

# Multifamily Building Solutions Network

**Application Signature Page, Instructions,  
and Terms and Conditions**

April 2021



# Table of Contents

- Introduction ..... 1**
  - Provider Application Package..... 1
  - Application Evaluation, Notification, and Orientation ..... 2
  - Evaluation Criteria..... 2
- Minimum Requirements..... 3**
  - Certifications, Accreditations, and Licenses..... 3
  - Industry Experience ..... 3
  - Insurance ..... 3
- Technical Requirements..... 4**
  - Case Studies ..... 4
  - Energy Audit..... 4
- Business Qualifications..... 4**
  - Business Stability..... 4
  - Customer References..... 5
  - Geographic Coverage..... 5
- Management Plan..... 5**
  - Customer Service Plan ..... 5
  - Quality Control Plan..... 6
  - Staffing Plan ..... 6
  - Subconsultants ..... 8
  - Appendices ..... 8
- Applicant Signature ..... 9**
- Terms and Conditions..... 10**
- Exhibit A: Multifamily Building Solutions Network Benefits and Responsibilities..... 15**
  - The Provider Role ..... 16
  - Provider Benefits..... 16
  - Provider Responsibilities ..... 17
  - Requirements for Provider Participation in the Multifamily Performance Program ..... 17
  - Maintenance Reporting ..... 18
  - Quality Assurance ..... 18

<b>NYSERDA’s Code of Conduct for Contractors, Consultants, and Vendors .....</b>	<b>18</b>
Introduction .....	18
Contractor Conduct .....	19
Lobbying .....	19
Non-Collusion and Independence of Bid .....	20
Vendor Ethics Program .....	20
Limits on Gifts to NYSERDA Members and Employees .....	20
Employing Relatives of NYSERDA Employees .....	21
Hiring Former NYSERDA Members and Employees.....	21
Reporting Violations .....	21
Questions.....	21
<b>Stop Work Order.....</b>	<b>22</b>
<b>ADDENDUM ONE .....</b>	<b>23</b>

# Introduction

The Multifamily Building Solutions Network (Network) is a roster of highly-qualified firms and organizations (Providers) who work directly with developers, building owners, and their representatives to plan and implement energy efficiency projects. Addressing the energy needs of a property can be a daunting task for even the most motivated of building owners. At its core, an energy efficiency project is typically a capital improvement project and can be just as complex. The easiest way to reduce this complexity and simplify the experience is to work with qualified, trained professionals.

Providers are seasoned experts in building science and energy efficiency that perform energy use analyses, building performance assessments, whole building software modeling, work scope development, design document review, installation verification, and oversight of project progress. NYSERDA qualifies and approves applicants to the Network to serve multifamily building owners, managers, and developers. Approved Providers have demonstrated their ability to provide multifamily building performance services by meeting the requirements of this Application.

All components of the NYSERDA Multifamily Performance Program (MPP) require participants to work with a Provider. MPP provides incentives to building owners to help pay for multifamily retrofit projects to improve the energy efficiency of a property.

## Provider Application Package

A complete Provider Application Package consists of four parts:

1. A signed copy of Application Signature Page, which is Section 6 of the Multifamily Building Solutions Network Application Signature Page, Instructions, and Terms and Conditions (Application) (PDF format).
2. A completed Multifamily Building Solutions Network Application Workbook (Application Workbook) (an Excel workbook).
3. A *Management Plan* (including attachments) (written by the applicant and contains appendices as defined in the Instructions).
4. An *Energy Audit* (ASHRAE Level II or III) (provided by the applicant).

Application Packages may be submitted via e-mail to [mfbuildingsolutions@nyserda.ny.gov](mailto:mfbuildingsolutions@nyserda.ny.gov).

Alternatively, Application Packages may be submitted on electronic media (compact disc, flash drive, or other portable device). Print copies are not required. Application Packages submitted on electronic media should be mailed to:

Multifamily Building Solutions Network  
NYSERDA  
c/o Multifamily Team  
1359 Broadway, 19<sup>th</sup> Floor  
New York, NY 10018

Application Packages may be submitted at any time. Incomplete Application Packages will not be reviewed. It is the applicant’s responsibility to ensure that all pages and attachments are included in the Application Package submission.

## Application Evaluation, Notification, and Orientation

NYSERDA staff and its designated representatives evaluate and score Application Packages and grant approval or denial for each received. Applicants can typically expect notification of status 6-8 weeks after the Application Package has been submitted.

NYSERDA is not responsible for and will not reimburse applicants for costs incurred to develop Application Packages. NYSERDA reserves the right to seek clarification from any applicant regarding Application information. NYSERDA also reserves the right to accept or reject any or all Applications received, or to cancel this offering in part or in its entirety.

Approved Providers must attend a Provider Orientation. The Provider Orientation may take the form of an in-person or on-line meeting.

## Evaluation Criteria

Application approval is based on how well the applicant meets the criteria indicated in this document. Points are awarded for each section of the Application Package. A minimum score of 80 is required for approval. Further details on how points are awarded for each section can be found in the *Application Details* tab of the *Application Workbook*.

New applicants are scored on the following criteria.

