



## Renewable Portfolio Standard Program Purchase of Renewable Energy Attributes Request for Proposals (RFP) No. 1037

**Application Packages Due: December 12, 2006 by 5:00 pm Eastern Time\***

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 G) 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 1037 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.**

Through this RFP, NYSERDA seeks to purchase, beginning on January 1, 2008, RPS Attributes associated with approximately 2,700,000 megawatt hours (MWh) per year. NYSERDA anticipates that the third procurement will be held sometime in 2007, with a delivery term commencing on or about January 1, 2009.

**Application Package Submission:** Bidders must submit an original and three (3) copies of the Application Package with a completed and signed Application Package Checklist attached to the front of each copy. Application packages must be clearly labeled and submitted to:

**Roseanne Viscusi, RFP 1037  
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 **Doreen Darling, ext. 3216**, e-mail **djd@nyserda.org**.

No communication intended to influence this procurement is permitted except by contacting Cheryl Earley, Director of Contract Management at (518) 862-1090, ext.295 or [cle@nyserda.org](mailto:cle@nyserda.org), or Greg Frank, Assistant Director of Contract Management at (518) 862-1090, ext. 3510 or [gaf@nyserda.org](mailto:gaf@nyserda.org) (Designated Contacts). Contacting anyone other than these Designated Contacts (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer and (2) may result in the proposer not being awarded a contract.

\*Late packages and those lacking the appropriate completed and signed package Checklist will 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](http://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 (“PSC”) 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 Orders can be accessed at the PSC’s RPS webpage at [www.dps.state.ny.us/03e0188.htm](http://www.dps.state.ny.us/03e0188.htm).

All Bidders are strongly advised to review the Orders before participating in this RFP.

## **II. OBJECTIVE OF THIS RFP**

NYSERDA seeks to purchase RPS Attributes associated with approximately 2,700,000 MWh per year of RPS eligible renewable energy, subject to available funding. 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 XXIV (DEFINITIONS). BIDDERS SHOULD REFER TO THIS SECTION WHEN READING THIS DOCUMENT.**

## **III. NYSERDA’S RPS FUNDING**

The contracts awarded through this RFP will be funded through the non-bypassable “RPS surcharge” levied on the delivery portion of electricity bills for 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. 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.

The Orders direct each utility 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 the aggregate, the annual payments to NYSERDA for funding of the RPS program, including both the Main and Customer-Sited Tiers, range from more than \$24 million in 2006 to \$167 million in 2013, and total approximately \$741 million. Each year's collections are to commence three months prior to each applicable calendar year, with initial collections having commenced on October 1, 2005. In its December 15, 2004 Order, the PSC further ruled that the transfer payments are to continue for as long as needed to fulfill long-term RPS contracts, in amounts to be determined at such time as actual costs are known. This collection process and the surcharge pass-through transfer payments to NYSERDA are similar to the process that has been used successfully for the SBC funds since 1998.

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), and the RPS surcharge funds are maintained in a segregated account. The RPS revenues and expenditures will be separately reported in NYSERDA's annual financial statements, which are subject to annual independent audit. The RPS funds cannot be used for any purpose other than the funding of the RPS Program.

#### **IV. BIDDERS' TELECONFERENCE**

NYSERDA will conduct a teleconference on **November 20, 2006 at 10:00 a.m.** 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 responses will be provided during the conference and/or subsequently posted on the RPS web site, [www.nyserda.org/rps/about.asp](http://www.nyserda.org/rps/about.asp). Bidders who intend to participate must send an email indicating such to [rps@nyserda.org](mailto:rps@nyserda.org), with the subject line "Bidders' Teleconference." Bidders will then be provided with a teleconference dial-in number and pass code.

