to which local and state economic activity will increase as a result of:

i. the purchase and consumption of local goods and services (other than those in e., below) by non-NY-resident workers, such as, but not limited to, food, lodging, vehicles, equipment, fuel, and/or

ii. the purchase of materials sourced from within New York such as, but not limited to, gravel, steel, concrete and similar materials and/or the purchase 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. Wind turbine components not manufactured within New York State will not be considered and should not be included.

List each type of purchase or service that will be used and provide total dollars expected to be spent on all the purchases or consumption of local/in-state goods from this category through the first three (3) Contract Years of operation (Expected Total Dollars). Divide the Expected Total Dollars by the Bid Capacity, and provide the result.

e. **Short-Term Employment of NYS Workers:** Describe the degree to which New York workers will be employed on a short-term basis. Illustrative examples include direct employment of NYS construction, rail and port workers, contractors and laborers, engineering or environmental service providers, consultants, financial service advisors, and legal service providers associated with the development and construction/modification of the Bid Facility. List and describe the type of jobs and the expected duration of such jobs. Provide the number of jobs, in Full Time Equivalents (FTEs), and the expected average annual salary and benefits for all jobs. Provide expected total dollars for salaries and benefits through the first three (3) Contract Years of operation (Expected Total Dollars). Divide the Expected Total Dollars by the Bid Capacity, and provide the result.

f. Divide the Expected Total Dollars from all categories listed above (a through e) by the Bid Capacity, and provide the result.

Section 4: Verification Plan (up to 3 pages). Bidders must provide a detailed verification plan specifying how the economic benefits claimed for evaluation (see 3a-3e above) will be documented for contract compliance (see Section XVIII). Specifically, Bidders should include a description of all documents, reports, contracts, subcontracts, invoices, or other information/documentation that may be submitted to verify the economic benefits claimed hereunder. In doing so, Bidders should identify the entity issuing such documentation (subcontractor, taxing jurisdiction, equipment service company, etc.) and explain how the Bidder intends to attain such documentation for ultimate submission to NYSERDA for compliance under Section XII of this RFP.

Section 5: Bid Proposal Form; Bid Price Form. At the time Bidders are notified of qualification to submit a Bid Proposal (Section X; A), NYSERDA will provide Qualified Bidders with a Bid Proposal Form and a Bid Price Form, in the formats provided in the Sample Bid Proposal and Bid Price Forms, Attachments D and E to this RFP. Bidders will be responsible for submitting one (1) fully completed and signed Bid Proposal Form and one (1) fully completed and signed Bid Price Form with each Bid Proposal.

THE BID PRICE FORM MUST BE SUBMITTED IN A SEPARATE SEALED ENVELOPE MARKED "RFP 2389 BID PRICE FORM" CLEARLY IDENTIFYING THE BIDDER, BID FACILITY, AND BIDDER NUMBER.

XI. BID PROPOSAL EVALUATION

NYSERDA will employ a scoring system comprised of two evaluation components totaling 100 points:

1. Expected Economic Benefits to New York: 30 points
2. Bid Price: 70 points

Alternate Bid Proposals for a single Bid Facility will be evaluated and scored independently; only one Bid Proposal for a single Bid Facility may be awarded.

NYSERDA has developed and will employ a Maximum Acceptable Bid Price (MABP); NYSERDA will not award a contract at a Bid Price above the maximum acceptable Bid Price.

A. Economic Benefits Evaluation

Bid Proposals will be scored on the ability of the Bid Facility to contribute positively to the economy of New York State in the categories listed in Section X; A (Submitting a Bid Proposal).

A Technical Evaluation Panel (TEP), consisting of NYSERDA staff, Department of Public Service staff, and outside reviewers will evaluate and award points (up to 30) to Bid Proposals based on the degree to which each Bid Proposal demonstrates a contribution to the economic benefits categories listed in Section X; A (Submitting a Bid Proposal).

Only those economic benefits falling within the defined categories in Section X; A (Submitting a Bid Proposal) will be considered for evaluation. NYSERDA reserves the right to reduce, for evaluation purposes only, the amount of dollars reported in Section 3(b) of the Bid Proposal ("Payments to New York State and/or its Municipalities") by the amount of any benefits under any Empire State Development program, including any NYS Empire State Development sponsored business program.

Please review Section XVIII: Post-Award Demonstration of Actual Economic Benefits for further details.
Scoring on the basis of expected economic benefits will be conducted independently (without knowledge of bid prices) of Bid Price evaluation.

B. Bid Price Evaluation

Bids will be sorted in ascending order by Bid Price (per MWh). The lowest Bid Price will receive the maximum points available for the Bid Price component (70 points). Bid Prices above the

MABP will receive zero (0) points; such Bid Proposals will be ineligible for award. Points awarded to all other Bid Prices will be awarded in proportion to where the Bid Price falls within the range from lowest Bid Price to the highest eligible Bid Price.