Scoring Criteria – New Applicants	
Application Section	Points Available
Minimum Requirements	
Minimum requirements are required for all applicants. Applications that do not meet the minimum requirements will not be approved.	
Technical Requirements	
Case Studies	15
Energy Audit	30
Business Qualifications	
Capability to conduct business successfully	6
Customer References	24
Management Plan	
Geographic Coverage	3
Staffing Plan	9
Customer Service Plan	5
Quality Control Plan	8
<b>TOTAL POINTS AVAILABLE</b>	<b>100</b>

# Minimum Requirements

## Certifications, Accreditations, and Licenses

Applicants must include a minimum of one of the following designations on their teams. Applicants that do not show at least one of these designations are ineligible to become a Provider.

Designator Entity	Title
AEE	Certified Energy Auditor (CEA™)
AEE	Certified Energy Manager (CEM®)
BPI	Multifamily Building Analyst (MFBA)
State Licensing Board	Licensed Architect (RA)
State Licensing Board	Professional Engineer (PE)

Use the *Application Workbook* to identify the number of individual(s) on the team, including subconsultant(s), who hold the required designations. Include documentation of the certification, accreditation and/or licenses as **Appendix A to the Management Plan**.

## Industry Experience

Applicants must have a minimum of five years' industry experience. Submit documentation to demonstrate a minimum of five years' industry experience, such as certificate of incorporation or leadership resumes as **Appendix B to the Management Plan**.

## Insurance

Submit an insurance certificate demonstrating proof of insurance as **Appendix C to the Management Plan**. NYSERDA must be listed as a certificate holder. Applicants must hold the following types and levels of insurance:

1. Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster.
2. Workers Compensation, Employers Liability, and disability benefits as required by New York State.

# Technical Requirements

## Case Studies

Submit three case studies (**Case Studies tab in the *Application Workbook***) that demonstrate experience with performing energy assessment and installation oversight in multifamily or commercial properties. Case studies will be evaluated for their applicability to multifamily properties and demonstration of experience with performing energy assessment and installation oversight.

## Energy Audit

Submit an ASHRAE Level II or III energy audit for a multifamily property. The audit should be provided in PDF format and should include appendices showing applicable calculations. The submitted energy audit will be evaluated for whole building analysis, utility bill analysis, existing conditions and operations, measure descriptions, and supporting calculations.

Energy audit documentation should include details about which building systems were evaluated and how the building analysis was performed. The utility bill analysis should show clear data and baseline usage information for all utility accounts in the building. Existing conditions, building operations, and recommended improvement measures should be described accurately and thoroughly. All supporting calculations should be complete and clear.

# Business Qualifications

## Business Stability

Customers should have confidence that their Provider is an established organization capable of long-term relationships. Therefore, Providers should be stable, financially sound businesses or nonprofit organizations.

If you are a for-profit business, attach a current version of one of the following items as **Appendix D to the Management Plan** (mark any proprietary information as “confidential” on each page).

- Dunn & Bradstreet Business Information Report
- Dunn & Bradstreet Credit Report
- Dunn & Bradstreet Credit Evaluator Plus Report
- Equifax Small Business Credit Report
- Experian Business Profile Report

If you are a nonprofit organization and do not have access to one of these reports, attach a current version of one of the following items as **Appendix D to the Management Plan** (mark any proprietary information as “confidential” on each page):

- IRS Form 990 (latest year available)
- GuideStar Financial SCANSM report
- Latest available audited annual financial statement

## Customer References

Submit three customer references (**Customer References tab in the *Application Workbook***). References should include a minimum of one multifamily property. Multifamily references are eligible for more points than non-multifamily customer references. References will be contacted by Application evaluators and Application scores will be based on the information provided by the references. Customer References will be evaluated based on whether or not the customer is a multifamily building, how the customer grades the Provider’s past performance, and the customers’ willingness to hire the Provider again.

## Geographic Coverage

Submit the regions in which you propose to provide services and provide at least one project address served in each listed region within the last three years (**Geographic Coverage tab in the *Application Workbook***). Describe your capacity to provide services to customers in the regions selected. If you propose to serve customers in regions outside of your home region, describe your approach to handling leads and referrals from customers in regions outside your home region.



## Management Plan

Submit a **Management Plan and appropriate appendices**, which includes all of the following items.

## Customer Service Plan

Providers are eligible to receive qualified leads and referrals from NYSERDA. They must have the capacity to receive referrals during standard business hours. Describe your approach to Customer Service by addressing the following items:

- **Lead and Referral Handling:** Describe your proposed methodology in detail for receiving leads and referrals from NYSERDA; and Describe your established policy to return calls or inquiries from prospective customers.



- Feedback Mechanisms:
  - Describe how you solicit feedback from your customers.
  - Indicate how this feedback is used to improve business operations and customer service.
- Complaint Resolution Protocols:
  - Describe your company's process for handling customer complaints and/or disputes.

The Customer Service Plan will be evaluated based on how well the applicant addressed the following items: lead and referral handling, feedback mechanisms, and complaint resolution protocols. **All items listed above must be included in the customer service plan to receive full points.**

## Quality Control Plan

Providers identify and quantify energy efficiency improvements. This may include whole building modeling, stand-alone calculations, and the application of engineering principles. Describe your approach to quality control to ensure that technical work and deliverables are accurate and performed according to best practices.

