



FINANCIAL ADVISOR SERVICES Request for Proposal (“RFP”) 1923

Proposals Due: March 15, 2010 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (“NYSERDA”) invites proposals from firms interested in serving as financial advisor in connection with its implementation of financing structure(s), including the possible issuance of bonds, notes, and other obligations by NYSERDA and the use of other possible financing vehicles for purposes of making loans or otherwise providing financial support for energy efficiency improvements for the residential, small commercial, and other sectors. Services may relate to the initiation of financings under NYSERDA’s enabling statute, including the Green Jobs – Green New York Act or the Municipal Sustainable Energy Loan Program legislation, as it may be amended from time to time, and other programs, and including secured and unsecured financings.

Proposal Submission: Proposers must submit five (5) copies of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to:

Roseanne Viscusi, RFP 1923
NYS Energy Research and Development NYSERDA
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Jacquelyn L. Jerry at (518) 862-1090, ext. 3284, or jlj@nyserda.org. If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507, or vwf@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting Jacquelyn L. Jerry (Designated Contact) at (518) 862-1090, ext. 3284, or jlj@nyserda.org. Contacting anyone other than this 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 proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned. Faxed or e-mailed proposals will not be accepted. Proposals 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.**

I. Introduction

NYSERDA is a public benefit corporation of the State of New York created and operating under the provisions of Public Authorities Law, §§1850 *et seq.*, the New York State Energy Research and Development Authority Act ("Act"). The purposes and powers of NYSERDA include conducting energy research, development, and demonstration programs; managing radioactive wastes and facilities at the Western New York Nuclear Service Center in West Valley, New York; managing certain premises and facilities in Malta, New York, known as the Saratoga Technology + Energy Park; and administering an Energy Efficiency Services program, a Residential Energy Affordability Program, an Energy Analysis program, a Systems Benefit Charge Program, a Renewable Energy Portfolio Standard Program, and a Radioactive Waste Policy and Nuclear Coordination program.

In addition, NYSERDA issues bonds and notes to finance energy-related facilities qualifying under the Internal Revenue Code for tax-exempt financing. NYSERDA has financed certain electric energy, gas, district heating and cooling, solid waste disposal, and pollution control facilities through its financing program. Currently, NYSERDA has outstanding approximately \$3.6 billion in tax-exempt bonds issued on behalf of New York State investor-owned utilities. These bonds are issued on a conduit, non-recourse basis.

Current NYSERDA energy efficiency loan programs

NYSERDA administers the Home Performance with ENERGY STAR® program allowing energy efficiency improvements to be implemented in 1-4 family homes. The program provides consumer access to contractors who are trained and certified through the Building Performance Institute (BPI). Contractors perform a comprehensive home assessment and then provide retrofit recommendations to the consumer. The program provides the ability for the consumer to finance the cost of the energy efficiency improvements using an unsecured Fannie Mae loan (Energy Loan) offered through Energy Finance Solutions, a subsidiary of the non-profit organization, Wisconsin Energy Efficiency Corporation, an authorized Fannie Mae lender. Using System Benefits Charge (SBC) program funds, NYSERDA subsidizes the interest cost by buying down the Fannie Mae loan (which offers a 13.99% interest rate) to a rate of 5.99% - currently this subsidy averages about 20% of the loan amount. Current loan volume is approximately 550 loans totaling \$4.4 million per year. Loan approval is based on credit score and other criteria, and Fannie Mae requires a minimum credit score of 640. Currently, about 30% of consumers who apply for financing through NYSERDA's program are denied financing due to credit scores. As an alternative to the loan, a homeowner has the option to receive a Homeowner Finance Incentive in lieu of the financing which provides a cash incentive of 10% of the cost of the energy retrofit work. Currently approximately 3,400 consumers annually take this option rather than obtain the financing, requiring incentive payments in the aggregate annual amount of \$3.2 million. Consumers who are income eligible can participate in the Assisted Home Performance with ENERGY STAR® program and receive a cash incentive for 50% of the cost of the energy retrofit work, and they may also finance the balance by obtaining a program loan. Currently, approximately 1,400 retrofits are completed annually under the Assisted Home Performance with ENERGY STAR® program, requiring incentive payments in the aggregate annual amount of \$5.5 million.

