

Applications accepted through August 1, 2016, 5:00 PM Eastern Time

Approximately \$4 million in funding from the Clean Energy Fund (CEF) is available in 2016 to support the installation and operation of Anaerobic Digester Gas (ADG)-to-Electricity Systems in New York State. PON 2828 is being reopened at this time to allow the \$4 million budgeted for anaerobic digestion projects under the CEF for 2016 to be made available for funding projects in the waitlist, or “queue” of projects submitted through February 29, 2016, which were determined to be complete and compliant with the PON but which did not receive a funding award.

Funding is limited to \$2 million of funding per project, depending on the project specifications.

At NYSEERDA’s sole discretion the administration of a waitlist of projects in the queue may continue, even after the \$4 million budget is committed and/or even after this solicitation has closed. This may allow for other projects in the waitlist to be contracted for incentives should any funds previously awarded to ADG-to-Electricity System projects through the CEF or Renewable Portfolio Standard Customer Sited Tier (RPS-CST) Program become available due to project attrition.

NYSEERDA may add additional funds to this PON should they become available. If the existing queue of projects becomes fully satisfied, and surplus funds remain or become available, then this solicitation may be revised to invite newcomer applications. Since any such revised solicitation may include revised requirements for eligibility and proposal content, newcomer applications will not be accepted at this time. For other potential funding opportunities see Section VIII, below.

All Program Questions should be directed to: Tom Fiesinger, (518) 862-1090, ext. 3218, Tom.Fiesinger@nyserda.ny.gov, or Steve Hoyt, ext. 3587, Stephen.Hoyt@nyserda.ny.gov. All Contractual Questions should be directed to: Venice Forbes, ext. 3507, Venice.Forbes@nyserda.ny.gov.

No communication intended to influence this procurement is permitted except by contacting Tom Fiesinger or Stephen Hoyt (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 offeror, and (2) may result in the proposer not being awarded a contract.

*If changes are made to this solicitation, notification will be posted on NYSEERDA’s website at www.nyserda.ny.gov.

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I. INTRODUCTION

The ADG-to-Electricity Program is included in the Resource Acquisition Transition Chapter of the Investment Plan for the Clean Energy Fund administered by NYSERDA to support projects commonly described as “behind the meter” electric generation that is sited and used at the electric customer’s location. For 2016, this Chapter provides \$4 million dollars for project incentives: \$2 million is initially allocated to projects in the farm-related sector and \$2 million is initially allocated to waste water treatment plant (WWTP)-related projects. Any of these funds or previously-awarded RPS-CST funds subsequently freed-up from withdrawal of awards or termination of contracts for ADG projects may be re-allocated to the queue without limitation as to whether they are farm-related or WWTP-related. Funding is available through the program on a first-come, first-served basis, until all funding is fully committed. If funding is exhausted, eligible projects may be held, at NYSERDA’s sole discretion, in a queue of projects for possible contracting should funding become available.

Sections II through VII include descriptions of the program application and evaluation processes. These basic processes are planned to be used should additional funding become available in excess of that needed to fund projects in the existing queue. Some changes to these processes may be made if NYSERDA revises the PON to accept newcomer proposals.

II. INCENTIVES

A total of up to \$2 million is available per project depending on project specifications. This consists of up to \$2 million in combined Performance, Capacity, and Interconnection Incentives; these

categories of incentives are described in detail in the following paragraphs. NYSERDA has developed an *Incentive Calculation Tool*, located in Appendix B (Section C), for Applicants to use in determining the incentives for which their project may be eligible. Please note that Appendix C also outlines in detail how the incentive values are determined by the *Incentive Calculation Tool*.

PERFORMANCE INCENTIVES

Performance Incentives are designed to offset on-going operational costs for ADG-to-Electricity Systems and/or H₂S reduction components. They are paid in annual installments over a period of 10 years. A budget for these incentives is calculated using the *Incentive Calculation Tool*, and are based on a fixed incentive value per kWh for each Performance Incentive and the projected kWh of power generation production from the project. Actual Performance Incentive payments for electricity production are based on the verified electricity generated by the ADG-to-Electricity System (as described in Appendix C *Using the Incentive Calculation Tool and Specific Incentive Requirements*). Therefore, the total Performance Incentives actually paid to any particular project will depend on the project's actual verified production, and may be less than the amount budgeted using the *Incentive Calculation Tool*.