- Industry Standards: Describe how you incorporate relevant and required industry standards (including but not limited to ASHRAE, BPI, Codes) to project analysis, development, and implementation.
- Project Review Protocols: Describe your process for performing internal review of analyses and deliverables.
- Staff Training and Development: Describe your approach to staff development and list the trainings that the staff take part in annually.

The Quality Control Plan will be evaluated based on how well the applicant addressed the following items: knowledge of industry standards, internal review protocols, and staff training and development.

## Staffing Plan

Providers are specialists in building performance and qualified to perform whole-building energy assessments per the Building Performance Institute's *Multifamily Building Analyst Technical Standards*. They evaluate buildings and their systems to determine the best way to achieve a building's energy efficiency goals. Their skills, however, do not end at an energy audit. Once the plan is in place, they assist the building in putting that plan into action by facilitating procurement, installation, and monitoring. The following tasks represent, at a minimum, the required skillset of a Solutions Provider.

- Project Development
  - Verify that building performance upgrade opportunities exist
  - Verify decision maker's interest in energy upgrade projects
  - Assess key risks to project completion
  - Develop customer contract

- Project Funding
  - Facilitate participation in NYSERDA, utility, and other incentive programs
  - Identify financing opportunities
  - Calculate simple payback or return on investment based on energy savings
- Utility Bill Analysis and Benchmarking
  - Utility data gathering and compilation
  - Utility bill analysis
  - Summarize energy use and cost associated with each end use
  - Be capable of using common industry benchmarking indices such as EPA Portfolio Manager
- Whole Building Energy Assessment
  - Oversee energy assessment report
  - Perform on-site building performance assessment
  - Mechanical systems diagnostics and inspections
  - Electrical systems diagnostics and inspections
  - Perform quality control of energy assessment report
- Energy Modeling
  - Use simulation software to model existing conditions and proposed improvements; calibrate energy model to actual energy usage
- Negotiate Scope of Work
  - Present building performance assessment recommendations to decision maker
  - Finalize scope of work for installations
  - Identify procurement requirements
- Procure Installation
  - Develop energy improvement specifications (where required)
  - Facilitate qualified contractor selection
  - Work with design engineer/architect to ensure the intent of the energy assessment is reflected in approved design documents
- Monitor Construction
  - Determine documentation requirements
  - Establish change order process
  - Schedule & perform inspections to ensure that installations meet requirements
- Verify Completion
  - Perform final diagnostic testing
  - Reconcile documentation
  - Create post-monitoring plan

- Create owner's manuals
- Facilitate building staff training
- Facilitate resident training & education

Provide the following information in your staffing plan:

1. Identify staff and subconsultants that will perform the tasks associated with performing Provider services in the Staff Matrix (**Staffing Matrix tab of the *Application Workbook***).
2. Attach **Appendix E to the Management Plan** that contains an organization chart and resumes for all staff and subconsultants.

The Staffing Plan will be evaluated based on how well the applicant addressed the following items: ability to provide all services shown on the Staffing Matrix, support all of the tasks listed above, and relevance of staff experience.

## Subconsultants

Applicants may team with subconsultants to complement the lead applicant's ability to perform Provider services. If subconsultants are used, provide the following as **Appendix E to the Management Plan**:

1. Name each subconsultant and describe their role on the team.
2. Include a signed letter of intent from each named subconsultant. The letter of commitment must be on subconsultant letterhead and signed to indicate their intent to team with the lead applicant.
3. Include resumes for relevant subconsultant staff that show the required training, education, and experience for their role.
4. Include subconsultants on the organization chart.

## Appendices

The following items should be provided in the Management Plan appendices:

1. Appendix A: Proof of certifications, accreditations, and licenses
2. Appendix B: Documentation of at least 5 years of industry experience
3. Appendix C: Proof of insurance
4. Appendix D: Documentation of business stability
5. Appendix E: Organizational chart, staffing plan resumes, and (if applicable) letters of intent from subconsultants

# Applicant Signature

**If you are submitting this Application via electronic media, sign where indicated below and return a scanned or hard copy of this page with your Application Package.**

I certify, under penalties of law, that the statements made in this Application Package have been examined by me and are true and complete. I understand that by signing this Application, I consent to any other inquiry to verify or confirm the information I have given.

I, the undersigned, agree to abide by the Minimum Requirements and Terms and Conditions as outlined in this Application Package and will notify NYSERDA if there are any changes to the company that would impact our compliance. I also understand that by maintaining my status as a Multifamily Building Solutions Provider, I am eligible for the benefits and must comply with the responsibilities detailed in the “Multifamily Building Solutions Network Benefits and Responsibilities” document. I understand that NYSERDA reserves the right to modify the document at any time and I will be given 30 days to determine if I will continue to comply and maintain my status as a Provider.

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

# Terms and Conditions

This section identifies the terms and conditions required of a Multifamily Building Solutions Provider (Provider) recognized as a member of the Multifamily Building Solutions Network (Network).

## 1. Minimum Requirements

The Provider shall maintain at all times the minimum requirements to become a Provider, as defined in the Application. While Minimum Requirements shall be confirmed annually, review of the Provider's conformance with Minimum Requirements may occur at any time.