#### **V. BIDDER INQUIRIES**

Bidders also have the option of submitting questions in writing to NYSERDA pertaining to the bid process, the Application Package requirements, the Bid Proposal Requirements, and the RPS Standard Form Contract. Questions must be directed to [rps@nyserda.org](mailto:rps@nyserda.org), with the subject line "RPS Question." Bidders are encouraged to submit questions prior to the Bidders' Teleconference. Questions can be submitted at any time on or before 5 p.m. **November 27, 2006.** NYSERDA will post all questions anonymously, along with NYSERDA responses, at [www.nyserda.org/rps/about.asp](http://www.nyserda.org/rps/about.asp), by no later than December 4, 2006. All questions regarding the RFP documents or the process MUST be directed as indicated. Questions submitted directly to any individuals at NYSERDA, Department of Public Service Staff, or to individuals working for or on behalf of NYSERDA, are discouraged and will not be answered.

## **VI. ELIGIBILITY**

### **A. Bid Facility Eligibility**

Each Bid Facility designated in an Application Package for the supply of RPS Attributes under this RFP must be eligible 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. Under these rules a Bid Facility must have first commenced commercial operation on or after January 1, 2003, or must first produce new or incremental RPS-eligible Attributes after January 1, 2003. To determine such eligibility, each Bid Facility must be Provisionally Certified as a Main Tier Eligible Electric Generation Source. Such certification will be made through completion of the Provisional Certification process outlined on NYSERDA’s website at <http://www.nysenda.org/rps/mainTierParticipation.asp>, and each Bid Facility will be subject to Operational Certification prior to any payment by NYSERDA. Additional requirements apply to hydropower upgrades, Repowering facilities, and facilities that involve co-firing eligible and ineligible fuels, as is detailed in the Provisional Certification application process.

Maintenance resource Bid Facilities approved by the PSC for participation in this RFP are also eligible.

RPS-eligible Attributes produced by a Customer-Sited Bid Facility are eligible to the extent that the electricity associated with such attributes is in excess of the electricity used by the customer and such excess electricity is not sold to a local distribution utility under a net metering regime.

### **B. Eligibility Limitations**

State/Local Investments. Offers of RPS Attributes produced by projects or 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 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, will be ineligible for participation in RFP 1037.

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 1037. If selected under RFP 1037, 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 1037.

### **C. 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 December 12, 2006, 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.

## **VII. SUBSTITUTION OF BID FACILITIES**

At any time on or before September 1, 2007, a Seller that has executed an RPS Standard Form Contract as a result of this RFP may submit to NYSERDA a request to permit the replacement of the Bid Facility identified in such RPS Contract with any eligible Substitute Bid Facility or facilities or any portion thereof.

Requests for substitution will not be unreasonably denied. Where permitted by NYSERDA, such substitutions will be accomplished through a contractual modification; Contract Security must remain in place or be simultaneously replaced and under no circumstances will the Bid Quantity be increased. The Bid Quantity may be reduced. However, should the Bid Quantity be reduced, NYSERDA will retain a prorated amount of Contract Security if the Bid Capacity of the approved Substitute Bid Facility (or aggregate Bid Capacity if more than one Substitute Bid Facility) is less than the Bid Capacity associated with the Bid Facility included in the original contract. Also, NYSERDA will not permit the substitution of an External Bid Facility for a Bid Facility within the NYCA.

Bidders must submit an Application Package for EACH Bid Facility, whether a Substitute Bid Facility or otherwise, that Bidder may wish to employ for performance under a Standard Form Contract executed as a result of this RFP. Only those Bid Facilities found eligible through Step One will be eligible for substitution.

## **VIII. CONTRACT DURATION AND COMMENCEMENT DATE**

A Bidder offering RPS Attributes produced by a Fuel-Based Bid Facility may bid any whole number of Contract Years between three (3) and ten (10). Any Bidder offering RPS Attributes produced by a Fuel-Based Bid Facility awarded a contract of less than ten (10) years in duration as a result of this RFP will be permitted to bid in subsequent RPS solicitations; however, the cumulative terms of RPS contracts for RPS Attributes produced by such Bid Facility may not exceed ten (10) years. A Bidder offering RPS Attributes from any other type of Bid Facility must bid a fixed contract duration of ten (10) Contract Years.

The Contract Delivery Term for all contracts awarded under this RFP will commence on the later of: (i) January 1, 2008 or, (ii) if the Commercial Operation Milestone Date is extended pursuant to the provisions in Section XIII (Contract Security), on the first day of the month after the Bid Facility commences Commercial Operation.