C. Selection

A ranking of Bid Proposals will be developed based on the sum of points awarded for Bid Price and points awarded on the basis of the economic benefits evaluation. Selection will be based on this final ranking, subject to NYSERDA's procurement target and available funds except that: **NYSERDA will not award a contract to any Bidder offering a Bid Price above the maximum acceptable Bid Price.**

NYSERDA reserves the right to reject or accept any or all bids. 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 electronic mail to the Bidder's Designated Agent(s), as identified on Attachment E, Bid Price Form. Bidder's Designated Agent(s) must be authorized to respond and to commit to counteroffers on behalf of Bidder.**

Upon notification of an award, NYSERDA will prepare a conformed copy of the RPS Standard Form Contract which shall be delivered to Bidder, in a manner to be agreed upon, for Bidder's execution and return.

NYSERDA may withdraw and rescind awards to Bidders who fail to execute the RPS Standard Form Contract within a reasonable amount of time.

NYSERDA RETAINS THE RIGHT TO ACCEPT ANY OR ALL BIDS, TO REJECT ANY OR ALL BIDS, TO SOLICIT RE-BIDS, AND TO MAKE COUNTEROFFERS TO SUCH BID(S) AS IT DEEMS APPROPRIATE.

XII. CONTRACT DURATION, COMMENCEMENT DATE, COMMERCIAL OPERATION

Contract awards will be for a fixed contract duration of ten (10) Contract Years. Fuel-based Bid Facilities, excluding Maintenance Tier Bid Facilities, awarded contracts with Contract Delivery Terms of less than 10 years under a previous RPS Main Tier RFP are eligible to bid the remainder of the 10 year term; such bids must be for the balance of the 10 year term

Contracts for Fuel-Based Bid Facilities (See Attachment H to this RFP) include a unilateral termination clause maturing upon each 30 month anniversary of the commencement date of the Contract Delivery Term, exercisable by Seller should Seller be unable to secure a continuous bio fuel supply at a price that supports the contract. Notice of Seller's intention to terminate must be received by NYSERDA at least 30 days prior to each such 30 month anniversary date.

The Contract Delivery Term will commence on the first day of the month after the Bid Facility commences Commercial Operation, which shall be no later than the Commercial Operation Milestone Date (December 31, 2012, unless extended; See Sections XIII and XIV, below).

Seller must promptly notify NYSERDA's Project Manager of the date upon which the Bid Facility enters Commercial Operation, and the generating capacity in Commercial Operation as of that date (See Section VII;D).

For Bid Facilities in Commercial Operation as of the date of selection for award, 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 RPS Standard Form Contract.

Commercial Operation is defined as a state of operational readiness under which (i) generating capacity is available and physically producing electric energy and associated RPS Attributes, and (ii) all rights, abilities, permits and approvals to schedule and deliver energy to the Injection Point have been obtained.

XIII. COMMERCIAL OPERATION MILESTONE DATE

All Bid Facilities must enter Commercial Operation on or before the Commercial Operation Milestone Date of December 31, 2012. Seller may elect to extend the Commercial Operation Milestone Date from December 31, 2012 to September 30, 2013, on condition that such election is made by written Notice to NYSERDA, on or before October 17, 2012, and that Seller provides to NYSERDA, one of the following:

(1) Contract Security, in addition to the amounts provided under "A" and "B," of Section XIV, below, in the amount of three dollars ($3.00) multiplied by the Bid Quantity;
(2) for Bid Facilities from which the electricity associated with the Quantity Obligation will be delivered into a market administered by the NYISO, proof that an interconnection agreement (for External Bid Facilities, a comparable agreement with the local grid operator) has been entered into by the NYISO, the Connecting Transmission Owner, and the Bidder or a legal representative of the Bidder, with respect to the Bid Facility;
(3) for Bid Facilities seeking to satisfy the electricity delivery requirement through options 2 or 3 of Section XIX; A, a comparable interconnection agreement has been entered into with all the necessary sites, service providers and parties that will be enable and permit the transmission of the energy from the Bid Facility to the point of its consumption.

XIV. CONTRACT SECURITY

All Contract Security amounts, as described below, must be provided in the form of (a) cash, (b) certified funds, or (c) an irrevocable stand-by letter of credit, payable to NYSERDA, and drawn on an institution acceptable to NYSERDA, in substantially the form provided at Exhibit C to the RPS Standard Form Contract. Note: under the Standard Form Contract, once conformed to the Bid, references to Bidder become references to Seller.

A. Bidders must provide to NYSERDA, within 10 business days of notification of selection, Contract Security in an amount equal to $6.00 per MWh times the Bid Quantity. Unless otherwise agreed by NYSERDA in writing, if Bidder does not provide the required Contract Security within 10 business days of notification of selection, its award may be rescinded, and Bidder will forfeit the Bid Deposit, which will be retained by NYSERDA.

B. On or before July 17, 2012, Seller must provide additional Contract Security in an amount equal to $3.00 per MWh multiplied by the Bid Quantity. **Failure to provide the additional Contract Security by July 17, 2012 will constitute a default and will result in termination of the Standard Form Contract.**

C. On or before October 17, 2012, Sellers electing to extend the Commercial Operation Milestone Date to September 30, 2013 under Section XIII; 1, above, must provide Contract Security, in addition to the amounts provided under "A" and "B," above, in the amount of three dollars ($3.00) multiplied by the Bid Quantity.