NYSERDA also administers the **New York Energy \$martSM** Loan Fund program for the purpose of financing certain eligible energy efficiency improvements and renewable technologies for 1-4 family homes and commercial buildings. The program provides an interest rate subsidy which is used to reduce the interest rate charged by a participating lender (about 100 banks, credit unions and leasing companies currently participate) . These loans are limited to a term of up to 10 years and a maximum loan amount of \$1 million. The interest rate reduction for eligible borrowers is up to 4.0% or 400 basis points, but subject to a minimum loan rate of 3.0%. The participating lender conducts a credit analysis for the loan in accordance with its normal standards and practices. Eligible improvements may be financed by loans obtained on a secured or unsecured basis, at the option of the lender. NYSERDA pays the lender up-front upon loan closing for the interest rate reduction, which varies based on the loan term and the lender's rate, but generally averages about 15% of the loan amount. The commercial loan fund was put on hold effective February 2009 due to a shortage of program funding. Prior to this, loan volume had been increasing and in the last year of the program approximately 141 loans totaling \$61 million were issued, for both small commercial and large commercial customers. During 2009, the Loan Fund approved 310 loans for energy efficiency projects in 1-4 family homes totaling \$2.6 million and 36 loans for multifamily buildings totaling \$25.7 million.

Green Jobs – Green New York Program

In October 2009, Governor Paterson signed into law the Green Jobs-Green New York Act of 2009 (Chapters 487 and 488 of the Laws of 2009). The legislation created a statewide program to be administered by NYSERDA to promote energy efficiency and technologies to reduce energy costs and reduce greenhouse gas emissions. The program will also support sustainable community development and create opportunities for green jobs.

The Program is funded with \$112 million from the proceeds of selling CO2 allowances under the Regional Greenhouse Gas Initiative (RGGI) program. The legislation authorizes NYSERDA to establish a program for the performance of energy audits and energy efficiency retrofits and improvements for residential, multifamily, small business, and not-for-profit property owners, occupiers, and managers. The program will provide energy audits to eligible applicants based on a sliding scale where audit fees are waived for residential applicants whose demonstrated income is less than two times the median county household income. The legislation authorizes NYSERDA to establish a revolving loan fund to provide loans to finance retrofits and allows NYSERDA to establish the term and structure of loans offered as deemed appropriate, subject to maximum loan amounts of \$13,000 for residential structures (four or fewer dwelling units), \$26,000 for non-residential structures (small commercial/not-for-profit facilities), and amounts as determined by NYSERDA for multi-family structures (five or more dwelling units).

Municipal Sustainable Energy Loan Program

In November 2009, legislation was signed (Chapter 497 of the Laws of 2009) to create the Municipal Sustainable Energy Loan Program, legislation similar to Property Assessed Clean Energy (PACE) enabling legislation that has been passed in a significant number of other states throughout the nation. The New York legislation allows any municipality to establish a

sustainable energy loan program to make loans to the owners of real property located within the municipality to finance the installation of renewable energy systems and energy efficiency improvements and related energy audits and renewable energy system feasibility studies. The program also allows such municipality to establish the criteria for making such loans and the terms and conditions for repayment of such loans. The loans made under such a program will constitute a lien upon the real property benefitted by such loan. The municipality may require the loan to be repaid through a charge on the real property benefitted by the loan, levied and collected in the same manner as municipal taxes, but levied as a separately listed charge on the owners' tax bill. The legislation requires energy audits to be conducted by consultants certified by NYSERDA, by a certifying entity approved by NYSERDA, or by the municipality. The program must use lists of cost effective efficiency improvements for different building types as approved by the authority, the term of any loans must not exceed the weighted average useful life of measures financed by such loan, the loans must bear a fixed interest rate, and the principal amount of the loan cannot exceed the lesser of ten percent (10%) of the appraised real property value or the actual costs of the installed measures. If Federal funds are not made available to provide financial support for this program, statutory amendments will be necessary before NYSERDA and municipal corporations will be able to implement this approach.