## 2. General Conditions

Provider understands and agrees to the following:

- The Provider shall conduct themselves in a professional and respectful manner at all times, including when interacting with any customer or potential customer, NYSERDA, the Network Program Implementer, the Network Quality Assurance Contractor or other Providers. As such, the Provider shall comply with [NYSERDA's Code of Conduct for Contractors, Consultants and Vendors](#). The purpose of this Code of Conduct is to advise NYSERDA's many contractors, consultants, and vendors on what is expected of them to ensure a business relationship with NYSERDA that is consistent with ethical business practices.
- NYSERDA reserves the right to make changes to the Network, including to this document and Exhibit A Multifamily Building Solutions Network Benefits and Responsibilities, at any time upon 30 days' notice to the Provider. Such notification shall be provided by email and posted on the Provider Portal at [nyserdera.ny.gov/provider-portal](https://nyserdera.ny.gov/provider-portal). The Provider is required to keep its email address current with NYSERDA. If paper communications are preferred, they will be accommodated upon request.
- NYSERDA may terminate Provider status for any reason as outlined in Section 6.5, including failure to maintain quality standards. A Provider who submits fraudulent information or data to the MPP or the Network risk immediate termination from the Network and may be subject to legal action. In all cases involving a termination status or denial of incentives, NYSERDA's written decision is final.
- The Provider hereby consents to publication by NYSERDA of any data or metrics relating to the Provider's participation in the Network. NYSERDA and its agents will track Provider performance in order to periodically evaluate the status of the Provider. Such performance metrics may include, but not be limited to: number of active projects, number of completed projects, number of cancelled or terminated projects, number of projects that fail to fully complete installation or MPP as applicable, average and range of projected project energy savings, realization rate of completed projects, participant ratings and feedback, and comprehensiveness and customization of recommended improvements. NYSERDA may also publish various performance metrics in any form or medium at its sole discretion for the purpose of providing more information to potential customers, evaluating the Network or Provider performance, or providing feedback to the Provider on its performance.

- The Provider shall maintain an accurate and current profile by communicating with [mfbuildingsolutions@nyserda.ny.gov](mailto:mfbuildingsolutions@nyserda.ny.gov). The information in the profile is displayed to potential customers and is expected to be a current and accurate representation of the Provider firm and the services it provides. The information contained within this profile is used to filter Providers when inquiries are made by potential customers on the [Provider Locator Map](#).
- The Provider shall notify NYSERDA of any staffing changes that affect the Minimum Requirements to become a Provider as detailed in the Application or in their ability to fulfill their role as defined above.
- The Provider shall notify NYSERDA in writing of any changes to their business entity within 30 days of the change. This includes, but is not limited to, entity name changes, mergers and/or acquisitions, etc.
- Relationship of the Parties. It is understood and agreed that the personnel furnished by the Provider to perform the services stipulated in this Agreement, including personnel who may perform such services at NYSERDA's offices, shall be Provider's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Provider, except to the extent required by section 414(n) of the Internal Revenue Code. The relationship of the parties to this Agreement is that of independent contractors. Nothing in this Agreement shall be construed as creating a Partnership, joint venture, employment, agency, legal representation or other relationship between NYSERDA and Provider for any reason, including but not limited to unemployment, workers' compensation, employee benefits, expense reimbursement, vicarious liability, professional liability coverage or indemnification. Neither party shall have the right, power or authority to obligate or bind the other in any manner not specified in this Agreement.
- No Benefits. Provider agrees that if the personnel furnished by Provider are determined to be "leased employees" within the meaning of section 414(n) of the Internal Revenue Code, Provider acknowledges that leased employees are excluded from participation in the employee benefit plans, funds and programs provided by NYSERDA to its employees including, but not limited to, any group health plan, sickness or accident plan, retirement plan, retirement plan or similar benefit plan provided to employees by NYSERDA, by the terms of such benefit plans, funds or programs. Provider agrees to notify NYSERDA if it maintains (or ceases to maintain) a plan described in section 414(n)(5)(B) of the Internal Revenue Code.

- Notification of Claims/Events. Provider expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Provider and/or Provider's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Provider expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon Provider's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.
  - Term: The provisions of this Agreement are effective from the date of execution for the duration of the Multifamily Performance Program unless sooner terminated. On behalf of the Provider, the undersigned certifies that the qualifications, certifications, and accreditations identified by the Provider in this Agreement and the Provider's submissions related to the Application are, and remain, valid and that the information submitted in the Application Package is true to the best of my knowledge.
  - The Provider understands and agrees to comply with all commitments described in the Multifamily Building Solutions Network Application, Instructions, and Terms and Conditions, including all applicable program documents and supporting policies described or referenced therein.
  - The Provider agrees to maintain current and accurate information in its Provider profile.
  - NYSERDA reserves the right to modify the provisions of this Agreement at any time during the term of this Agreement. The obligations of the Provider to indemnify and to maintain records shall survive any expiration or termination of this Agreement.
3. Provider shall abide by the following business practices:
- The Provider shall treat customers fairly and deliver promised services in a timely and responsible manner.
  - The Provider shall properly represent the relationship of the Provider to the State of New York, NYSERDA, NYSERDA's Network Program Implementer, and NYSERDA's Quality Assurance Contractor. The Provider is an independent contractor, qualified to provide services to customers within NYSERDA's Network. The Provider shall not represent itself as working for, approved by, endorsed, or certified by the State of New York, NYSERDA, NYSERDA's Network Program Implementer, or NYSERDA's Quality Assurance Contractor.
  - The Provider shall maintain any relevant licenses required by federal, state, county, or municipal governments or any other agencies with jurisdiction over work performed with Network support.
  - It is the sole responsibility of the Provider to ensure that all contracts and subcontracts submitted to NYSERDA by the Provider comply with the Laws of the State of New York.