D. Refund/Retention of Contract Security

As provided by Article XV of the RPS Standard Form Contract (Attachment G and H), amounts provided by the Bidder as Contract Security will be returned or refunded to the Bidder by NYSERDA:

a. In its entirety if the Installed Bid Capacity is equal to or greater than the Bid Capacity.

b. At a prorated amount if the Installed Bid Capacity is less than the Bid Capacity. Such amount that will be returned or refunded, expressed as a percentage of the total Contract Security, will be equal to Installed Bid Capacity divided by the Bid Capacity.

As provided by Article XV of the RPS Standard Form Contract, amounts provided by Bidder as Contract Security will be retained by NYSERDA:

a. In their entirety if Seller fails to provide to NYSERDA, on or before July 17, 2012, Contract Security in the amount required under Section XIV; B, above.

b. At a prorated amount if the Installed Bid Capacity is less that the Bid Capacity. Such amount that will be retained, expressed as a percentage of the total Contract Security, will be equal to the Bid Capacity minus the Installed Bid Capacity; divided by the Bid Capacity.

XV. NYSERDA'S ACQUISITION OF RIGHTS/TITLE TO RPS ATTRIBUTES

Under the RPS Standard Form Contract, Bidder (as Seller) will deliver and NYSERDA will acquire title and exclusive rights to all RPS Attributes for the Contract Delivery Term, as defined herein, along with the exclusive rights to claim, consistent with New York State Environmental Disclosure rules: (i) that the energy associated with RPS Attributes was generated by the Bid Facility during the Contract Delivery Term; (ii) that all RPS Attributes produced by the Bid Facility are conveyed to NYSERDA; and (iii) that New York State and/or the RPS Program is responsible for the environmental benefits including reductions in emissions and/or other pollution resulting from the generation of the Bid Facility's energy and its delivery into, and use within, the NYCA. NYSERDA will NOT acquire energy, capacity or ancillary services from any Bid Facility.

Each invoice submitted and requesting payment for the delivery of the RPS Attributes must be accompanied by a Certification and Assignment of Rights Form, in the form provided at Exhibit B to the RPS Standard Form Contract, which will identify the number and vintage of all RPS Attributes for which payment is requested, bear a certification as to the eligibility of such RPS Attributes, and transfer and assign all title and rights to such RPS Attributes to NYSERDA.

In the event that Bidder (as Seller) must apply for or take some other action under any emission-trading or other regime other than the NY RPS in order to secure a claim, title, ownership, or rights of any type, nature or sort (Title) to any RPS-eligible Attributes associated with Quantity Obligations, or any certification, registration, verification or other memorialization of the creation of such RPS-eligible Attributes by the Bid Facility to which Bidder (as Seller) may be otherwise entitled, Bidder (as Seller) shall (i) notify NYSERDA of such opportunity, and, if requested to do so by NYSERDA shall (ii) take all actions necessary to apply for and secure such Title, to the maximum extent to which Bidder (as Seller) is entitled, (iii) provide NYSERDA with evidence of taking such action; and (iv) convey such Title to NYSERDA whenever so secured.

Except as may be permitted under Section XX, Suspension of Delivery, Sellers may not apply for or otherwise seek to achieve compliance under Section 242-8.7 (CO2 budget units that co-fire eligible biomass) of the CO2 Budget Trading Program (6 NYCRR Part 242), or any other state program operating as a part of the Regional Greenhouse Gas Initiative, on the basis of any MWh or emission of CO2 or reduction in emissions of CO2 or other benefit associated with RPS Attributes or for any activity constituting performance under an RPS Standard Form Contract.

XVI. VERIFICATION OF RIGHTS TO RPS ATTRIBUTES

Throughout the Contract Delivery Term, NYSERDA will require certification and verification of the delivery of the RPS Attributes, as follows:

1. In order to enable NYSERDA and the administrator of the NYS Environmental Disclosure Program (Department of Public Service)(DPS) to verify delivery of RPS Attributes and associated electricity, NYSERDA will require the Seller to provide independent access to detailed monthly market accounting settlement or other pertinent data from either:

   a) the administrator(s) of the wholesale energy market into which energy from the Bid Facility was produced and/or delivered,
   b) the operator of the transmission/distribution utility/public authority or municipal electric company into which energy from the Bid Facility was produced and/or delivered, or

   c) an independent, third party that measures energy generation and usage by a Customer-Sited Bid Facility.

   Seller will be required to waive confidentiality as applicable, as to NYSERDA, for the direct transfer to NYSERDA by such entities of transactional and/or delivery information and data pertinent to the verification of RPS Attribute and associated electricity delivery.

2. Should the State of New York, the NYS Public Service Commission, DPS or NYSERDA create, sanction, adopt or begin participation in a system for the accounting of generation attributes or certificates associated with generation in the New York Control Area, transfer will also include the delivery of the attributes or certificates associated with each RPS Attribute, at the earliest time such certificates or attributes become available for delivery, to an account designated by NYSERDA. Seller will be responsible for and will pay all fees and charges, if any, for the delivery and registration of the attributes or certificates associated with each RPS Attribute into such account, inclusive of accounts in New York State.