ANAEROBIC DIGESTER COMPONENT AND POWER GENERATION COMPONENT CAPACITY INCENTIVES

Capacity Incentives are intended to offset the capital costs of the anaerobic digester and power generation equipment. A list of eligible anaerobic digester and power generation components is included in Appendix B (Section C). In the *Incentive Calculation Tool*, these capacity incentives are based on a fixed incentive element and a variable incentive rate element applied to the proposed power generation capacity of the ADG-to-Electricity System.

PROJECT ENHANCEMENT COMPONENT CAPACITY INCENTIVES

Greater power generation can result from the incorporation of certain enhancements to a digester system, including equipment and/or management/operational techniques. Enhancements for which incentives are available are listed in Appendix B (Section C).

INTERCONNECTION REVIEW INCENTIVE

In order to interconnect with the electrical grid, ADG-to-Electricity Systems generally require a Coordinated Electrical System Interconnection Review (CESIR) to be completed by the utility per NYS Standardized Interconnection Requirements (SIR). For many farms New York State's net-metering laws limit interconnection costs (including the cost for completing the CESIR) to \$5,000. However, farms that plan to install power generation capacity that will exceed 20% of the grid line capacity, as well as non-farm projects, must generally cover the full cost of any required grid upgrades, including the CESIR costs associated with such upgrades. The Interconnection Review Incentive can pay up to 75% of the costs exceeding \$5,000 to complete a CESIR for the project up to a maximum incentive of \$50,000 per project, provided that the ADG project proposal has been determined to be complete and compliant with the requirements of this PON.

INTERCONNECTION IMPLEMENTATION INCENTIVE

Significant grid interconnection costs have been barriers to implementing some ADG-to-Electricity Systems. As noted above, New York State's net-metering laws limit interconnection costs for many farms to \$5,000. For projects where interconnection implementation costs are not limited to \$5,000 by net-metering laws, the Interconnection Implementation Incentive is intended to offset 50% of the interconnection cost estimated by the CESIR up to a maximum incentive of \$300,000 per project (within the total project cap of \$2,000,000 according to the limitations described below). However

Interconnection Implementation Incentives payments will be limited to reimbursement of 50% of *actual costs incurred* upon completion of the interconnection or \$300,000, whichever is less.

Determining Total Incentives:

In determining the total incentives available to a project, a Performance Incentives budget is calculated first. Any funds remaining after subtracting the Performance Incentives budget from the \$2 million cap are available for Interconnection and then Capacity Incentive budgets. Refer to the *Incentive Calculation Tool* in Appendix B (Section C) and Appendix C *Using the Incentive Calculation Tool and Specific Incentive Requirements*.

Limitations on Incentives:

- If previous NYSERDA funding was received for the purchase and/or installation of ADG-to-Electricity System components, the maximum available funding through this solicitation may be reduced by the amount of the previous funding received, or in a manner to be determined by NYSERDA based on factors such as useful equipment life.
- Funding cap per project/site: Total funding awarded through the ADG Program is limited to \$2 million per Project/Host Site. (Previously-awarded NYSERDA funding in support of ADG-to-Electricity activities at a given site may be counted toward this funding cap, thereby diminishing the amount of new funds that a subsequent project may qualify for). Once a Project supported through a previous award has operated successfully for a period of 18 months or longer beyond the start of the Performance Period of its Agreement, it will be considered to be its own installation (as opposed to being a previous phase of an ongoing installation) and therefore its previously-awarded funding will no longer count against the \$2 million cap of a proposal to launch a subsequent Project. For example, if a Project that was awarded the maximum \$2 million ADG incentive for a new digester and generator has successfully operated for 18 months, and the site has secured additional feedstock and can produce more biogas, the site could then propose a separate additional project for an additional generator and would be eligible for an additional \$2 million.
- Projects that have or will receive Federal 1603 Treasury Grant funding, USDA REAP, or NRCS/EQIP anaerobic digester funding will have their total awards under PON 2828 reduced by 50% of that additional funding. Award reductions may be applied to Performance, Interconnection or Capacity Incentives in a manner to be determined by NYSERDA.
- To be eligible for Interconnection Review and Interconnection Implementation Incentives, total project interconnection costs, including the CESIR, grid upgrades, safety relays, transformers, etc. must exceed \$5,000. NYSERDA will review the CESIR interconnection implementation cost estimate provided by the utility and reserves the right to request an additional review by one of its technical consultants and/or the NYS Department of Public Service and may reduce the amount of any Interconnection Implementation Incentive if a less expensive interconnection design is found to be acceptable.

