



**The Bio-Fuel Station Initiative:
Driving Energy Independence for the Empire State
Program Opportunity Notice (PON): 2290
Approximately \$1 Million Available**

Applications accepted beginning September 27, 2013 until 5:00 PM July 5, 2015.

The objective of **The Bio-Fuel Station Initiative: Driving Energy Independence for the Empire State**, is to increase the number of retail E85 Ethanol service stations selling these fuels to the general public in New York State through a comprehensive approach. This PON solicits applications for funds to purchase and install equipment to store and dispense E85 Ethanol (Biofuels). It is estimated approximately 125 new retail E85 Ethanol fueling stations will be opened as a result of this initiative.

The Bio-Fuel Station Initiative ("Program") provides a fixed incentive of \$35,000 per site, for new installations of Biofuel dispensing equipment, storage tanks, and associated equipment which enable the station to sell E85 Ethanol to the general public. Funds will be issued on a first-come, first-served basis. Applications will be accepted from owners and operators of retail stations throughout the State that are open to the public. Funds will be committed based on approved applications, and then paid upon final inspection indicating that installation is complete.

Application Submission: Send **one (1)** applicant checklist (**Attachment 1**) attached to the front of Disclosure of Prior Findings of Non-responsibility (**Attachment 2**), and the project application (**Attachment 3**), which **must** contain original signatures, be clearly labeled, and submitted to:

**Biofuel Station Program
David McCabe, PON 2290
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399**

All Program questions should be directed to: Patrick Bolton at (518) 862-1090, ext. 3322 or ppb@nyserda.ny.gov. All Contractual questions should be directed to: Nancy Marucci at (518) 862-1090, ext. 3335 or nsm@nyserda.ny.gov.

*Late, incomplete, or unsigned applications will be returned. Faxed or e-mailed applications will not be accepted. Applications will not be accepted at any other NYSEERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSEERDA's website at www.nyserda.ny.gov.

1.0 INTRODUCTION

The New York State Energy Research and Development Authority (NYSERDA) is a public-benefit corporation established by the State Legislature in 1975 to address the State's energy and environmental challenges. NYSEDA is promoting deployment of renewable transportation fuels such as E85 Ethanol as a way to address the State's dependence on foreign sources of petroleum and to reduce emissions associated with the transportation sector. The funding was made available through the New York State Budget to establish the **Bio-Fuel Station Initiative: Driving Energy Independence for the Empire State**. The objective of this initiative is to support development of the distribution and delivery infrastructure for Biofuels in New York State.

There are about 400,000 Flex-Fueled vehicles capable of running on E85 Ethanol registered in New York State. Additionally, consumers can purchase E85 capable vehicles from many car manufacturers. Currently only a small percentage of vehicles use alternative fuels in New York and there are still relatively few stations open to the public.

Funding is available through PON 2290 to reimburse eligible applicants a fixed incentive of \$35,000 per site, for new installations of Biofuel dispensing equipment, storage tanks, and directly associated piping and equipment. Funds will be issued on a first come, first served basis until available funds are committed. Applications will be accepted from owners or operators of retail stations throughout the State. Funds will be committed based on approved applications, and then paid upon final inspection by a NYSEDA representative indicating that the installation is complete. (See the definition of a completed facility in Section 3.2).

Funding awarded through PON 2290 may be used in conjunction with certain Federal tax credits or other sources of federal funding that are in place for alternative fuel infrastructure improvements. (See Section 5.0 for more information.)

2.0 PROGRAM REQUIREMENTS

2.1 Eligibility Requirements

The Program is open to any entity that owns or operates one or more retail fueling stations that are registered with the New York State Department of Tax and Finance to sell gasoline to the general public and that is capable of accepting major credit cards as a form of payment for fuel. The entity that applies must be the entity that will own the biofuel equipment and must have the legal authority to make improvements to the site at which the Biofuel dispenser(s) will be located. If the entity leases the property or does not own the property, it must prove it has the right under the lease agreement to make improvements to the property. These rights should be in place for a minimum of 6 years going forward from the time the Program funds are dispersed to the applicant. If the applicant is a franchisee, it must present documentation of its franchise agreement.