3. Sellers with External Bid Facilities located in a control area with an environmental attribute accounting system must deliver any and all certificates, verifications or RECs associated with the Quantity Obligation to an account designated by NYSERDA; or if so allowed or required pursuant to the rules of any future New York attribute accounting system or Renewable Energy Certificate ("REC") registry or tracking system, to convert RECs from such source-area system into RECs created by the New York system and deliver such RECs into an account designated by NYSERDA, at the earliest time such certificates or attributes become available for delivery. Seller will be responsible for and will pay all fees and charges, if any, for the delivery and registration of the attributes or certificates associated with each RPS Attribute into such account, inclusive of accounts in New York State.

4. NYSERDA's obligations to purchase RPS Attributes and to make payment are conditional on the ability of Seller to demonstrate to the satisfaction of the DPS that the creation of and title to the RPS-eligible Attributes is sufficiently verifiable for purposes of the Environmental Disclosure Program. Solely for purposes of this Agreement, Bid Facilities participating in the NEPOOL Generation Information System or the Pennsylvania-Jersey-Maryland Generation Attribute Tracking System are deemed sufficient for this purpose. Sellers with External Bid Facilities in control areas other than the NYISO, NEPOOL, or PJM may seek a determination of sufficiency from the DPS.

5. In no event shall the RPS Attributes of the generation associated with a contract with NYSERDA under this RFP be assigned by Seller to any entity other than NYSERDA. Any assignment or application by Seller of the RPS Attributes associated with a contract with NYSERDA to any other entity, program, or jurisdiction, whether associated with a publicly administered program or a voluntary transaction, is strictly prohibited by, and will constitute a default under, the RPS Standard Form Contract.

XVII. QUANTITY OBLIGATIONS & ADJUSTMENTS

Should an Intermittent Bid Facility's Quantity Obligation fail to achieve 85% of the Bid Quantity for three (3) consecutive Contract Years, NYSERDA may adjust the Bid Quantity for the remainder of the Contract Delivery Term to equal the <u>highest</u> Actual Annual Eligible Production during any Contract Year over that three-year period multiplied by the Bid Quantity Percentage.

Should a Fuel-Based Bid Facility's Quantity Obligation fail to achieve 85% of the Bid Quantity for two (2) consecutive Contract Years, NYSERDA may adjust the Bid Quantity for the remainder of the Contract Delivery Term to equal the average Actual Annual Eligible Production of the two (2) Contract Years multiplied by the Bid Quantity Percentage.

Failure by any Bid Facility's Quantity Obligation to achieve 65% of the Bid Quantity during any Contract Year will constitute a default under the Standard Form Contract executed as a result of this RFP.

Should the Installed Bid Capacity differ from the Bid Capacity, Bidder agrees that NYSERDA may at its option upon Notice to Bidder modify the Contract by adjusting the Bid Quantity, Bid Quantity Percentage, or other relevant terms to reflect the Installed Capacity.

XVIII. POST-AWARD DEMONSTRATION OF ACTUAL ECONOMIC BENEFITS

Within sixty (60) days of the third anniversary of the commencement of the Contract Delivery Term, Seller will be required to submit an economic benefits report including documentation demonstrating the actual economic benefits that resulted from the construction and operation of the Bid Facility. Such report should include sufficient records and documents relating to employment, purchases, and other payments necessary to demonstrate the economic benefits created by the Bid Facility under the categories listed in Section 3 of the Bid Proposal (Economic Benefits Created by the Bid Facility).

Should Seller fail to reasonably demonstrate that the total dollar amount of economic benefits having accrued to New York as a result of the development, construction/modification, and operation of the Bid Facility through the first three (3) Contract Years of operation (Verified Total Dollars), divided by Installed Bid Capacity, is at least 85% of Expected Total Dollars divided by the Bid Capacity, NYSERDA may reduce the Bid Price payable for the remainder of the Contract Delivery Term. Such reduction in the Bid Price will be made by an amount equal to the percentage shortfall between the Verified Total Dollars divided by the Installed Bid Capacity compared to the Expected Total Dollars divided by the Bid Capacity.

XIX. BID FACILITY ELECTRICITY DELIVERY REQUIREMENTS

A. For all Bid Facilities, the electricity associated with the Quantity Obligation must be:

1. delivered into a market administered by the NYISO for end-use in New York State; or

2. delivered through a wholesale meter under the control of a utility, public authority or municipal electric company such that it can be measured, and such that consumption within New York State can be tracked and verified by such entity or by the NYISO; or

3. delivered through a Bid Facility dedicated generation meter, which shall be approved by and subject to independent verification by NYSERDA, to a customer in New York State (excluding customers in the service territory of the Long Island Power Authority) whose electricity was obtained through the NYISO/utility system as of January 20, 2011.

For Bid Facilities seeking to satisfy the electricity delivery requirement through options 2 or 3, above, all costs associated with measurement, tracking, and verification, to the satisfaction of NYSERDA and DPS Staff must and will be borne by Bidder. See also Section XXI; D, Metering.

B. Non-Intermittent External Bid Facilities

During each hour in which a non-intermittent External Bid Facility generates Actual Eligible Production, the Seller must schedule and transmit the electricity representing the Quantity Obligation and associated with the RPS Attributes from the Injection Point to the Delivery Point for end-use in New York. This Delivery Requirement will be applied to each hour during which the Bid Facility produces Actual Eligible Production; electricity delivered during each hour will be recognized as delivered only during such hour; deliveries in excess of the Quantity Obligation during any given hour will not be recognized, for purposes of this requirement, for delivery during any other hour. This rule applies to bilateral and NYISO spot market transactions. The Seller must demonstrate to the satisfaction of the PSC and/or NYSERDA that it is the financially responsible party for the transaction from the Injection Point to the Delivery Point.