## **IX. 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.**

## **X. SCHEDULE**

The schedule for this RFP process is established to provide an expedited process for proposals, evaluations, and contract execution. The anticipated time-line for the RFP 1037 process is as follows:

Notice of Intent to Bid Form (optional) due	Immediately
Bidders' teleconference	November 20, 2006
Deadline to submit questions	November 27, 2006
Responses to questions posted	December 4, 2006
Deadline to submit Application Packages	December 12, 2006
Deadline to submit Provisional Certification Applications	December 12, 2006
NYSERDA notifies Qualified Bidders	December 22, 2006
Bid Proposals due	January 5, 2007
NYSERDA notifies winning Bidders	February 1, 2007
Contract execution	February 7, 2007

Please note that the above dates are subject to change. Submittal of the Notice of Intent to Bid Form (Attachment G) 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.

## **XI. 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 either (1) participation in Step Two, or (2) eligibility as a Substitute Bid Facility. All bidders will be notified of such determinations no later than December 22, 2006. A complete Application Package consists of:

1. Signed Application Package Checklist (Attachment A hereto); (**Application Packages lacking a completed and signed Checklist will be rejected.**)
2. Disclosure of Prior Findings of Non-Responsibility Form (Attachment B hereto);
3. Bid Facility Profile Form (Attachment C hereto);
4. Project Schedule Form, if applicable. If the Bid Facility, as proposed, is not currently operating, the Bidder must provide a schedule showing the feasibility of attaining Commercial Operation by the Commercial Operation Date. (see Attachment D hereto);
5. Bid Deposit, as specified below (except for facilities to be used solely as Substitute Bid Facilities);
6. 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.nyserdera.org/rps/mainTierParticipation.asp>. **It is strongly recommended that Bidders visit this website and apply for Provisional Certification as soon as possible. If not previously filed, an Application for Provisional Certification must be included with each Application Package.**

**Bid Deposit.** Except as described below, each Application Package must include a Bid Deposit, in the form of cash or certified funds, in an amount determined by the Nameplate Capacity of the Bid Facility.

The amounts are as follows:

Nameplate Capacity:	Bid Deposit Required:
up to 4.99 MW:	\$5,000
5.00 – 19.99 MW:	\$15,000
20.00 – 49.99 MW:	\$25,000
50.00 MW or more:	\$50,000

No Bid Deposit is required for Application Packages for Substitute Bid Facilities; such Application Packages will not be evaluated for qualification to submit a Bid Proposal under Step Two, but rather will be evaluated for eligibility as a Substitute Bid Facility, as described at Section VII (Substitution of Bid Facilities).

Bid Deposits will be refunded to Bidders whose Bid Proposals have been selected by NYSERDA for contract upon NYSERDA's receipt of the Contract Security as described in Section XIII (Contract Security). Bid Deposits will be refunded to Bidders whose Bid Proposals have not been selected by NYSERDA, if not before, immediately upon the expiration of the time during which the Bid Proposal remains an open offer. 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 December 12, 2006. 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.

## **B. Application Package Evaluation**

NYSERDA will evaluate Application Packages for completeness and against the qualification criteria specified in Section XI, Subsection A (Submitting an Application Package). All Bidders will be contacted by NYSERDA no later than December 22, 2006 and those Bidders deemed qualified as a result of this review will be invited to submit one or more Bid Proposals according to instructions that will be provided.

## **XII. STEP TWO – BID PROPOSALS**

### **A. Submitting a Bid Proposal**

At the time that Bidders are notified of their qualification status, qualified bidders will be provided with Bid Proposal and Bid Price forms, and will be invited to submit one or more Bid Proposals. Each Bid Proposal must designate a single Bid Facility. Alternative Bid Proposals may be submitted for a single Bid Facility, only one of which can be accepted. The submission of a Bid Proposal that is conditional on the acceptance of one or more other Bid Proposals is not permitted.

Bid Proposals constitute a binding offer to contract under the RPS Standard Form Contract terms (attached hereto as Attachment H) and must remain open for a period of at least thirty (30) days from the deadline for submittal or such time as designated by NYSERDA at the time of notification. 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.**

Bid Proposals, including each alternative Bid Proposal, must contain the following information without exception and must be organized as indicated below.