2.2 Available Funds

NYSERDA anticipates awarding approximately \$1 million under the Program, but may award more than, or less than that amount. **Only stations that have submitted an application are considered to be included in the program. The program may run out of money or be closed at any time. Stations that complete work and apply to the program after it is closed or runs out of funding will not be eligible for any program funds. Applicants are encouraged to apply to the program as soon as possible to ensure their place in the funding line is secured and their application is received prior to the program closing down.**

2.3 Reporting

Applicants will be required to provide semiannual reports to NYSEDA detailing the amount of fuel dispensed and operation of the equipment funded under the Program. A sample of the semi-annual report

is included as **Attachment 4**. These reports must be submitted on a semi-annual basis for 6 years after the Program funding is dispensed to the Applicant.

2.4 Program Incentive

NYSERDA will provide a fixed incentive, of \$35,000 per site, for a Biofuel Station Project (defined in Section 2.6).

There is no cap on the total amount of funds that any one entity can receive. Applications from entities that own or operate multiple fueling sites in New York State are encouraged to apply, but no single facility or site can receive more than \$35,000.

2.5 Recapture Provision

Entities receiving funds through the Program are required to offer the Biofuel for sale to the public (further described in Section 2.6, Station Requirements) for a minimum of six years from the date the dispenser(s) are operational. If the Biofuel is offered for sale for any period less than six years, the funds are subject to recapture. The recapture amount will be based upon the proportion of time the fuel was actually available for sale against the minimum amount of time, six years, that the fuel was obligated to be available for sale. (See the formula following.)

Recoupment payment = $[6 \text{ years} - \text{number of years biofuels available} / 6] \times \$35,000$

2.6 Station Requirements

- A Biofuel Station Project must be comprised of: one or more above- or below-ground tanks capable of storing a minimum of 2,000 gallons of E85 Ethanol fuel; one or more dispenser systems for dispensing E85 Ethanol; and a card reader/payment system that accepts major credit cards for sale of the fuel to the general public.
- Code Compliance: All installations of Biofuel equipment must comply with applicable local and State Building and Fire Codes or have a waiver from the local authority having jurisdiction ("AHJ").
- § First Responder Preparation: Stations owner/operators awarded Program funds for E85 must ensure that the local first responders have the proper fire fighting foam equipment to respond to an E85 fire or other incident related to the storage or dispensing of the Biofuel. This includes purchasing special fire fighting foam for the local responders, if needed. A letter from the local fire chief stating they have the necessary equipment is required as part of the stations invoice to NYSERDA.
- Signage: Each site receiving funds through the Program must install proper signage to notify the public of the availability and price of the Biofuel. Signs should be placed on the marquee of the fueling facility, however if such placement is prohibited by local jurisdiction, another appropriate sign which is NYSERDA approved must be prominently displayed on the property, in order to provide uniformity.

A signage kit for E85 comprised of items such as pump toppers, decals, and banners, developed by Growth Energy, must be used at the site. These items can be viewed at the following site. . www.Ethanolretailer.com/store then click **NYSERDA Compliance Items** on the upper left hand side. To purchase these items, contact Growth Energy by the information listed below. Ask for the New York/NYSERDA Pump Imaging Package. These station kits are usually complimentary with the exception of the purchase of one of the three signs offered plus shipping cost. Station owners and operators are also encouraged to make promotional information about Biofuels available as

take-aways for the public. For additional information on the signage kit please contact the Market Development Coordinator at:

Growth Energy
Sara Brenden
PH: 402.932.0567 ext 211
order@growthenergy.org

- Sale of Biofuel: Station owner and operators must offer the Biofuel for sale on a continual basis, without interruption, for at least 12 hours per day for a period of six years. The Biofuel must be offered at the lowest possible retail price to the general public. Applicants need to keep in mind the significant public investment in these upgrades. Every reasonable attempt must be made to keep the gross margin for E85 no higher than the gross margin the station charges for premium gasoline. Stations are subject to NYSERDA audits regarding pricing margins. Stations that are found to be charging higher than allowed margins will be notified by NYSERDA in writing. Any stations that consistently continue to charge higher margins on E85 will be subject to recoupment of incentive funds.
- Public Announcement: Station owner and operators should announce the opening of the site through the local media, local automobile dealerships, and other appropriate venues, and schedule events to highlight the availability of the Biofuel. All announcements, press releases, and advertisements must be approved by NYSERDA prior to release and must include a statement pre-approved by NYSERDA noting support given by NYSERDA through the Program.