C. Intermittent External Bid Facilities

During each hour in which an Intermittent External Bid Facility generates Actual Eligible Production, the Seller must schedule and transmit from the control area of its location to the Delivery Point for end-use in New York, an amount of electricity, in MWh, equal to the Quantity Obligation during such hour. This Delivery Requirement will be applied to each hour during which the Bid Facility produces Actual Eligible Production; electricity delivered during any given hour will be recognized as delivered only during such hour; deliveries in excess of the Quantity Obligation during one hour will not be recognized, for purposes of this requirement, for delivery during any other hour. This rule applies to bilateral and NYISO spot market transactions. The Seller must demonstrate to the satisfaction of the DPS and/or NYSERDA that it is the financially responsible party for the transaction from the Bid Facility's local control area to the Delivery Point.

Failure by any Seller of RPS Attributes from External Bid Facilities to meet these delivery requirements for a minimum of 90% of the hours in which the Bid Facility produces Actual Eligible Production during any Contract Year will constitute a default under the RPS Standard Form Contract.

D. Bilateral Sales

Bilateral sales for electricity associated with the Quantity Obligation produced by any Bid Facility are permissible provided the Seller can demonstrate that:

1. the purchaser of the electricity is a NYS Load Serving Entity (LSE) serving an equal or greater amount of load than the Bid Quantity, or

2. the purchaser is one or more NYS end-users consuming an aggregate amount of electricity equal to or greater than the Bid Quantity.

XX. SUSPENSION OF DELIVERY

Upon prior approval by NYSERDA, a Seller may suspend deliveries of RPS-eligible Attributes to NYSERDA in order to (1) make sales of RPS Attributes to the Voluntary Market in New York State or pursuant to New York State Executive Order 111 or other mandated New York State governmental procurement, or (2) for compliance under the CO2 Budget Trading Program (6 NYCRR Part 242), subject to terms and conditions set forth at Article II of the RPS Standard Form Contract.

XXI. PAYMENT

A. General Payment Terms

In order to receive payments under the RPS program, a Bid Facility must first be Operationally Certified by the Director of the Department of Public Service Office of Energy Efficiency and Environment (OEEE). Once Operationally Certified, NYSERDA will make payments for RPS Attributes based on monthly invoicing, retroactive to the commencement of the Contract Delivery Term, and in accordance with NYSERDA's Prompt Payment Policy (Exhibit to Attachments G and H). NYSERDA will not pay for more than 95% of any Bid Facility's Actual Eligible Production during any month in any Contract Year. Amounts payable in a given month shall be calculated as follows:

1. for Bid Facilities in the NYCA, the multiplicative product of (a) the Actual Eligible Production of the Bid Facility during the prior month; (b) the Bid Quantity Percentage; and (c) the Bid Price.

2. for Non-Intermittent External Bid Facilities, for each hour during such month, NYSERDA shall first determine, for that hour, the lesser of: (1) the Actual Eligible Production during such hour, metered at the Injection Point, multiplied by the Bid Quantity Percentage, and (2) the amount of electricity (in MWh) delivered by Seller from the Injection Point to the Delivery Point in conformance with the Delivery Requirement during such hour. The amount payable shall be the sum of the amounts determined for each hour multiplied by the Bid Price.

3. for Intermittent External Bid Facilities, for each hour during such month, NYSERDA shall first determine, for that hour, the lesser of: (1) the Actual Eligible Production during such hour, metered at the Injection Point, multiplied by the Bid Quantity Percentage, and (2) the amount of electricity (in MWh) delivered by Seller from the local control area to the Delivery Point in conformance with the Delivery Requirement during such hour. The amount payable shall be the sum of the amounts determined for each hour multiplied by the Bid Price.

Notwithstanding the above, NYSERDA will not pay for any RPS Attribute for which Seller has not transferred title to NYSERDA by the Certificate and Assignment of Rights Form (Exhibit B to the RPS Standard Form Contract) for such month. Further, all payments will be conditioned on the provision by Seller of all additional documentation, including but not limited the Certification and Assignment of Rights Form, generation data or access to generation data, and, if appropriate, fuel data/information necessary for NYSERDA to quantify and verify the existence of the RPS Attributes for which payment is being requested. For Fuel-Based Bid Facilities, the Seller will be required to provide additional information as outlined in Exhibit F to the Fuel Based Bid Facility Standard Form Contract (Attachment H to this RFP).

B. Payment Adjustments

NYSERDA may adjust payments to subsequent invoices consistent with NYISO or other control-area billing settlement true-up procedures, based on actual metered production data at the Injection Point and data demonstrating compliance with the Bid Facility electricity delivery requirements. Successful bidders offering RPS Attributes from External Bid Facilities will be paid such amount less any and all reasonable costs borne by NYSERDA to verify Operational Certification throughout the Contract Delivery Term and any and all costs for NYSERDA's participation in any renewable energy attribute accounting system operating in the local control area.