If a proposed project does not fit into the constraints of the *Incentive Calculation Tool* (e.g., Applicants have received prior NYSERDA funding), but the proposed project meets the requirements

of the Program, NYSERDA will consider alternative methods of estimating incentives available to such a proposed project on a case by case basis. Please contact Tom Fiesinger or Steve Hoyt to discuss (contact information provided above).

III. ELIGIBILITY

In order to participate in this program, Applicants/Program Participants must comply with all program rules, procedures, and eligibility requirements, submit all required forms and supplemental documentation, and enter into a Standard Performance Contract Agreement with NYSERDA (see Appendix F). Program Participants must also adhere to all Quality Assurance/Quality Control (QA/QC) requirements throughout the term of the Agreement. QA/QC is the process of documenting that the system has been installed and commissioned as specified in the contract; and also specifies the process by which electrical generation shall be monitored, measured, and verified (see Appendix E).

Proposed projects must include one or more of the following:

- Proposed new ADG-to-Electricity System installations* that will result in new ADG-fueled electricity generation at the site (where none had been before) or;
- Proposed new ADG-to-Electricity System installations* that will result in an incremental increase in ADG-fueled electricity generation over any existing ADG-to-Electricity generation at the site or;
- New equipment applied to existing Systems as noted under the Project Enhancement component section of Appendix B (Section C). Requirements for the Project Enhancement component are detailed in Appendix C.

Note that the incremental increase over any existing ADG-to-Electricity System generation at the site will be determined considering the maximum electric output of the power generation system, in a manner acceptable to NYSERDA.

* Proposed new ADG-to-Electricity System projects can include either new (not previously operated other than for manufacturer testing) engine-generators and anaerobic digester equipment; or previously operated engine-generators and anaerobic digester equipment that have been adequately reconditioned and upgraded to NYSERDA's satisfaction.

Additionally, to participate in the Program, the following criteria must be met:

- Host sites must be located in New York State.
- Generally, systems must be located at or serving sites owned or operated by electric utility customers who currently pay the NYS SBC surcharge for electric service or will pay such surcharge, e.g. for new construction of a site.
- ADG-to-Electricity Systems, including Project Enhancement Components must consist of Commercially Available Technologies, which are defined as technologies that have operated satisfactorily for a minimum of one year at similar scale, with similar inputs and with similar output as described in the Application Package; or which can be otherwise demonstrated to NYSERDA's satisfaction of having a proven operating history specific to the ADG-to-Electricity System design described in the Application Package. Additionally if someone other than the supplier of the Commercially Available Technology will construct and/or install the technology, NYSERDA strongly prefers that the supplier provide on-site

supervision of the construction and installation process and that the supplier verify that the new system has been installed to a standard consistent with the supplier's previous installations.

- Applicants must have submitted an application to the electric utility for interconnection to the grid and received a completed Preliminary / Supplemental Screening Analysis (as per STEP 4 of the NYS Standardized Interconnection Requirements (SIR) for systems from 50 kW to 5 MW), if applicable, from the utility *before* NYSERDA will provide an Agreement for incentives through this PON. Applicants must include a completed Preliminary Review / Supplemental Screening Analysis, if applicable and available, from the electrical utility or documentation from the utility that a Preliminary / Supplemental Screening Analysis has been deemed unnecessary as part of their Application Package (see Appendix A). Note that the SIR requires the utility to respond to a completed interconnection application with a Preliminary / Supplemental Screening Analysis within 15 business days. A copy of the current SIR is included in the Appendix G to this PON or can be accessed from the Department of Public Service website: <http://www.dps.ny.gov/>. Applicants should note that they will need to identify all power generation sources at the site when applying for interconnection, including solar and back-up power generation.
- The initial awarding of CEF incentives through this PON will be for ADG-to-Electricity systems that are either farm-related or WWTP-related. Farm-related systems include those either located on a farm or digesting a significant amount of livestock manure and other farm wastes. WWTP-related systems include those located at a WWTP or digesting feedstock from a WWTP.
- To participate in this PON, the proposed new ADG-to-Electricity system installation must have a power generation capacity of 50 kW or more, unless the application is solely for installation of certain Project Enhancements, specified in Appendix B, for existing ADG-to-Electricity power generation capacity.
- Applicants who have applied for funding under PON 2828 but have not yet been approved for funding may proceed with their project at their own risk. However, NYSERDA will not approve funding for any major components of the ADG-to-Electricity System that have already been (a) delivered to the site or a staging area or (b) installed or constructed (including associated grid upgrades) prior to the submittal of this application to NYSERDA for funding under PON 2828.
- NYSERDA will not fund projects that are determined by NYSERDA to be unable to meet the projected energy production or that cannot demonstrate reasonable financial sustainability for at least the first 10 years of operation.
- Eligible Biomass Feedstocks include manure, agricultural residues and biomass, industrial organic wastes (e.g., food wastes), municipal wastewater and municipal organic solids. [Note: Electricity generated by landfill biogas is not eligible for the ADG-to-Electricity Program.]
- Contracted Capacity is the real power production capacity of the new equipment as determined by the rated kW output of the generator at a power factor of 1.0, except as may be limited by (a) a lower power output of the engine at 100% load, with consideration of the generator efficiency, (b) equipment limiting generator output, (c) existing power generation associated with Project Enhancement incentives (Appendix B) and, (d) any other factors, all as determined in a manner satisfactory to NYSERDA. In most cases, NYSERDA will limit