1. Section 1: Cover Letter
2. Section 2: General Description of the Bidder and Bid Facility
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. Section 4: Completed Bid Proposal Form (see sample Form, Attachment E to this RFP)
- 5. Completed Bid Price Form (see sample Form, Attachment F to this RFP)

Bid Proposals should be concise and clearly organized in the format listed above. Not including the Bid Proposal Form and Bid Price Form, Bid Proposals should be no longer than 15 pages in length. 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 shall not be smaller than 11 point.

Bidders must submit one original and nine (9) copies of each Bid Proposal. The tentative due date for Bid Proposals is January 5, 2007; the due date will be confirmed at the time Bidders are notified that they have qualified. Bidders will not be reimbursed by NYSERDA for any costs associated with the preparation of their proposals.

**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. Additionally, the cover letter should also include the following declaration:

*[Insert legal name of Bidder] (the "Bidder") hereby acknowledges receipt of the NYSERDA's 2006 Request for Proposals 1037 issued on November 13, 2006 (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 RFP1037 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 is a firm and binding offer, for a period of at least 30 days from the date Bid Proposals are due.*

**Section 2: General Description of the Bidder and Bid Facility (1-2 Pages)** Provide a profile of the Bidder's company and its parent company, if any. Describe the relationship of the Bidder and the owner(s) of the Bid Facility. Provide a description of the Bid Facility including resource type, location, expected fuel supply type, Nameplate Capacity, projected capacity factor, project schedule, major permits/approvals necessary to build and operate the Bid Facility, and the major equipment manufacturers/providers.

**Section 3: Economic Benefits Created by the Bid Facility (up to 12 Pages)** Bidders must describe the economic benefits expected to accrue to New York as a result of the

construction/modification and operation of the Bid Facility. Only those economic benefits falling within the defined categories below will be considered and in no instance will NYSERDA and its Technical Evaluation Panel (TEP) consider any indirect benefits created by any “multiplier effect,” or other attribution method under which direct capital infused into the economy may create peripheral spending and jobs. Bidders are not permitted to apply escalation rates or cost of living adjustments when calculating the Expected Total Dollars in each category. For this section only, and only for those Bidders offering RPS-eligible Attributes from Repowering, hydroelectric upgrades and co-firing applications, the Bid Capacity must be calculated as the product of: (i) the Bid Quantity divided by the Expected Average Annual Production, and (ii) the Nameplate Capacity.

Bidders offering RPS Attributes produced by a Bid Facility that has been found eligible to participate in this RFP by the PSC as a maintenance resource must submit information describing the degree to which the operation of the Bid Facility creates new or preserves continued economic benefits to New York State in the categories listed below.

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

- 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. 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 or total compensation and direct benefits (excluding overhead for normal operations) for all jobs. Provide expected total dollars for compensation/salaries and benefits for 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. Describe the tax payment or PILOT arrangement with all taxing jurisdictions. Provide expected total dollars paid to all taxing jurisdictions 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.
- 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 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.

**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, vehicle/equipment fuel, and/or
- ii. the purchase and/or rental of materials and equipment associated with manufacture, assembly, transport, construction and operation of a Bid Facility that is sourced from within New York, such as, but not limited to, gravel, steel, concrete, and mechanical equipment.

Provide total dollars expected to be spent on the purchase or consumption of local/in-state goods during the construction/modification phase of the Bid Facility and 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. 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 for the development period plus the first three 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.

**Bid Proposal Form** NYSERDA will provide Qualified Bidders with a Bid Proposal Form in the format provided in the Sample Bid Proposal Form, Attachment E to this RFP. Bidders will be responsible for submitting a fully completed and signed Bid Proposal Form with each Bid Proposal.