3.0 DEFINITIONS

3.1 E85 Ethanol

E85 is a blend of typically 85% denatured ethanol [ethyl alcohol (C₂H₅OH) containing 5% hydrocarbon denaturant] and 15% hydrocarbon by volume. The hydrocarbons must meet all applicable State and Federal requirements. Total hydrocarbon volume must range from 15% to 30% of the total volume of the E85 based on information provided at <http://www.afdc.energy.gov/afdc/ethanol/specs.html> . Such specifications are incorporated by reference, are available upon request, and located on the Growth Energy Market Development website at www.ethanolretailer.com.

3.2 Completed Facility

NYSERDA will determine a site is a completed facility based on the following: all necessary equipment has been installed, all necessary State and local permits have been received, appropriate signage has been installed, a card reader system that takes major credit cards is activated, and the station is open to the general public. Additional requirements for fueling stations are described in Section 2.6. All facilities are subject to inspection by NYSERDA's Consultant to determine if the Biofuel Station Project is completed. The facility must meet all conditions set forth in section 2.6.

3.3 NYSERDA Consultant

NYSERDA's consultant for this Program is Bergmann Associates, P.C. and the contact person is Gary Flisnik. Gary's contact information is listed below:

Bergmann Associates, P.C.
Attention: Gary Flisnik
200 First Federal Plaza
28 East Main Street

Rochester, New York 14614
Phone: 585-232-5137 ext. 346
Fax: 585-232-4652
E-mail: gflisnik@bergmannpc.com

4.0 APPLICATION REQUIREMENTS AND PROGRAM STEPS

4.1 Your application **MUST** contain the following in order:

1. Applicant Checklist (**Attachment 1**) that must contain an original signature
2. Disclosure of Prior Findings of Non-Responsibility (**Attachment 2**) that must contain an original signature
3. Project Application Form (**Attachment 3**) that must contain an original signature
4. Exceptions to Standard Terms and Conditions if applicable (**See Attachment 5**)

Applications that fail to follow the requirement guidelines may be rejected as non-responsive.

Applicant Checklist - Complete the Applicant Checklist (**Attachment 1**) and include it as the front cover of the application. Be sure that the individual signing the Applicant Checklist is authorized to commit the applicant's organization to the application as submitted. This form must contain an original signature.

Disclosure Requirement – Complete the Disclosure of Prior Findings of Non-Responsibility Form (**Attachment 2**). 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 that 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.

Project Application Form - Complete the Project Application Form (**Attachment 3**) in its entirety. Be sure that the individual signing the Project Application Form is authorized to commit the applicant's organization to the application as submitted. This form must contain an original signature.

Indicate whether you accept the Standard Terms and Conditions as contained in the attached Sample Agreement (**Attachment 5**). If you do not accept the Standard Terms and Conditions, alternate terms with justification based on the risk and benefit to NYSERDA and New York State must be submitted with the application. Applicant does not need to fill out and complete **Attachment 5**. It is for applicant review only.

Mail these forms with a cover sheet to

Biofuel Station Program
David McCabe, PON 2290
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

- 4.2 Applications will be reviewed for compliance with Program rules and procedures, eligibility, and completeness. For those applications deemed eligible, NYSERDA will assign its Consultant to schedule a site visit at the soonest possible date and the Consultant will subsequently provide NYSERDA with a site review report composed of a project check-list and brief narrative. The

purpose of the site visit is to determine the suitability of the proposed location, including an assessment of the local market, for the installation of Biofuel dispensing equipment, and whether the proposed project is consistent with the objective of the Program to increase the number of retail E85 Ethanol service stations selling these fuels to the general public. The Consultant will review the specifications for the proposed equipment to determine if such equipment will meet applicable code, if waivers are required, budget costs for the project, and if the proposed equipment is adequate to meet the applicant's expected fueling operation parameters. Please use this checklist to ensure the following information will be available at the initial site visit:

- ___ Copy of recent reconciliation
- ___ Copy of the Petroleum Bulk Storage Certificate
- ___ Copy of the As-Built site plan for the facility
- ___ Existing tanks: Capacity/Fuels Stored
- ___ Existing dispensers: Type and number of each
- ___ Existing piping: Material
- ___ Existing fire suppression system: Type
- ___ Existing point of sale system: Type
- ___ Description of proposed upgrade
- ___ Cost estimate for proposed upgrade

4.3 Once NYSERDA receives the site review report, NYSERDA will review the information for reasonableness of the overall project scope and fuel use estimates. If the information and the scope of work included in the report is approved, and if Program funds are available, NYSERDA will issue a Funding Letter notifying the applicant they are eligible for funding under the Program. The Funding Letter does not obligate the applicant to participate in the Program. **If the Applicant does not receive a funding letter they are not included in the program and funding for their project is not secured.**

4.4 Before NYSERDA will issue an Agreement to the applicant for Program funds, the applicant must submit estimates for the installation of all equipment, including the biofuel equipment, and labor costs for the complete project. The applicant should make every effort to receive more than one estimate for the project scope. Once NYSERDA has all the information necessary to proceed, NYSERDA will forward an agreement with the applicant for signature. Once executed by NYSERDA, this Agreement will remain in effect for one year only. Applicants may apply for extensions after the one-year expiration, which may or may not be approved at NYSERDA's sole discretion. NYSERDA has no commitment to fund any portion of the project until an Agreement is executed.

4.5 The applicant must notify NYSERDA when it believes it has a completed facility (see Section 3.2). NYSERDA will assign its Consultant to perform a final site inspection to ensure that the facility is fully operational and that it meets all Program requirements. If the facility meets all of the necessary requirements, the Consultant will forward the documentation to NYSERDA. After NYSERDA reviews the post-construction inspection report and all required documentation is in place, NYSERDA will request an invoice from the applicant. The invoice will be submitted and the authorized funding for that facility will be paid to the applicant. Facilities must be completed within 1 year of the execution of the Agreement. Extension requests for the Agreement must be submitted to NYSERDA in writing 30 calendar days prior to the Agreement expiration date. Extensions may be granted or withheld at NYSERDA's sole discretion. Please use this checklist to ensure the following information will be available at the final site inspection:

- ___ Building permit and/or certification of occupancy
- ___ Written certification by the local fire company on Fire Department letterhead stating that the first responder fire company is aware the fueling facility located at (insert address) is

storing and dispensing E85 Ethanol and they have the necessary equipment and proper fire fighting foam to handle an alcohol based fire or spill at this location.

- ___ Petroleum Bulk Storage Certificate or Revised Application
- ___ Station Owner Certification

- 4.6** The applicant is required to submit semi-annual reports to NYSERDA and the Consultant due on July 31 and January 31 detailing the amount of Biofuel sold and the average price of the fuel sold during the previous six months. Reports, to be submitted for a period of 6 years after the facility is completed, must also include information on the operation of the facility and equipment installed under the Program. Applicants that do not submit reports will be subject to a recapture of the Program funds given to them, as described in Section 2.5.

5.0 POTENTIAL TAX BENEFITS

5.1 New York State may provide an exemption from state taxes on the sale of E85 and portions of the state taxes (http://www.tax.state.ny.us/pdf/memos/petroleum/m06_2m.pdf). Applicants are also encouraged to consult with their tax professional regarding a Federal income tax incentive of 50 percent of the cost of installing E85 Ethanol related equipment with a cap of \$30,000 per site (<http://www.irs.gov/pub/irs-pdf/f8911.pdf>). NYSERDA does not warrant that these tax incentives will be in place or applicable to the Applicant.

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 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.

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 new 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 (**Attachment 2**) 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/killin/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 contacting and filed with NYSERDA. See, ST-220-CA (available at http://www.tax.state.ny.us/pdf/2006/killin/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 multiple awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. 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.

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 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.

ATTACHMENTS

Attachment 1 - Applicant Checklist
Attachment 2 – Disclosure of Prior Findings of Non-responsibility
Attachment 3 - Project Application Form
Attachment 4 – Sample Semi-Annual Report
Attachment 5 – Sample Agreement