C. Maximum Payment

NYSERDA will not make payment for more than 100% of the product of the Bid Quantity multiplied by the total number of Contract Years multiplied by the Bid Price. NYSERDA will not make payment for more than 100% of the Bid Quantity in any Contract Year.

D. Metering

The Actual Production and Actual Eligible Production of the Bid Facility must be capable of accurate and verifiable measurement at the Injection Point by the local ISO, a transmission utility, public authority, municipal electric company, and in the case of a Customer-Sited Bid Facility, an independent third party. Unless specifically agreed to by NYSERDA in writing, all Bid Facilities that are the subject of an award under this RFP must be separately metered and must be functionally represented by a single and discrete Injection Point.

XXII. PERMITS/APPROVALS

The Seller shall be responsible to obtain all applicable permits and regulatory approvals that may be required in order to develop and/or operate the Bid Facility over the duration of the Contract Delivery Term. Neither the RPS Program nor selection under this RFP in any way replaces or modifies the necessity or applicability of any permit or approval process by any jurisdiction.

NYSERDA is subject to the State Environmental Quality Review Act (SEQRA), and is thereby required to assess the potential environmental impacts, *to New York State*, of any project funded through RFP 2389, wherever such project may be located. Upon selection, Sellers under

contracts with Bid Facilities as to which no SEQR proceeding has been commenced will be required to provide a "full" Environmental Assessment Form (EAF), (1) evaluating the potential environmental impacts *to New York State* of construction and operation of such Bid Facility, and (2) demonstrating that construction and operation of the Bid Facility will not create a significant potential for violation of Article 11 of the Environmental Conservation Law.

A description of the State Environmental Quality Review Act and the associated regulations, as well as the full EAF, is available at http://www.dec.ny.gov/permits/57228.html. NYSERDA's obligations to make payments to Sellers under contracts entered as a result of RFP 2389 will be conditional on the acquisition of all such permits and approvals. Upon request by NYSERDA Seller must demonstrate such acquisition and/or provide copies of all permits and approvals acquired.

XXIII. GENERAL CONDITIONS

A. State Finance Law Sections 139-j and 139-k

NYSERDA is required to comply with State Finance Law Sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html The attached Application Package calls for a signature certifying that the proposer will comply with State Finance Law Sections 139-j and 139-k, and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under Section 139-j of the State Finance Law within the previous four years.

B. 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/st220td_fill_in.pdf). The Department has developed guidance for contractors which is available at http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf.

C. 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
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

D. 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.

E. Confidentiality

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 exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 www.nyserda.org/about/nyserda.regulations.pdf. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

XXIV. LIST OF ATTACHMENTS

Attachment A – Application Package Checklist
Attachment B – Disclosure of Prior Findings of Non-Responsibility Form
Attachment C – Project Schedule Form
Attachment D – Sample Bid Proposal Form
Attachment E – Sample Bid Price Form
Attachment F – Notice of Intent to Bid Form
Attachment G – RPS Standard Form Contract – Non-Fuel-Based Bid Facilities
  Exhibit A - Standard Terms and Conditions for all NYSERDA Agreements
  Exhibit B - Certification and Assignment of Rights Form
  Exhibit C - Letter of Credit
  Exhibit D - Intentionally Deleted
  Exhibit E - Prompt Payment Policy Statement
Attachment H – RPS Standard Form Contract – Fuel-Based Bid Facilities
  Exhibit A - Standard Terms and Conditions for all NYSERDA Agreements
  Exhibit B - Certification and Assignment of Rights Form
  Exhibit C - Letter of Credit
  Exhibit D - Intentionally Deleted
  Exhibit E - Prompt Payment Policy Statement
  Exhibit F

XXV. DEFINITIONS

In evaluating and responding to this RFP, please note that the terms and definitions used in this RFP have identical meanings to those in the RPS Standard Form Contracts (Attachments G and H to this RFP); in the case of conflict the meanings in the RPS Standard Form Contract will govern. This RFP and the RPS Standard Form Contract should be read in conjunction with each other.

Actual Annual Production: The amount, in MWh, of the total electric energy produced by the Bid Facility during any Contract Year, measured at the Injection Point.

Actual Annual Eligible Production: The amount, in MWh, of the Actual Eligible Production during a full Contract Year.

Actual Eligible Production: The amount, in MWh, of the electric energy produced by the Bid Facility during any period within a Contract Year, measured at the Injection Point, except that:

(i) for a Repowering or Hydroelectric upgrade, the Actual Eligible Production shall be the product of (a) Actual Production of the Bid Facility, multiplied by (b) the percentage of the Actual Production resulting from the upgrade or Repowering established through the Provisional/Operational Certification Process.

(ii) for a Fuel-Based Bid Facility that has never used eligible fuels, the Actual Eligible Production shall reflect the eligible biomass generation only, determined as the Actual Production of the entire Bid Facility, multiplied by the BTU input ratio of (a) the biomass fuel heat input to (b) the total fuel heat input, consistent with how such terms are applied for Provisional/Operational Certification;

(iii) for a Fuel-Based Bid Facility that used eligible fuels, including co-firing with ineligible fuels, on or before January 1, 2003, the Actual Eligible Production shall reflect only that Actual Production using eligible biomass, biogas, or liquid bio-fuel above the historical baseline production established through the Provisional/Operational Certification Process.