**Bid Price Form** NYSERDA will provide Qualified Bidders with a Bid Price Form in the format provided in the Sample Bid Price Form, Attachment F to this RFP. Bidders will be responsible for submitting a fully completed and signed Bid Price Form with each Bid Proposal. **THE BID PRICE FORM MUST BE SUBMITTED IN A SEPARATE SEALED ENVELOPE CLEARLY IDENTIFYING THE BIDDER AND BID FACILITY AND MARKED “RFP 1037 BID PRICE FORM”.**

## **B. Bid Proposal Evaluation**

NYSERDA will employ a scoring system that will award points to each Bidder based on two evaluation components totaling 100 points:

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

Alternate Bid Proposals for a single Bid Facility will be evaluated and scored independently. The submission of a Bid Proposal that is conditional on the acceptance of one or more other Bid Proposals is not permitted and will therefore not be evaluated.

### **1. 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). NYSERDA has developed a maximum acceptable Bid Price, and any Bid Price above the maximum acceptable Bid Price will receive zero (0) points. 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 maximum acceptable Bid Price. **NYSERDA will not award a contract at a Bid Price above the maximum acceptable Bid Price.**

### **2. 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 XII, subsection A (Submitting a Bid Proposal).

A Technical Evaluation Panel (TEP), consisting of NYSERDA staff, PSC staff, and outside reviewers will evaluate and award points (up to 30 points) to Bid Proposals based on the degree to which each Bid Proposal demonstrates a contribution to the economic benefits categories listed in Section XII, Subsection A (Submitting a Bid Proposal). **Only those economic benefits falling within the defined categories in Section XII (Submitting a Bid Proposal) will be considered for evaluation and in no instance will the TEP consider any indirect benefits created by a “multiplier effect,” or other attribution method under which direct capital infused into the economy may create peripheral spending and jobs.**

Scoring on the basis of expected economic benefits will be conducted independently (without knowledge of bid prices) of Bid Price evaluation.

### C. Selection

A ranking of Bid Proposals will be developed based on the combination 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 the Application Package Checklist (Attachment A hereto). 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 and execute two conformed copies 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.

### D. Post-Award Economic Benefits Documentation

All Sellers will be required to submit a 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.

Sellers with a Contract Delivery Term of three (3) years will be required to submit such report within sixty (60) days of the first anniversary of the Commercial Operation Date. Sellers with a Contract Delivery Term greater than three (3) years will be required to submit such report within sixty (60) days of the third anniversary of the Commercial Operation Date.

Should a Seller fail to reasonably demonstrate at least 85% of the Expected Total Dollars (in dollars per MW of Bid Capacity) of the economic benefits included at Section 3 of the Bid Proposal (Economic Benefits Created by the Bid Facility), NYSERDA may reduce the Bid Price payable for the remainder of the Contract Delivery Term. Such reduction in the Bid Price payable for the remainder of the Contract Delivery Term will be made by an amount equal to the percentage shortfall of the economic benefits actually demonstrated compared to the Expected Total Dollars included in Section 3 of the Bid Proposal.

### **XIII. CONTRACT SECURITY**

Upon selection and contracting, 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, 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.

Contract Security is required. If Bidder does not provide the required Contract Security within 10 business days of notification of selection, its selection will be rescinded, and Bidder will forfeit the Bid Deposit, which will be retained by NYSERDA. NYSERDA may elect to award a contract to one or more other Bid Facilities, subject to the same security requirements.

Seller may at its option extend the Commercial Operation Milestone Date to November 1, 2008, by providing NYSERDA with additional Contract Security in an amount equal to \$3.00 per MWh times the Bid Quantity, 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. In order to exercise such option, Seller must request such extension and provide the additional Contract Security to NYSERDA no later than December 1, 2007.

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

- a. In the amount of fifty percent (50%) of the amount provided if the Bidder elects to terminate the contract on or before July 15, 2007.
- b. In its entirety if the Bid Capacity of the Bid Facility that enters Commercial Operation on or before the Commercial Operation Milestone Date is equal to or greater than the Bid Capacity of the Bid Facility described in the Bid Proposal.
- c. At a prorated amount if the Bid Capacity of the Bid Facility that enters Commercial Operation on or before the Commercial Operation Milestone Date is less than the Bid Capacity of the Bid Facility described in the Bid Proposal. Such amount that will be returned, expressed as a percentage of the total Contract Security, will be equal to Bid Capacity of the Bid Facility that enters Commercial Operation on or before the Commercial Operation Milestone Date divided by the Bid Capacity of the Bid Facility described in the Bid Proposal.