NYSERDA approach for improving energy efficiency financing

NYSERDA is exploring several approaches for providing loans to consumers for energy efficiency retrofits. They include, but are not limited to: unsecured loans; credit-enhanced consumer loans; on-bill recovery financing; and loans supported by property tax liens and repaid through property tax assessments. Providing multiple approaches to consumers will allow them to select a method that best meets their circumstances and preferences, and will also provide information on the comparative differences between the approaches.

NYSERDA expects to use a portion of the RGGI funds to support a financial structure that would allow NYSERDA access to capital markets to fund loans on a non-recourse basis. This structure could include the use of loan loss reserve funds provided from RGGI funds and also through potential funding that may be available from foundations and other investors who have expressed interest in supporting the program.

NYSERDA is interested in pursuing options for both unrated securities sold through private placement as well as rated securities that would achieve an above minimum investment grade rating by one or more national rating agencies, allowing the securities to be marketed broadly to institutional and individual investors. Based on current budget estimates, it is anticipated that approximately \$60 million will be available to support the financing structure, and that these funds may be used for: loan loss reserves; funding differences between interest costs paid to investors compared to interest rates charged to borrowers; differences between the term of investor debt and that allowed for loans (which may be longer than investor debt to support cost effective energy efficiency measures requiring longer payback periods); and issuance costs. (The remaining \$52 million in RGGI funding will be used for workforce development initiatives, outreach and marketing, energy audit subsidies, NYSERDA administration, and program evaluation costs). NYSERDA's financing structure needs to balance the needs for providing financing to the broadest range of consumers against the need for creating a structure that provides safeguards for protecting investor interests. In addition, the ideal financing structure

would provide consumers with flexible loan repayment terms to ensure a better match between anticipated energy savings and loan repayment amounts.

NYSERDA is willing to consider alternate structures that provide for the lowest effective cost, and the highest degree of leveraging and sustainability, to achieve the program purposes. It is not anticipated that the financing structure will be self-sustaining, as current capital market pricing may require subsidization of the interest rate in order to encourage consumers to implement energy efficiency/renewable energy measures. NYSERDA is also willing to explore alternate market delivery strategies (municipal bond market, asset-backed market) and different structures (senior/subordinate or amortizing issuance with fixed reserves).

There are differences between the authorization established in the Green Jobs-Green New York legislation and the Municipal Sustainable Energy Loan Program legislation that will need to be addressed if a single program financing strategy is pursued. For example, renewable energy systems are eligible for financing under the Municipal Sustainable Energy Loan Program legislation, but not the Green Jobs-Green New York legislation. In addition, loan amounts are limited in the Green Jobs-Green New York legislation, but not in the Municipal Sustainable Energy Loan Program legislation.

Additional background information on NYSERDA and its programs is available on the NYSERDA website at www.nyserda.org. Please contact Jacquelyn L. Jerry at (518) 862-1090, ext. 3223, for more information.

II. Scope of Services

NYSERDA requests proposals from financial advisor firms to assist in implementing possible financing activities under its enabling statute, the Green Jobs – Green New York legislation, the Municipal Sustainable Energy Loan Program, and other financing activities. The selected firm is expected to perform the tasks listed below, as requested, for a two year period, with three possible 1-year renewal options. Tasks will be assigned on an as needed basis.