the Contracted Capacity of the project to the greater of (a) the eligibility capacity limit in the current Net Energy Metering Law (for projects eligible for Net Energy Metering)(PSL § 66-j) or (b) the approximate Peak Connected Load at the Customer's meter. However, where there are recognized public benefits (such as a project which accepts food wastes from the region that might otherwise be landfilled), or where practical considerations suggest, NYSERDA may approve a larger Contracted Capacity. For example, NYSERDA may approve a Contracted Capacity larger than the Customer's Peak Connected Load due to the incremental sizes of electric power generation and ancillary equipment currently available, or to effectively use the maximum volume of biogas produced.

- Applicants/program participants (and host sites owners, if different) must comply with all applicable:
 - Federal, State and Local codes and regulations;
 - Federal, State and Local permitting requirements;
 - State Environmental Quality Review (SEQR);
 - Federal, State and Local emissions limits; and
 - Concentrated Animal Feeding Operation (CAFO) requirements.

Additional Eligibility Notes:

Third Party Ownership: Third party ownership of an ADG-to-Electricity System is permitted under this program contingent upon: the electric power generation equipment being located at or serving a site owned or operated by an electric utility customer who pays (or will pay, for new construction of a site for example) the SBC surcharge on the electric bill for the utility meter to which the ADG-to-Electricity system will be connected; and the host site or site being served by the power generation (e.g., farm, waste water treatment plant or business) agreeing to contract terms with the third party. Generally, ADG-fueled electricity must be generated and must be used by the host site in conjunction with a utility meter that is interconnected with the grid.

ADG Fuel from Pipeline: Electric generation equipment fueled by ADG from a dedicated ADG pipeline may be eligible to participate in the Program; please contact Tom Fiesinger or Steve Hoyt to discuss (contact information provided above).

IV. HOW THE PROGRAM WORKS

This section describes the steps of participation in the ADG-to-Electricity Program, from submitting an application to requesting Performance Incentive payments for verified ADG-fueled electricity generation.

1. Submit Application Package

A complete Application Package must be submitted to NYSERDA. Detailed Application Package requirements are included in Appendix A. NYSERDA will conduct a review of the proposal and may request additional information in support of the Application Package and/or may conduct a site inspection to verify the accuracy of the information provided. NYSERDA will determine whether the proposal meets all eligibility requirements and fulfills program requirements.

2. Sign Standard Performance Contract Agreement

After approval of the Application Package, assuming NYSERDA has received the required SIR documentation, and if adequate funding is available, NYSERDA will send the Applicant a Standard Performance Contract Agreement for signature. The Agreement will specify the dollar amount that has been awarded to the project; going forward this will be referred to as the “Total Contracted Project Incentive”. NYSERDA will not commit funds to a project until the signed Agreement has been received from the Applicant. Funding will be committed to Applicants who return a signed Standard Performance Contract Agreement within the timeframe specified in NYSERDA’s cover letter which transmits the Agreement (typically, this is specified as being within thirty days of the date of the transmittal letter). NYSERDA reserves the right to rescind contract offers that have not been signed within 30 days of mailing or emailing.

