

## **NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors**

### **Introduction**

The purpose of this Code of Conduct for NYSERDA Contractors, Consultants, and Vendors ("Contractor Code of Conduct") is to advise the New York State Energy Research and Development Authority's (NYSERDA) many contractors, consultants, and vendors ("Vendors") on what is expected of them to ensure a business relationship with NYSERDA that is consistent with ethical business practices.

NYSERDA requires its Board Members (in their capacity as NYSERDA Board Members) and employees, including its Officers, to adhere to high ethical standards and NYSERDA also requires the many Vendors with which it does business to adhere to the highest ethical standards.

Towards this end, NYSERDA has established a corporate system of internal controls to ensure that its Board Members and employees perform their official duties consistent with the requirements of the New York State Public Officers Law Code of Ethics and other applicable laws, Executive Orders, rules, regulations, and internal policies of NYSERDA. This internal control system also is intended to encourage and support a fair, open, and honest business relationship among NYSERDA Members, employees, and Vendors.

### **Contractor Conduct**

To promote ethical business relationships with NYSERDA, Vendors are to:

- Furnish all required goods, materials, and services in a manner consistent with the underlying terms and conditions of their contract and applicable program solicitation,
- Submit complete and accurate reports and invoices to NYSERDA and to other related program participants as required,
- Not seek, solicit, demand, or accept any information, verbal or written, from NYSERDA or others involved in NYSERDA efforts that provides an unfair advantage over a competitor,
- Not engage in any activity or course of conduct that restricts open and fair competition on NYSERDA-related programs, projects, or transactions, or that is inconsistent with any law, rule, or regulation,
- Not engage in any course of conduct with NYSERDA Members and employees or others involved in NYSERDA efforts that constitutes a conflict of interest, in fact or in appearance,
- Not offer any gifts or gratuities in excess of nominal value to NYSERDA Members or employees (including special event tickets or other items of value), and
- Not engage in other conduct that violates this Contractor Code of Conduct.

### **Lobbying**

All Vendors are to comply with the Omnibus Lobbying Reform Act of 2005, with respect to NYSERDA solicitations, by contacting only the NYSERDA employees named in the solicitation, during the Restricted Period, as defined and required by such Act. The Vendor is required to ensure compliance with the Act's requirements and must direct every individual or entity retained, employed, designated by, or acting for, or on behalf of, the Vendor to attempt to influence the NYSERDA procurement process, to limit their contacts with NYSERDA concerning specific procurement actions to the NYSERDA designated contact(s) for that procurement.

### **Non-Collusion and Independence of Bid**

Vendors are to calculate price(s) contained in their bid or proposal, independently, without collusion, consultation, communication, or agreement with any other competing Vendor for the purpose of

restricting competition.

Unless otherwise required by law, the price(s) that a Vendor quotes in its bid or proposal shall not knowingly be disclosed by the Vendor, directly or indirectly, to any other competing Vendor prior to the closing date for bids or proposals.

In addition, a Vendor shall not make any attempt to induce any other individual or entity to submit or not to submit a bid or proposal.

### **Vendor Ethics Program**

NYSERDA encourages its Vendors to advance and support ethical business conduct and practices among their respective directors, officers and employees, through the adoption of corporate ethics awareness training programs and written codes of conduct. In addition to considering technical competence and financial ability, NYSERDA may also consider its past experience with a Vendor in this regard, prior to awarding any new contracts or issuing any new purchase orders.

### **Limits on Gifts to NYSERDA Members and Employees**

NYSERDA strongly discourages Vendors from offering or giving anything of value to NYSERDA Members and employees under circumstances that may constitute, or even suggest, impropriety. Section 73(5) of the Public Officers Law expressly prohibits any firm or its agents, that are doing or seeking to do business with NYSERDA from directly or indirectly offering or giving any gift having more than a nominal value to NYSERDA Members or employees under circumstances in which it:

- Could be reasonably inferred the gift was intended to influence NYSERDA Members or employees in the performance of their official duties, or
- Could reasonably be expected to influence NYSERDA Members or employees in the performance of their official duties, or
- Was intended as a reward for the NYSERDA Member's or employee's official action.

For purposes of determining compliance with this requirement, all gifts to NYSERDA Members and employees during any 12-month period are aggregated. Additionally, even if a particular gift would not be more than nominal value, the offering or giving of a gift of any value to NYSERDA Members or employees may be considered inappropriate because the nature of pending matters may give rise to the appearance of impropriety (e.g., gifts given during the contract procurement process).

Violations of these limits on gifts may be grounds for immediate contract termination and referral for civil action or criminal prosecution.

### **Employing Relatives of NYSERDA Employees**

Vendors may employ relatives of NYSERDA Members and employees, but must notify NYSERDA of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. NYSERDA reserves the right to request that work assignments of a NYSERDA Member's or employee's relative be modified, if a conflict of interest, or the appearance thereof, is deemed to exist.

### **Hiring Former NYSERDA Members and Employees**

Vendors may hire former NYSERDA Members and employees. As a general rule, however, under the Public Officers Law, former Members and employees of NYSERDA may neither appear nor practice before NYSERDA, nor receive compensation for services rendered on a matter before NYSERDA, for a period of two years following their separation from NYSERDA service. Additionally, former

NYSERDA Members and employees are subject to a “lifetime bar” that prevents them from working on or receiving compensation for services regarding any transaction in which they personally participated or that was under their active consideration during their tenure with NYSERDA.

### **Reporting Violations**

Vendors are to remain alert to and report possible violations of this Contractor Code of Ethics, either by its employees directly or by an inappropriate solicitation from a person acting on behalf of NYSERDA.

Vendors must promptly report such potential violations directly to NYSERDA or indirectly by contacting NYSERDA’s independent and anonymous fraud and abuse hotline at 1 (866) 219-1122. Vendors are required to fully cooperate in any investigation of a possible violation.

### **Questions**

Any questions on these guidelines should be directed to the responsible Project Manager, Program Manager, Program Director, Director of Contract Management, Internal Control Officer, or Office of the General Counsel at (518) 862-1090.

When in doubt, please seek guidance.

1 (866) NYSERDA • [info@nyserda.org](mailto:info@nyserda.org) • [www.nyserda.org](http://www.nyserda.org)