Services are expected to include, but need not be limited to:

1. Advising on alternate structures to securitize and sell secured or unsecured loans for energy efficiency and renewable energy improvements in residential, multifamily and commercial facilities, including but not limited to structures that include: credit enhancements, reserves, and subsidization of issuance and interest rate costs. Providing advice on loan underwriting and servicing requirements and processes, interim financing facilities and secondary market executions, and otherwise advising on the cost effectiveness of different financing scenarios is also expected. This may include advising on effective loan aggregation vehicles/conduits, how the program may establish relationships with consumer-orientated lenders to create volume, which financing products will be effective for different property segments and types of borrowers, and how NYSERDA can encourage community banks and consumer-oriented entities to market the product, among other tasks.

2. Reviewing and providing advice on preliminary official statements, official statements, remarketing circulars, and other disclosure documents necessary or appropriate to the authorization, issuance, sale, or delivery of bonds.
3. Assisting with preparation of financing schedules.
4. Advising on federal and state tax and securities law matters and changes thereto, the investment and expenditure of bond proceeds, and the collection, investment, and application of monies used to pay debt service on bonds.
5. Drafting, analyzing, advising, or commenting on federal and state legislation, regulations and rules, NYSERDA guidelines, and other matters which may have an impact on the financing activities.
6. Participating in meetings with utilities, municipalities and other potential borrowers, bond counsel, rating agencies, underwriters, NYSERDA's Members (board of directors) and Audit and Finance Committee, and other parties, as necessary or appropriate.
7. Providing any other services, advice, or opinions relating to NYSERDA's financing program, and other financial matters, as requested.

III. Proposal Requirements

Proposers must submit five (5) copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this RFP. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist may be returned.** Faxed or e-mailed copies will not be accepted.

Procurement Lobbying Requirements - State Finance Law sections 139-j and 139-k Procurement lobbying requirements contained in State Finance Law sections 139-j and 139-k became effective on January 1, 2006. (The text of the laws is available at: <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>). In compliance with §139-j and §139-k of the State Finance Law, for proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of \$15,000, additional forms must be completed and filed with proposals: (1) a signed copy of the Proposal Checklist including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form. Failure to include a signed copy of the Proposal Checklist referenced in this solicitation will disqualify your proposal.

A proposal should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Proposals should be limited to not more than 15 pages, plus attachments. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. Each

page of the proposal should state the name of the proposer, the RFP number, and the page number.

Proposals must be submitted in two parts. Part I must consist of responses to the management and qualifications items (Section III(A) below). Part II must consist of complete contract cost and pricing information (Section III(B) below). Each part must be complete, so that it can be evaluated independently.

A. Management and Qualifications.

1. Briefly discuss your firm's experience with the municipal market. Provide a brief description of services you expect to provide to NYSERDA. Indicate whether your firm is prepared to render the services enumerated in this RFP using its own resources. The description should emphasize particular services to be provided in order for NYSERDA to deliver a State-wide program, at the lowest cost possible, consistent with the intent of each targeted program and the issuance of bonds. Discuss the approach your firm would take in analyzing the services provided by intermediaries to ensure that NYSERDA is receiving the best value from these service providers. Discuss the approach your firm would take in proposing financing ideas to facilitate financing programs. Give examples of your firm's experience, if any, in assisting public issuers in issuing bonds, and the factors to be considered in selecting the best financing vehicle. Discuss the approach your firm would take in: acting as a source of municipal bond market and product information for research and advice as it relates to this RFP; advising NYSERDA on the targeted investor base; determining under what circumstances NYSERDA would be best served by competitive or negotiated sales, as appropriate; assisting NYSERDA by providing advice on structuring, financial modeling capabilities, bidding logistics, verification, credit enhancement solicitations, rating agency presentations and investor meetings; ensuring competitive pricing and to the extent possible receipt of maximum value from other third-party participants; consulting with NYSERDA on market conditions, timing, and terms; and otherwise ensuring the selection of the best financing vehicle for its intended audience. Include information on your firm's ability to provide successful and timely financial advisory services to NYSERDA. Include the types of businesses (i.e., investment banking, investment services) your firm is involved in, indicate the number of clients your firm serves, the dollar amounts associated with these services, and the percentage of staff dedicated to the various types of businesses. Discuss your approach to ensuring that financing schedules are met.