- The Provider recognizes and acknowledges that this Network membership, and the opportunity to serve as a Provider to the Multifamily Building Solutions Network, is a privilege.
- The Provider acknowledges that failure to follow Network requirements and procedures, including processing of required documents, will result in a loss of applicable incentives, may result in an increased level of Quality Control and Quality Assurance of the Provider's work, and may lead to actions outlined in Section 5 of this document, including termination of Provider Status.

4. Participation in the Multifamily Performance Program:

Providers are eligible to facilitate their customers' participation in Multifamily Performance Program (MPP) incentive opportunities. Responsibilities associated with participation in MPP are outlined in the Multifamily Building Solutions Network Benefits and Responsibilities in Exhibit A of this document. If a Provider works with a customer on a project through MPP, the Provider must abide by the following conditions:

- The Provider shall execute a contract with each MPP customer. NYSEDA and its Program Implementer will not process or approve any incentive payment request submitted by a customer until a fully executed contract between the Provider and customer is received. The contract must include the services required for participation in MPP as well as the price charged by the Provider to deliver those services. The contract may include services in addition to those required by MPP, but the price charged for these additional services must be indicated separately in the contract.
- The Provider shall strive to ensure that all customers served by the Provider under MPP make a bona fide attempt to achieve the MPP's minimum performance target. Providers shall not submit MPP applications by customers that are not intending to complete MPP.
- NYSEDA reserves the right to limit the Provider's activity in MPP, including limiting the number of projects undertaken by the Provider at any point in time or restricting activity to a particular component or building size or type. Any such limitation will be based, in part, on the Provider's past performance, including quality of the Provider's submissions and its compliance with the relevant MPP guidelines. Providers with no, or limited, historic MPP activity will be subject to limitations on the number of projects accepted into MPP, and possibly on the size or type of projects, until an acceptable performance history has been established.

5. Provider Status Designations

Providers are assigned a status based upon their work in the Network. Five status designations -- Full, Provisional, Probation, Suspended, and Terminated -- are detailed in the following table.



Status	Issue	Consequences & Recommended Action
Full	<ul style="list-style-type: none"> <li>No issues</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>
Level 1 Provisional	<ul style="list-style-type: none"> <li>New to MPP Program without acceptable performance history *</li> <li>Previously designated to Level 2 Probation status</li> </ul>	<ul style="list-style-type: none"> <li>Limited number of projects accepted into MPP</li> <li>Work to be closely supervised and inspected</li> <li>Will be designated to Full status once acceptable performance history established/restored</li> </ul>
Level 2 Probation	<ul style="list-style-type: none"> <li>Failure to demonstrate acceptable performance history while in Provisional Status</li> <li>Failure to maintain compliance with the Provider Terms and Conditions</li> <li>Failure to maintain compliance with requirements detailed in Appendix A: Multifamily Building Solutions Network Benefits and Responsibilities</li> <li>Persistent unresponsiveness to NYSERDA-facilitated customer inquiries</li> <li>Customer complaint(s) received by NYSERDA or its representatives</li> <li>Annual Quality Assurance desk review (see Appendix A: Multifamily Building Solutions Network Benefits and Responsibilities) reveals work not performed in accordance with relevant licensing and/or certifications or applicable industry standards</li> <li>Persistent submittal of incorrect or not approved MPP program documents</li> <li>Persistently missed MPP project deadlines</li> </ul>	<ul style="list-style-type: none"> <li>30-day probation period starts with written notice of probation</li> <li>Defined timeline (30 days) given for making the recommended improvements based on the infractions to date</li> <li>New project applications for MPP will not be accepted</li> <li>Removal from Provider Locator Map</li> <li>No use of NYSERDA logos, no participation in pilots</li> <li>Pending work to be closely supervised and inspected</li> <li>Reinstatement upon rectification of issues</li> <li>Assistance to address deficiencies identified during annual Quality Assurance review including training resources, mentorship, or project-based advisory services</li> </ul>
Level 3 Suspension	<ul style="list-style-type: none"> <li>Failure to resolve Level 2 issues during probation period</li> <li>Failure to demonstrate Minimum Requirements as defined in Section 2</li> </ul>	<ul style="list-style-type: none"> <li>90-day suspension period starts with written notice of suspension</li> <li>Defined timeline (90 days) given for making the recommended improvements based on the infractions to date</li> <li>New project applications for MPP will not be accepted</li> <li>Removal from Provider Locator Map</li> <li>No use of NYSERDA logos, no</li> </ul>