Once NYSERDA countersigns the agreement it will be considered “fully executed” with an assigned “Effective Date.” A copy of the fully executed Agreement will be mailed or emailed to the program participant. (For your reference, a sample agreement is included in Appendix F.) Once the agreement has been fully executed, NYSERDA will assign a Technical Consultant to the project.

3. Develop Quality Assurance/Quality Control (QA/QC) Plan

A QA/QC Plan must be developed for the Project. The plan can either be developed by the Technical Consultant, or by the Program Participant in conjunction with the Technical Consultant. Guidance on developing the QA/QC Plan is included in Appendix E *QA/QC and Reporting Requirements*. A sample QA/QC Plan can be requested from Tom Fiesinger or Steve Hoyt (contact information provided above).

PLEASE NOTE: Specific electric metering and gas measuring equipment is required by NYSERDA. The specifications for this equipment are included in Appendix E. Unless the required equipment has been installed, payment of incentives may be withheld by NYSERDA until such time as a full year of data has been recorded with acceptable instrumentation.

4. Procurement and Installation Milestones

Contracted projects must meet procurement and installation milestone requirements or risk contract termination. Please refer to requirements within Appendix F *Sample Standard Performance Contract Agreement* for a detailed description of the milestone requirements.

5. Incentive Payment Distributions

Performance, Capacity and Interconnection Incentive payment distributions are estimated in the *Incentive Calculation Tool* (Appendix B: Application Form) and payment descriptions and requirements are outlined in Appendix C: Using the Incentive Calculation Tool and Specific Incentive Requirements.

V. APPLYING FOR THE PROGRAM

APPLICATION PACKAGE

Should sufficient additional funds become available and this PON revised to invite newcomer applications, the basic application processes planned to be used are described below and in Appendix A. Some changes may be made in these processes in any PON revision to accept newcomer proposals.

APPLICATION PACKAGE REVIEW AND APPROVAL

NYSERDA will date-stamp and log all program materials as they are received. NYSERDA recommends that all program materials be sent via delivery service, certified mail or registered mail. It is the sole responsibility of the Applicant to ensure that the application is received by NYSERDA by the due date. Applicants should retain proof of delivery (such as a return receipt for certified, registered, or overnight mail) for all program materials submitted. NYSERDA will accept Application Packages until July ___, 2016 at 5:00 PM Eastern Standard Time

Upon receiving an Application Package, NYSERDA will review the materials to ensure that the project meets all eligibility requirements of this PON. To secure the earliest possible position in the funding queue (in the event that funding for a particular year is exhausted), please ensure that your submitted application package is complete and fully compliant with all PON requirements.

1. If at any time NYSERDA determines that a proposed project changes significantly (e.g., design, scale, ownership, location, etc.), the Application Package may be returned to the beginning of the review process, regardless of when the proposal was submitted or the position of the proposal in the funding queue.

2. In the Application Review Process, projects are technically and financially evaluated. If additional information is required, Applicants will have 30 days to provide such information. Applicants that fail to provide the required information will have their application rejected as incomplete. Extensions to this 30 day period may be requested and can be granted at NYSERDA's sole discretion. Applications will only be considered complete and compliant when all required information has been provided to NYSERDA's satisfaction and until such time, the application will have no standing in the Queue Process for funding.

3. Not all possible circumstances have been foreseen in preparing this PON. If circumstances arise where a waiver of any provision of the PON is determined by NYSERDA to be warranted, NYSERDA at its sole discretion may grant a request for such a waiver for documented good cause.

VI. ADDITIONAL INFORMATION AND REQUIREMENTS

ENVIRONMENTAL ATTRIBUTES ASSESSMENT AND REPORTING

NYSERDA will register all ADG-to-Electricity Projects that receive incentives awarded through PON 2828 in the New York Generation Attribute Tracking System (NYGATS) and will route any certificates created by the NYGATS for the project into a NYSERDA account. The renewable energy certificate retirement rules associated with the operation of the NYGATS are based on the Public

Service Commission's reporting requirements under the Renewable Portfolio Standard (03-E-0188) and CEF programs (14-M-0094) for Projects that have received a financial incentive by participating in those programs.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEORA)