2. Describe your firm's experience and expertise with general representation of public entities and local municipalities, including particularly New York State public benefit corporations or public authorities. Describe any experience in advising on legislation at the State or local level relating to the renewable energy and energy efficiency sectors. Describe how your services would assist NYSERDA on addressing the various energy efficiency and clean energy financing program needs of local municipalities, under the various local enabling laws.

3. List your firm's major financial advisor engagements during the last three years and provide a brief description of each scope of work.

4. Discuss your firm's experience, if any, with securities regulators.

5. Describe any technical knowledge or any subjects related to financial advisor services in which you feel your firm has special expertise. Provide a project organization and management description that describes the unique capabilities of your firm and the individuals assigned as financial advisors.

6. Provide the names of personnel in the firm that will be assigned to NYSERDA's account and their experience in performing services similar to the services requested by this RFP. Include resumes for all employees proposed to be involved on NYSERDA's account. Include a description of each employee's function in the company, title, office address, and number of years of service with the firm and other relevant past experience. Describe the availability of the lead person(s) for consultation with NYSERDA, including but not limited to his or her ability to meet with NYSERDA staff in Albany, New York. (Resumes may be included as an appendix.)

7. Discuss fully any conflicts of interest, actual or perceived, which might arise in connection with your firm's involvement with NYSERDA. If conflicts do or might exist, describe how your firm would resolve them. Please be aware that the firm selected will be expected to represent NYSERDA in all transactions falling under this RFP; representation of any other party to these transaction involving NYSERDA would be prohibited without the express written approval of NYSERDA, which would be unlikely.

8. Identify any litigation or administrative proceedings to which you are a party and which would either materially impair your ability to perform the services enumerated herein and for which this RFP was issued or, if decided in an adverse manner, materially adversely affect the financial condition of your firm.

9. Identify the employees discussed in Section III(A)(2) that have been the subject of any investigation or disciplinary action by the New York State Ethics Commission, the Commission on Public Integrity, or the Temporary State Commission on Lobbying. Describe briefly how any matter was resolved or whether it remains unresolved.

10. Furnish information on the number and percentages of minorities and women among the employees of the firm; a copy of the firm's affirmative action or equal opportunity plan or other commitment to affirmative action and equal employment opportunity or its status as a minority or women-owned business; and an explanation of how your firm, if selected, would help NYSERDA further its policy of promoting participation of minorities and women in the provision of services to it, including services in support of its financing program.

11. Indicate the address of the office through which NYSERDA's account will be primarily serviced, and any anticipated travel or other such costs.

12. Provide any other information you believe would make your firm's representation of NYSERDA superior to other firms' representation.

B. Cost.

1. State the rates at which the services of assigned personnel would be provided to NYSERDA beginning in fiscal year 2010-2011, *i.e.*, April 1, 2010 to March 31, 2011, and for NYSERDA fiscal years 2011-12, 2012-13, 2013-14, and 2014-2015, and how services would be billed. Increases, if any, for those years may be stated in terms of percentages above the rates for April 1, 2010 through March 31, 2011. Include:

(a) For each person whose resume is provided in response to III(A) above, your normal hourly rate and the hourly rate you propose to charge NYSERDA.

(b) Projected services to be provided by each advisor whose resume is provided in response to III(A) above, to the extent possible.

(c) For each applicable category of support staff or other assigned staff, the normal hourly rate and the hourly rate you propose to charge NYSERDA, if billed separately.

(d) A schedule of all disbursements which you anticipate may result in a charge to NYSERDA and the rate for each.

(e) Any reduced rates or fees charged other State or local public finance issuers in New York for these types of services.

(f) A statement whether you would be willing to agree to caps on fees on an issue by issue basis.