		<ul style="list-style-type: none"> <li>participation in pilots until fully reinstated</li> <li>• Pending work to be closely supervised and inspected</li> <li>• Reinstatement only upon appeal and review and then to 30-day probation level**</li> </ul>
Level 4 Terminated	<ul style="list-style-type: none"> <li>• Failure to resolve Level 3 issues within the suspension period</li> <li>• Theft, larceny, fraud, drugs/alcohol abuse, forged-faked invoices, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Written notice of termination</li> <li>• No MPP applications will be processed for any customer listing the involved Provider</li> <li>• MPP customers will be contacted to advise them of Provider status.</li> <li>• Provider will be removed from Network for a minimum of one year.</li> <li>• No reinstatement to the Network without re-application.</li> </ul>
<p>* Acceptable Performance History will be defined at NYSERDA’s discretion. New Providers will commonly be required to submit and receive NYSERDA approval for one SAV-IT.</p> <p>**Provider that is designated to Level 3 Suspension status must submit an appeal to NYSERDA to be reinstated to Level 2 Probation status. The written appeal should include the corrective actions the Provider has taken, plans to preemptively address similar potential infractions in the future, and any additional information pertaining to work quality of MPP projects.</p>		

## Exhibit A: Multifamily Building Solutions Network Benefits and Responsibilities

The Multifamily Building Solutions Network (Network) consists of qualified energy consultants and other types of firms who can provide multifamily building owners and managers throughout New York State a range of services that can help assess and improve their building performance. Providers are accepted into the Network in recognition of their exceptional abilities and contributions to the multifamily building sector. Providers perform energy use analyses, building performance assessments, whole building software modeling, work scope development, design document review, installation verification, and oversight of project progress. Approved Providers have demonstrated their ability to provide multifamily building performance services by meeting the requirements of the *Application, Instructions, and Terms and Conditions*. By maintaining these services, Providers are eligible for exclusive program benefits.

The NYSERDA Multifamily Performance Program (MPP) collaborates with the Multifamily Building Solutions Network to plan and implement energy efficiency projects. MPP may provide incentives to building owners to subsidize multifamily retrofit projects to improve the energy efficiency of a property. Some MPP program paths require the use of an approved Provider to access incentives. This exhibit details the role of the Provider along with their benefits and responsibilities.

## The Provider Role

Providers must maintain the capacity to provide the following services to the NYS multifamily marketplace:

- **Utility bill analysis and benchmarking** per the Building Performance Institute's *Technical Standards for the Multifamily Building Analyst Professional*. At a minimum, Providers shall be familiar with the U.S. Environmental Protection Agency's Portfolio Manager and be able to advise their customers on making use of this resource to benchmark their building's energy performance.
- **Energy assessment** in accordance with the Building Performance Institute's current *Technical Standards for the Multifamily Building Analyst* and/or ASHRAE's *Procedures for Commercial Building Energy Audits – Level II*.
- **Whole building modeling** to calculate and provide for the interaction between multiple building modifications.
- **Construction oversight** of energy improvement projects, including tracking and verification.
- **Financing assistance** to refer customers to relevant and applicable energy efficiency financing opportunities in their regions. Providers are expected to understand the opportunities available to their customers through the entire Clean Energy Fund Portfolio and by other programs administered by NYSERDA and local utilities. Providers should act as ambassadors to those programs in the same way they do for MPP in order to make sure their customers have all of the resources they need to improve the energy performance of their properties.

## Provider Benefits

Provider benefits are intended to support Providers in their efforts to implement successful energy efficiency projects in the NYS multifamily marketplace. In addition, the benefits may assist Providers to improve their business skills, customer service, and technical abilities.

Becoming a Provider and maintaining Full status in the Network affords the Provider the following benefits:

- Access to the Energy Use Snapshot, NYSERDA's Baseline Services, for any eligible project with which the Provider is working.
- Access to incentives under [NYSERDA's Multifamily Performance Program](#) on behalf of their eligible clients.
- A listing on [NYSERDA's Provider Locator Map](#) where the Provider will be highly visible to a steady stream of prospects and have the ability to capture leads through NYSERDA.
- Access to marketing collateral, case studies, and web-based resources that demonstrate the benefits of working with a Provider.
- Free attendance to the Multifamily Summit, NYSERDA's annual conference designed exclusively for Multifamily Buildings.

## Provider Responsibilities

- The Provider may opt to receive customer referrals from NYSERDA. A failure to respond to inquiries from potential customers when the Provider has requested such inquiries may affect the Provider's Status Designation and/or performance metrics.
- The Provider shall properly respond to leads facilitated by NYSERDA. If the Provider chooses to accept referrals, the Provider shall provide expeditious services to those referrals.
- The Provider shall attend and complete an orientation session on the Multifamily Building Solutions Network requirements and protocols. The Provider must attend the orientation prior to representation on the NYSERDA Provider Locator Map or the submittal of MPP incentive applications.
- Network activity includes but is not limited to MPP project submittal, event attendance, and responsiveness to referrals.
- If the Provider becomes involved in a dispute with a customer, the Provider shall work with the Network Program Implementer and NYSERDA to resolve the dispute amicably. In any event, the Provider shall indemnify and hold harmless NYSERDA and its members, the State of New York, the Network Program Implementer, and the Quality Assurance Contractor from any losses, liabilities, costs or causes of action arising from services provided with Network support.