Actual Production: The amount, in MWh, of the total electric energy production of the Bid Facility during any period within a Contract Year.

Bid Capacity: Bid Capacity shall equal the Bid Quantity Percentage multiplied by the Nameplate Capacity of the Bid Facility. In the case of repowering, hydroelectric upgrades and co-firing, the Bid Capacity shall equal the Bid Quantity divided by the Expected Average Annual Production, multiplied by the Nameplate Capacity.

Bidder: An entity submitting an Application Package and Bid Proposal in response to this RFP. Such entity need not be the owner of the Bid Facility, but must have secured rights to the RPS Attributes from the Bid Facility sufficient to satisfy all performance requirements stated in this RFP and the RPS Standard Form Contract.

Bid Facility: The electric generating station that has been identified and described in the Provisional Certification Form.

Bid Price: A single fixed production payment, expressed in $/MWh, applicable to each MWh of RPS Attributes offered as performance throughout the Contract Delivery Term.

Bid Quantity: The amount, in MWh, of RPS Attributes the Bid Facility expects to proffer as performance under the RPS Standard Form Contract over each Contract Year during the Contract Delivery Term. The Bid Quantity must be the same for each Contract Year throughout the Contract Delivery Term, subject to adjustments pursuant to Section XVII (Quantity Obligations & Adjustments) and XXI (Payment). This number will equal the Expected Annual Eligible Production multiplied by the Bid Quantity Percentage.

Bid Quantity Percentage: The percentage of the Bid Facility's Expected Annual Eligible Production that will be committed to performance under an RPS Standard Form Contract. The Bid Quantity Percentage must be at least 30% and may not exceed 95%, and will be applied to Actual Eligible Production in any period during the Contract Delivery Term to establish compliance with contract requirements.

Capacity Factor: The ratio, expressed as a percentage up to two decimal places, of the total electricity that the Bid Facility expects to produce during a Contract Year compared to the total potential electricity that could be produced if the Bid Facility operates at 100 percent of the Nameplate Capacity during every hour of the Contract Year.

Commercial Operation: A state of operational readiness under which (i) generating capacity is available and physically producing electric energy and associated RPS Attributes, and (ii) all rights, abilities, permits and approvals to schedule and deliver energy to the Injection Point have been obtained.

Commercial Operation Milestone Date: The Commercial Operation Milestone Date is December 31, 2012. The Commercial Operation Milestone Date may be extended (see Section XIV, Contract Security).

Contract Delivery Term: All contract awards will be for a fixed contract duration of ten (10) Contract Years. The Contract Delivery Term will commence on the first day of the month after the Bid Facility commences Commercial Operation. For Bid Facilities in Commercial Operation as of the date of selection for an award, 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 RPS Standard Form Contract.

Contract Security: All amounts provided to NYSERDA as defined in Section XIV (Contract Security) of this RFP.

Contract Year: A 12-month period commencing with the beginning of the Contract Delivery Term and each anniversary thereof within the Contract Delivery Term.

Customer-Sited Bid Facility: A Bid Facility interconnected on the customer side of a retail electric meter.

Delivery Point: For Bid Facilities located in the New York Control Area (NYCA), the Delivery Point shall be the Injection Point. For External Bid Facilities the Delivery Point will be the bus where the Seller delivers electricity to the NYCA for end use in New York.

DPS: the New York State Department of Public Service.

Expected Annual Eligible Production: The amount, in MWh, of the Expected Average Annual Production of the Bid Facility, measured or compensated to the Injection Point, except that:

(i) for a Repowering or Hydroelectric upgrade, the Expected Annual Eligible Production shall be the product of (a) Expected Average Annual Production multiplied by (b) the percentage of the Expected Average Annual Production resulting from the upgrade or Repowering established through Provisional Certification;

(ii) for a Fuel-Based Bid Facility that has never used eligible fuels, the Expected Annual Eligible Production shall reflect the eligible biomass generation only, determined as the Expected Average Annual Production of the entire Bid Facility, multiplied by the BTU input ratio of (a) the biomass fuel heat input to (b) the total fuel heat input, consistent with how such terms are applied for Provisional Certification;

(iii) for a Fuel-Based Bid Facility that used eligible fuels, including co-firing with ineligible fuels, on or before January 1, 2003, the Expected Annual Eligible Production shall reflect that Expected Annual Eligible Production using eligible biomass, biogas, or liquid bio-fuel that is above the historical baseline production established through Provisional Certification.

Expected Average Annual Production: The expected electric energy production of the entire Bid Facility during any Contract Year post-upgrade/repowering for which Provisional Certification was granted.

Expected Total Dollars: The total dollar amount of economic benefits, as presented in the Bid Proposal, expected to accrue to New York as a result of the development, construction, modification, and operation of the Bid Facility through the first three (3) Contract Years.

External Bid Facility: Any Bid Facility not located within the New York Control Area (NYCA); such Bid Facilities are subject to the delivery requirement specified in Section XIX (Bid Facility Electricity Delivery Requirement).