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 the amount of (50%) of the amount provided if the Bidder elects to terminate the contract on or before July 15, 2007;
- b. At a prorated amount if the Bid Capacity of the Bid Facility that enters Commercial Operation on or before the Commercial Operation Milestone Date is less than the Bid

Capacity of the Bid Facility described in the Bid Proposal. Such amount that will be retained, expressed a percentage of the total Contract Security, will be equal to the Bid Capacity of the Bid Facility described in the Bid Proposal minus the Bid Capacity of the Bid Facility that enters Commercial Operation on or before the Commercial Operation Milestone Date; divided by the Bid Capacity of the Bid Facility described in the Bid Proposal.

- c. In its entirety if the Bidder [as Seller] elects to terminate the contract under Section 14.01(e) of the RPS Standard Form Contract, which election shall only be available where (i) less than 60 percent of the Bid Capacity of the Bid Facility has commenced Commercial Operation by January 1, 2008 **and** (ii) the “placed in service” eligibility deadline under the Federal Production Tax Credit (see 26 U.S.C. § 45, et seq.) has NOT been extended beyond December 31, 2007 by at least ten (10) months.

#### **XIV. 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, including 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 reductions in emissions and/or other pollution resulting from the generation of the Bid Facility’s energy and its delivery into 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 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 entitled (Title), Bidder (as Seller) shall (i) take all actions necessary to apply for and secure such Title, to the maximum extent to which Bidder (as Seller) is entitled, (ii) provide NYSERDA with evidence of taking such action; and (iii) convey such Title to NYSERDA whenever so secured.

#### **XV. VERIFICATION OF RIGHTS TO RPS ATTRIBUTES**

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



- A. 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 detailed monthly market accounting settlement or other pertinent data from the administrator(s) of the energy market into which energy from the Bid Facility was produced and/or delivered. Seller will be required to waive confidentiality, as to NYSERDA, for the direct transfer to NYSERDA by an energy market administrator of transactional and/or delivery information and data pertinent to the verification of RPS Attribute and associated electricity delivery.
- B. Should the PSC or NYSERDA create, sanction, adopt or begin participation in a tracking system for accounting for 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.
- C. 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.
- D. 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.
- E. 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.

## **XVI. QUANTITY OBLIGATIONS**

Should an Intermittent Bid Facility’s Quantity Obligation fail to achieve 80% of the Bid Quantity for three (3) consecutive Contract Years, the Bid Quantity will be modified for the remainder of

the Contract Delivery Term to equal the average Actual Annual Eligible Production over that three-year period multiplied by the Bid Percentage.

Should the Quantity Obligation of a Fuel-Based Bid Facility that established its Bid Quantity under Option 1 (Incremental Generation Above the Average Baseline) of the Provisional Certification Process fail to achieve 90% of the Bid Quantity for two (2) consecutive Contract Years, the Bid Quantity will be modified for the remainder of the Contract Delivery Term to equal the average Actual Annual Eligible Production over that two-year period multiplied by the Bid Percentage.

Should the Quantity Obligation of a Fuel-Based Bid Facility that established its Bid Quantity under Option 2 (Incremental Capacity Above Baseline) of the Provisional Certification Process fail to achieve 90% of its Bid Quantity during any Contract Year, such failure will constitute a default under the Standard Form Contract executed as a result of this RFP.

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.

## **XVII. EXTERNAL BID FACILITY ELECTRICITY DELIVERY REQUIREMENTS**

### **A. 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.

### **B. 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 PSC 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 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.

## **XVIII. BILATERAL SALES**

Bilateral sales for electricity 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.