## Requirements for Provider Participation in the Multifamily Performance Program

Providers are eligible to facilitate their customers' participation in Multifamily Performance Program incentive opportunities. Providers shall abide by the following practices when working with customers that are also Participants in the Multifamily Performance Program:

- The Provider shall not employ a subconsultant that has been suspended or terminated from MPP or any other NYSERDA program to serve MPP without NYSERDA's prior written permission. Likewise, the Provider shall not allow a direct employee to serve one of its MPP projects if that employee served a principal function or in a significant capacity on a project which resulted in another firm's suspension or termination from MPP or any other NYSERDA program, without NYSERDA's prior written permission.
- The Provider shall maintain the original of all MPP documents that have been signed by the customer for a minimum of seven years and make such documents available to NYSERDA or its agents within three days of any request. This includes all of the Data Release Authorization Forms collected for a project.
- The Provider shall allow inspections of the work it performs under MPP by NYSERDA, or its designated contractors or agents. Upon request from NYSERDA or its Program Implementer, and at no additional cost to the customer, the Provider shall make reasonable corrections to work that the Provider has performed to bring such work up to MPP standards.

- The Provider shall make available information about MPP, available via NYSERDA and/or NYSERDA's Program Implementer.
- The Provider acknowledges that failure to follow MPP requirements and procedures, including processing of required documents, will result in a loss of applicable incentives, may result in an increased level of Quality Control and Quality Assurance of the Provider's work, and may affect the Provider's Status Designation as detailed in the *Multifamily Building Solutions Network Application, Instructions, and Terms and Conditions*.

## Maintenance Reporting

Maintenance Reporting is intended to ensure that information about Providers is up to date, that minimum requirements are being maintained, and that NYSERDA provides feedback to Providers about their performance in the Multifamily Building Solutions Network. Reporting consists of a survey completed by Providers. The survey could cover the following topics: market activities, market intelligence, customer satisfaction and general Provider information. In addition to surveys, NYSERDA will contact Providers for project updates. Providers may also contact NYSERDA for feedback on their performance in the Multifamily Building Solutions Network.

## Quality Assurance

Providers agree to perform energy consulting services in accordance with the requirements of their licensing and/or certifications as well as applicable industry standards. NYSERDA may perform a desk review of a random sample of multifamily projects. Additionally, NYSERDA may coordinate quality assurance activities with affiliated programs that participate in a reciprocal qualification agreement. A sample of Providers may be chosen each year for an interview. Provider may be contacted to follow up with any customer complaints or quality issues over the past year, and to allow an in-depth discussion about the program goals and successes. Providers may also be expected to submit a sample of current project work including but not limited to energy assessments and calculations, software models, site inspection results, and project energy savings results, upon request by NYSERDA. NYSERDA reserves the right to perform site visits on submitted work and to contact customer references.

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

## Introduction

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

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

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

## Contractor Conduct

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

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

## Lobbying

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

## Non-Collusion and Independence of Bid

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

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

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

## Vendor Ethics Program

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

## Limits on Gifts to NYSERDA Members and Employees

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

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

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

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

## Employing Relatives of NYSERDA Employees

Vendors may employ relatives of NYSERDA Members and employees, but must notify NYSERDA of such arise. NYSERDA reserves the right to request that work assignments of a NYSERDA Member's or employee's relative be modified, if a conflict of interest, or the appearance thereof, is deemed to exist.

## Hiring Former NYSERDA Members and Employees

Vendors may hire former NYSERDA Members and employees. As a general rule, however, under the Public Officers Law, former Members and employees of NYSERDA may neither appear nor practice before NYSERDA, nor receive compensation for services rendered on a matter before NYSERDA, for a period of two years following their separation from NYSERDA service. Additionally, former NYSERDA Members and employees are subject to a "lifetime bar" that prevents them from working on or receiving compensation for services regarding any transaction in which they personally participated or that was under their active consideration during their tenure with NYSERDA.

## Reporting Violations

Vendors are to remain alert to and report possible violations of this Contractor Code of Ethics, either by its employees directly or by an inappropriate solicitation from a person acting on behalf of NYSERDA. Vendors must promptly report such potential violations directly to NYSERDA or indirectly by contacting NYSERDA's independent and anonymous fraud and abuse hotline at 1 (866) 219-1122. Vendors are required to fully cooperate in any investigation of a possible violation.

## Questions

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

When in doubt, please seek guidance.

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



## Stop Work Order

(a) NYSERDA may at any time, by written Order to the Provider, require the Provider to stop all or any part of the Work called for by this Agreement for a period of up to ninety (90) days after the Stop Work Order is delivered to the Provider, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an Order, the Provider shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of work stoppage consistent with public health and safety. Within a period of ninety (90) days after a Stop Work Order is delivered to the Provider, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

- (i) by written notice to the Provider, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Provider, or
- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

(b) If a Stop Work Order issued under this Section is cancelled or the period of the Order or any extension thereof expires, the Provider shall resume Work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

- (i) the Stop Work Order results in an increase in the time required for, or in the Provider's cost properly allocable to, the performance of any part of this Agreement, and
- (ii) the Provider asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

(c) If a Stop Work Order is not cancelled and the Work covered by such Order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

(d) Notwithstanding the provisions of this Section, the maximum amount payable by NYSERDA to the Provider pursuant to this Section shall not be increased or deemed to be increased except by specific written amendment hereto.