In responding to this item III(B)(1), provide one or more of the following, in respondent's order of preference: (i) a single hourly rate for each employee to be billed separately; and (ii) a blended hourly rate for all employees. Proposers may also propose a different fee structure.

2. State the basis on which any other firm expenses related to services provided to NYSERDA would be billed, if other than cost.

3. Provide an estimate of number of hours and costs associated with the following two scenarios. Assume development of an initial financing structure in the amount of \$25 million for the reimbursement of unsecured loans issued by a program lender (responsible for loan origination and servicing) retained by NYSERDA, where consumer repayment occurs through an on-bill recovery charge through participating utilities.

Assume a second scenario for development of an initial financing structure in the amount of \$25 million for reimbursement of secured loans issued through a program lender retained by NYSERDA. Consumer repayment for these loans would be paid through municipal property tax assessments under the Municipal Sustainable Energy Loan Program legislation described above. Assume this scenario includes amendments to the legislation which would allow municipalities to enter into agreements with NYSERDA to provide for the aggregation and financing of such loans.

For each scenario, provide a high-level summary of tasks expected to be completed, and for each task, the projected number of staff hours, fees, reimbursements, and any other costs, not including those associated with underwriting the issue or for fees and expenses of bond counsel.

4. State any special considerations with respect to billing or payment of fees and expenses that your firm offers and that you believe would differentiate you from other proposers and make your firm's services as financial advisor more cost effective for NYSERDA.

IV. Proposal Evaluation

Proposals meeting the RFP requirements will be evaluated using the following Evaluation Factors.

A. Evaluation Factors

1. Quality and depth of the firm's expertise and its prior capability in providing similar services on projects and programs of magnitude or complexity comparable to the financing program contemplated in this RFP, and whether the firm's expertise has the highest probability of satisfactorily performing the scope of services. For those firms who have worked in any capacity with NYSERDA, the quality of work on those transactions will be considered.

2. Anticipated cost of services and demonstrated willingness to work with NYSERDA to minimize costs. (Although proposed fees will be taken into account in the selection process, NYSERDA reserves the right to negotiate with any firm selected lower fees or different fee structures than proposed.)

3. Experience as financial advisor involved in developing innovative financing structures and transactions, including those that could be adopted for use in the programs described herein.

4. Commitment of time, resources, and ideas to NYSERDA and availability to and facility for working with NYSERDA program and financing staff.

5. Information provided by client references.

6. Overall organization and quality of proposal, including cohesiveness, conciseness, and clarity of response.

B. Selection Process. A selection committee consisting of internal NYSERDA staff and external reviewers, a Technical Evaluation Panel (TEP), will review and evaluate proposals and develop a short list for further consideration. Firms so selected may also be invited to make oral presentations to the TEP or other NYSERDA staff as part of the final selection process.

V. GENERAL CONDITIONS

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

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

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

Empire State Development
Division For Small Business
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

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 Proposal Checklist 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.

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.state.ny.us/pdf/2006/fillin/st/st220td_606_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 perspective contractor prior to contracting and filed with NYSERDA. *See*, ST-220-CA (available at http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf). The Department has developed guidance for contractors which is available at http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf.

Contract Award - NYSERDA anticipates making one award under this solicitation, but is not precluded from selecting a second firm if it is in the best interest of NYSERDA to do so. It may award a contract based on initial applications without discussion, or following limited discussion, negotiations, or interviews. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA expects to notify proposers in approximately 8 weeks from the proposal due date whether your proposal has been selected to receive an award.

NYSERDA also reserves the right to correct any arithmetic errors, to change the final due date and time for the proposals, to accept or reject any of the firm's employees assigned to provide services on this project and to require their replacement at any time, and to reject any proposal containing false or misleading statements or that provides references that do not support an attribute or a condition claimed by the proposer.

Limitation - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest.

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 similar 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.

Attachments:

Attachment A - Proposal Checklist

Attachment B - Disclosure of Prior Findings of Non-responsibility form

Attachment C - Sample Agreement