## **XIX. SUSPENSION OF DELIVERY**

Upon prior approval by NYSERDA, a Seller may suspend deliveries of RPS-eligible Attributes to NYSERDA in order to make sales of RPS-eligible Attributes to the New York voluntary market, subject to the following terms and conditions:

- a. Seller shall provide at least 30 days written notice to NYSERDA; such notice shall specify clearly the duration and magnitude of the suspension;
- b. The suspension must be for a period of no less than six (6) months;
- c. The quantity suspended may be either a specific percentage of the Quantity Obligation or a specific quantity of RPS-eligible Attributes, but in either case must exceed the lower of (i) ten percent (10%) of the Bid Quantity during the suspension period or (ii) one thousand (1,000) RPS-eligible Attributes;
- d. NYSERDA shall not be obligated to purchase or pay for suspended RPS-eligible Attributes during the suspension period; however, for purposes of quantity obligations specified in the RPS Standard Form Contract, authorized sales of suspended RPS-eligible Attributes made to parties other than NYSERDA during the suspension period will be treated as if they were made to NYSERDA; and
- e. Sales of suspended RPS-eligible Attributes shall have no impact on NYSERDA's obligations outside the suspension period and shall have no impact on the Contract Delivery Term.
- f. Suspension of RPS-eligible Attributes produced by External Bid Facilities will not excuse the Seller from meeting the External Bid Facility Electricity Delivery Requirements specified in Section XVII of this RFP.

## **XX. 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 Electricity and Environment (OEE). Upon verification by NYSERDA that the Bid Facility has been constructed and/or will operate in accordance with the terms for which Provisional Certification was granted and all necessary permits and approvals have been acquired, NYSERDA will recommend to the OEE Director whether or not Operational Certification should be granted. Verification may be based on document audits, site visits, and attestations. Once Operationally Certified, NYSERDA will make payments based on monthly invoicing. NYSERDA will make payment only for RPS Attributes associated with production of electricity after December 31, 2007. 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.

In addition, payment will be made for RPS Attributes that were carried forward during a prior Contract Year consistent with the limits in subsection C (Payment Limitations), below.

### **B. 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 reflecting deliveries to the Injection Point. 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. Payment Limitations**

#### For Intermittent Bid Facilities:

- 1) NYSERDA will not pay, during any Contract Year, for RPS Attributes beyond 110% of the Bid Quantity;
- 2) Sellers will be allowed to carry forward RPS Attributes delivered to NYSERDA during any Contract Year in excess of 110% of the Bid Quantity for payment in Contract Years where Actual Eligible Production is less than 110% of the Bid Quantity; and
- 3) NYSERDA will not pay more than 105% of the product of the Bid Quantity multiplied by the total number of Contract Years multiplied by the Bid Price.

#### For Fuel-Based Bid Facilities:

- 1) NYSERDA will not pay, during any Contract Year, for RPS Attributes beyond 105% of the Bid Quantity;
- 2) Sellers will be allowed to carry forward RPS Attributes delivered to NYSERDA during any Contract Year in excess of 105% of the Bid Quantity for payment in Contract Years where Actual Eligible Production is less than 105% of the Bid Quantity; and
- 3) NYSERDA will not pay more than 100% of the product of the Bid Quantity multiplied by the total number of Contract Years multiplied by the Bid Price.

RPS Attributes that Seller wishes to carry forward to subsequent Contract Years must be unconditionally conveyed to NYSERDA during the month following their creation.

## **XXI. 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 1037, 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, are available at <http://www.dec.state.ny.us/website/dcs/seqr/index.html>

NYSERDA's obligations to make payments to Sellers under contracts entered as a result of RFP 1037 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.

## **XXII. GENERAL CONDITIONS**

### **a. State Finance Law sections 139-j and 139-k**

NYSERDA is required to comply with State Finance Law sections 139-j & 139-k. State Finance Law §139-j(6) requires that NYSERDA incorporate a summary of its policy and prohibitions regarding permissible communications during a covered procurement.

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between NYSERDA and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to solicit offers [such as a "Program Opportunity Notice," "Invitation for Bid" or "Request for Proposal," etc.] through final award of the Procurement Contract (the "restricted period") to other than Designated Staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated Staff, as of the date hereof, are identified on the first page of this solicitation.

NYSERDA employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to this law. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Bidder is debarred from obtaining governmental Procurement Contracts.