Fuel-Based Bid Facility: For purposes of this RFP, Fuel-Based Bid Facilities are those where Actual Annual Eligible Production is derived from the use of eligible biomass, biogas or liquid bio-fuels.

Hydroelectric Upgrade: A hydroelectric upgrade results from investments made to an existing hydroelectric renewable electric generating facility that cause an increase in renewable generation incremental to a historical baseline level of generation, as determined through the Provisional/Operational Certification process.

Injection Point: The generator bus or location where (a) the administrator of the wholesale power market, (b) the operator of the transmission/distribution utility, public authority or municipal electric company, or (c) in the case of customer-sited generation, the dedicated generation meter at which a third party, measures, or otherwise determines, energy production from the Bid Facility.

Installed Bid Capacity: Installed Bid Capacity shall equal the gross generating capacity, in MW, of the entire Bid Facility that achieves Operational Certification multiplied by the Bid Quantity Percentage. In the case of repowering, hydroelectric upgrades and co-firing, the Installed Bid Capacity shall equal the Bid Quantity Percentage multiplied by the portion of the gross generating capacity (MW) that has been repowered, upgraded and or retrofitted as determined by Operational Certification.

Intermittent Bid Facility: For purposes of this RFP, Intermittent Bid Facilities shall include the following: wind, solar, tidal, ocean, and run-of-river hydroelectric.

Nameplate Capacity: The gross generating capacity of the entire Bid Facility, post upgrade/repowering, in MW.

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

NYISO: The New York Independent System Operator, Inc. is the administrator of the wholesale power markets in New York and manages the physical electrical operations of the New York Control Area (NYCA).

Operational Certification: Operational Certification verifies that the Bid Facility has been constructed and/or will operate in accordance with the proposal submitted, for which Provisional Certification was granted and for which an award was made. See Section VII, Subsection B.

Quantity Obligation: Shall mean, for any period during the Contract Delivery Term, the number of MWh calculated as the Bid Quantity Percentage multiplied by the Actual Eligible Production; subject, however, to adjustments pursuant to Section XVII (Quantity Obligations & Adjustments).

Repowering: Shall mean a generation unit other than a hydroelectric upgrade, with an initial date of Commercial Operation no later than December 31, 2002, that has been or will be substantially and verifiably repowered on or after January 1, 2003, such that the Actual Annual Production from the facility after Repowering is or will be demonstrably greater than the Actual Annual Production prior to the January 1, 2003 level by at least five percent.

RPS-eligible Attributes: Shall mean all environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, allocations, howsoever characterized, denominated, measured or entitled, attributable to the generation of Actual Eligible Production by a Bid Facility. One RPS-eligible Attribute shall be created upon the generation by a Bid Facility of one MWh of Actual Eligible Production. RPS-eligible Attributes include but are not limited to: (i) any direct emissions of pollutants to the air, soil or water; (ii) 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; (iii) any avoided emissions of carbon dioxide (CO_2), methane (CH_4) 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; (iv) all set-aside allowances and/or allocations from emissions trading programs made unnecessary for compliance in such program as a result of performance under an RPS agreement, including but not limited to allocations available under 6 NYCRR §§ 204, 237 and 238; and (v) all credits, certificates, registrations, recordations, or other memorializations of whatever type or sort, representing any of the above. If the Bid Facility is a biomass or landfill gas facility and the Seller and/or Bid Facility receives any tradable credits, benefits, emissions reductions, offsets, and allowances based on the greenhouse gas reduction benefits attributed not to the production of electricity but rather to its fuel production, collection, conversion or usage, it shall provide NYSERDA or its designee with sufficient credits, benefits, emissions reductions, offsets, and allowances to ensure that there are zero net GHGs associated with the production of electricity from such Bid Facility.

RPS-eligible Attributes do not include (i) any energy, capacity, reliability or other power products, such as ancillary services; (ii) production tax credits associated with the construction or operation of the Bid Facility or other financial incentives in the form of credits, reductions, or allowances associated with the Bid Facility that are applicable to a state or federal income taxation obligation; (iii) fuel-related subsidies or "tipping fees" that may be paid to the Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or (iv) emission reduction credits encumbered or used by the Bid Facility for compliance with local, state, or federal operating and/or air quality permits.

RPS Attributes: The RPS-eligible Attributes offered and delivered as performance during the Contract Delivery Term. See Section XV of this RFP (NYSERDA's Acquisition of Rights/Title to RPS Attributes).

RPS Standard Form Contract: The standard contractual document to be entered into by NYSERDA and selected Bidders, which shall define, among other things, their rights and obligations concerning the generation of RPS Attributes, the delivery of all right and title to RPS Attributes to NYSERDA, and the payments by NYSERDA during the term of the agreement.

Seller: The contracting party to the RPS Standard Form Contract, as identified as the legal name of Bidder in Attachment D to this RFP (Bid Proposal Form). References to Bidder in this RFP correspond to references to Seller in the RPS Standard Form Contract.

Verified Total Dollars: The total dollar amount of economic benefits verified by NYSERDA to have accrued to New York as a result of the development, construction/modification, and operation of the Bid Facility through the first three (3) Contract Years.

Voluntary Market: The market through which sales are made of renewable attributes for purposes other than compliance.