NYSERDA is required, under SEQRA, to consider the environmental implications of all projects receiving NYSERDA funding. All proposals must include a completed SEQRA Environmental Assessment Form along with supporting documentation. If any local governmental entity has discretionary permitting or approval authority, the program participant must complete the appropriate SEQRA Environmental Assessment Form and submit it to that local governmental entity. A copy of the completed and signed Environmental Assessment Form must be attached to the Application Package. SEQRA forms are available from: <http://www.dec.ny.gov/permits/6191.html>

EMISSION STANDARDS FOR BIOGAS-FUELED DISTRIBUTED GENERATION SYSTEMS

The applicant is responsible for compliance with all applicable State and Federal emission standards and regulations for biogas-fueled distributed generation. The U.S. Environmental Protection Agency has adopted numerical emission standards and requirements for spark ignition engines: *Standards of Performance for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines* <https://www.federalregister.gov/articles/2011/06/28/2011-15004/standards-of-performance-for-stationary-compression-ignition-and-spark-ignition-internal-combustion>

Likewise, the NYS Department of Environmental Conservation generally requires biogas-fueled spark ignition engines to have an Air Facility Registration. Assistance in understanding and complying with these regulations may be available, free of charge, via the NYS Environmental Facilities Corporation's "Small Business Environmental Assistance Program" www.efc.ny.gov/sbeap.

For all technologies proposed, NYSERDA reserves the right to review emissions performance and determine whether the technology meets all environmental standards. NYSERDA prefers the use of the cleanest technologies available.

PREVENTION OF FUGITIVE DIGESTER EMISSIONS

New Systems should be designed and installed in accordance with standard engineering practice and the manufacturer's recommendations. The installation must include a flare (with a capacity equal to or greater than the anticipated maximum biogas production) to burn collected gas whenever such gas cannot be beneficially used, unless an alternative method of biogas emissions control is approved by NYSERDA. **NYSERDA may withhold payment from any project determined by NYSERDA to be emitting or venting significant quantities of methane not combusted by a flare or other means.**

VII. 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 NYSEDA 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 NYSEDA that the proposer wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://nyserda.ny.gov/~media/Files/About/Contact/NYSEDARegulations.ashx>. However, NYSEDA 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
625 Broadway
Albany, NY 12207

A directory of certified minority- and women-owned business enterprises is available from:

Empire State Development
Minority and Women's Business Development Division
625 Broadway
Albany, NY 12207

State Finance Law sections 139-j and 139-k - NYSEDA 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.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>.

The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

Contract Award - NYSEDA 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. NYSEDA may request additional data or material to support applications. NYSEDA will use the Sample Agreement to contract successful proposals.

Limitation - This solicitation does not commit NYSEDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSEDA

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.

VIII. RELATIONSHIP WITH RPS MAIN TIER PROGRAM

Projects eligible under this ADG-to-Electricity Program may also be eligible under the RPS Main Tier or other NYSERDA programs. However, once a Project application or proposal has been approved by NYSERDA or becomes the subject of an award under this ADG-to-Electricity Program, for which funds are available, that Project is ineligible for funding under the RPS Main Tier Program or other NYSERDA programs. Applicants will not be permitted to withdraw or cancel a Project application or proposal, or seek to nullify a contract in order to apply or pursue an application or proposal in the RPS Main Tier or other NYSERDA programs for the same Project (or for the same portion of the ADG-to-Electricity System).

If NYSERDA makes available funds and offers an award under PON 2828 in the amount requested, the Applicant will have 48 hours from the time of notification by NYSERDA to affirm and accept such award (and thereby become ineligible under the RPS Main Tier), or NYSERDA can consider the PON 2828 offer to have been declined and cancelled, and the project application will be ejected from the PON 2828 program. However, the Applicant will continue to be eligible to pursue an award under the RPS Main Tier. Furthermore, if a project persists in the PON 2828 queue while awaiting the availability of PON 2828 funds, and while waiting if an award is offered under the RPS Main Tier, the project will become ineligible under the ADG-to-Electricity Program regardless of whether or not the Applicant accepts the RPS Main Tier award.

IX. MERGED APPENDICES

Appendix A: Application Package Requirements

Appendix B: Application Form

Appendix C: Using the Incentive Calculation Tool and Specific Incentive Requirements

Appendix D: Disclosure of Prior Findings

Appendix E: Quality Assurance/Quality Control (QA/QC) and Reporting Requirements

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