Additional guidance regarding these procurement lobbying requirements and can be found at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>.

### **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.state.ny.us/pdf/2006/fillin/st/st220td\\_606\\_fill\\_in.pdf](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 contacting 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](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](http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.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 Bidder 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 Bidder 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. Bidders 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**

NYSERDA is subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL;" see Public Officers' Law Article 6). Information in any tangible form including any document that Bidder wishes to be protected from disclosure to third parties, including any information provided as a part of a Bid Proposal Package, must be marked "Confidential" or "Proprietary" at the time such information is provided to NYSERDA.

The FOIL Law (Public Officers Law § 87(2)(d)) provides an exception 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." If NYSERDA receives a request from a third party for information or a document received from Seller and which has been marked "Confidential" or "Proprietary," NYSERDA will process such request under the procedures provided by NYSERDA's FOIL regulations (see [www.nyserda.org/About/NYSERDA.Regulations.pdf](http://www.nyserda.org/About/NYSERDA.Regulations.pdf)).

### **XXIII. ATTACHMENTS**

- Attachment A – Application Package Checklist
- Attachment B – Disclosure of Prior Findings of Non-responsibility Form
- Attachment C – Bid Facility Profile Form
- Attachment D – Project Schedule Form
- Attachment E – Sample Bid Proposal Form
- Attachment F – Sample Bid Price Form
- Attachment G – Notice of Intent to Bid Form
- Attachment H – RPS Standard Form Contract
  - Exhibit A - Standard Terms and Conditions for All NYSERDA Agreements
  - Exhibit B - Certification and Assignment of Rights Form
  - Exhibit C - Form of Letter of Credit
  - Exhibit D - Bid Proposal
  - Exhibit E - Monthly Fuel Reporting Form
  - Exhibit F - Prompt Payment Policy



## XXIV. 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 Contract, which is attached hereto as Attachment H; 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 Customer-Sited Bid Facility, the Actual Eligible Production shall reflect only the amount in excess of the on-site energy consumption met with generation from the Bid Facility;
- (ii) 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.
- (iii) 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;
- (iv) 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.

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 Bid Facility Profile Form (Attachment C).

**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. 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 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 Name Plate Capacity during every hour of the Contract Year.

**Commercial Operation:** A state of operational readiness under which (i) the Bid Capacity is available and physically able to produce electric energy, and (ii) all rights, abilities, permits and approvals to schedule and deliver energy to the Injection Point have been obtained.

**Commercial Operation Milestone Date:** December 31, 2007, or such date as established by providing Additional Contract Security as specified in Section XIII (Contract Security).

**Contract Delivery Term:** The fixed duration of the period of performance under the RPS Standard Form Contract, which shall commence on the later of (i) January 1, 2008 or, (ii) if the Commercial Operation Milestone Date is extended pursuant to the provisions of Section XIII (Contract Security), the first day of the month after the Bid Facility commences Commercial Operation and which shall continue thereafter for the number of Contract Years proposed by Bidder.

**Contract Security:** All amounts provided to NYSERDA as defined in Section XIII (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 either the load bus or reference bus where the Seller delivers electricity to the NYCA.

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 Customer-Sited Bid Facility, the Expected Annual Eligible Production shall reflect only the amount of Expected Average Annual Production in excess of the on-site annual energy consumption met with generation from the Bid Facility;
- (ii) 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;
- (iii) 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;
- (iv) 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.

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 XVII (External 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 the administrator of the local control area measures, or otherwise determines, energy delivery from the Bid Facility into the local wholesale market.

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. that administers the wholesale power markets in New York and manages the physical electrical operations of the New York Control Area (NYCA).

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 XVI (Quantity Obligations).

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 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 (SO<sub>x</sub>), nitrogen oxides (NO), carbon monoxide (CO), particulate matter and other pollutants; (iii) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) 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, 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 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 XIV (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.

Substitute Bid Facility: Any Bid Facility that has submitted a complete Application Package and been qualified through Step One of RFP 1037 (**but which need not have posted a Bid Deposit**), and is not committed to perform under a Standard Form Contract awarded under RFP 1037 or any previous NYS RPS procurement.