## ADDENDUM ONE (5/26/20)

### ADDITIONAL COVID-19 TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

In response to the ongoing COVID-19 pandemic, beginning in March 2020, Governor Cuomo issued a series of Executive Orders addressing various categories of business activities, including, but not limited to, construction, manufacturing, administrative, and professional services. In addition, Empire State Development (ESD) was authorized to develop *Guidance for Determining Whether a Business Enterprise is Subject to a Workforce Reduction Under Recent Executive Orders*. Although much of NYSERDA's clean energy efforts involve construction activity, NYSERDA engages in many other activities that are affected by State COVID-19 directives and requirements.

The State has also established a series of metrics required to begin a phased reopening plan. The phase-in plan prioritizes businesses considered to have a greater economic impact and inherently low risks of infection for the workers and customers, followed by other businesses considered to have less economic impact, and those that present a higher risk of infection spread.<sup>1</sup> Pursuant to Executive Order 202.31 and "NY Forward," New York will reopen on a regional basis as each region meets the criteria necessary to protect public health.

For New York State regions and approved activities that have been deemed reopened pursuant to the State's Regional Monitoring Dashboard, and in light of the paramount importance placed on health and safety at this time, NYSERDA hereby directs and requires that NYSERDA contractors performing clean energy activity pursuant to a NYSERDA contract or program to comply with all Executive Orders addressing the COVID-19 pandemic, and in all events, NYSERDA contractors are expected to continue to comply with all relevant State, federal and local rules. All contractors are also accountable for staying current with any updates to these requirements. COVID-19 related guidance and references can be found on NYSERDA's website at: <https://www.nyserda.ny.gov/ny/COVID-19-Response, and is hereby deemed incorporated herein, as may be updated from time to time>.

Phase I of reopening does include all construction activity. All NYSERDA contractors specifically engaging in construction activity are required to, without limitation, adhere to and attest to the New York State Department of Health (NYS DOH) *Interim Guidance for Construction Activities During the COVID-19 Public Health Emergency* prior to commencing work on NYSERDA clean energy construction projects. The attestation is embedded within the Guidance Document and NYSERDA advises that contractors

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<sup>1</sup> In accordance with ESD's current Essential Business Guidance and subject to all relevant health and safety requirements, NYSERDA is hereby allowing its contractors performing program work pursuant to a NYSERDA contract or program to undertake the following activities on a Statewide basis:

- electric power generation and storage-related development, construction, operation or maintenance, except with respect to new solar projects on residential sites (which residential projects must continue to follow the regional reopening);
- electric vehicle (EV) charging station installation, operation and maintenance at commercial and government sites; and
- activity by a single worker who is the sole worker on a project site.

maintain a copy of such attestation for their records. Also, as included in the NYS DOH Construction Guidance, for all contractors performing construction activities, completed safety plans must be conspicuously posted on a project site. The State has provided a template to assist in developing Business Safety Plans, which is available through the NY Forward website as well as NYSERDA's COVID-19 webpage. While these plans are not required to be submitted to NYSERDA or a State agency for approval, they must be retained on the premises of the business or construction site and must be made available to the NYS DOH or local health or safety authorities in the event of an inspection.

In accordance with Executive Order 202.31, business activities may only commence for New York State regions that have been deemed reopened and is limited to only those activities approved for reopening. For state regions and activities that remain on PAUSE, or for reopened areas that revert back to PAUSE, NYSERDA continues to direct a pause in work until that region is re-opened for all NYSERDA contractors performing program activity pursuant to a NYSERDA contract or program, requiring in-person presence at a project site, that is not explicitly permitted under State directives or guidance.

During this time of uncertainty, NYSERDA is committed to working collaboratively with its Contractors to address contractual obligations when performance under the contract may be suspended or delayed due to COVID-19-related limitations in business activity that are beyond the reasonable control of either NYSERDA or the Contractor.

NYSERDA takes health and safety issues of its contractors and program participants very seriously and will strictly enforce compliance with Executive Order 202.31, and any relevant subsequent Executive Orders, and this guidance, as well as existing contractual obligations that require NYSERDA's contractors to comply with all general and special Federal, State, municipal and local laws, ordinances and regulations that may in any way affect the performance of agreements executed with NYSERDA.

Accordingly, non-compliance may give rise to disciplinary action, which may include, without limitation:

- orders to stop work;
- immediate termination of the Agreement;
- a determination of ineligibility to participate in one or more NYSERDA program efforts, on either a temporary or permanent basis;
- reporting of non-compliant activity to enforcement authorities, including but not limited to the NY Forward online complaint submission form, which will result in investigation and, if credible, enforcement.

***This guidance supersedes all previously issued guidance and shall be deemed to modify any applicable provisions in any NYSERDA contract, program rule, guideline, manual, solicitation or other applicable document or agreement.***



**NYSERDA**

**New York State  
Energy Research and  
Development Authority**

17 Columbia Circle  
Albany, NY 12203-6399

**toll free:** 866-NYSERDA  
**local:** 518-862-1090  
**fax:** 518-862-1091

[info@nyserda.ny.gov](mailto:info@nyserda.ny.gov)  
[nyserda.ny.gov](http://nyserda.ny.gov)