



New York State Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399

Re: RFI OSW-2018 - Response to RFI

Dear NYSERDA Large Scale Renewables Team:

This letter is in response to NYSERDA’s Request for Information (RFI) related to the development of a Request for Proposal (RFP) for Offshore Wind Renewable Credits. Climate Jobs New York (CJNY) is a coalition of labor organizations and community advocates united in their effort to combat climate change and promote economic justice. The growing coalition brings together workers that are directly-impacted by New York’s energy advances, including solar installers, building engineers, MTA track workers, power plant operators, heat and frost insulators and many other “climate workers”. CJNY includes AFL-CIO affiliated unions in several key sectors including in the energy, building, operations and maintenance, and transport sectors.

CJNY limits its response to the areas of Economic Benefits and Project Viability as related to workforce opportunities. CJNY submits this response in furtherance of its continued advocacy for progressive procurement policies that result in responsible economic development that offers high quality employment opportunities for New Yorkers.

CJNY defines high quality employment as jobs that (a) pay prevailing wages and benefits; (b) provide training that support both career creation and development in sustainable careers; (c) that protect against worker exploitation. Organized labor in the construction, manufacturing, operations and maintenance industries will be a vital resource to the state in the development of high-quality employment opportunities in the budding offshore wind industry.

## **ECONOMIC BENEFITS**

*Q. 29. The Order recognizes that the development of offshore wind creates the potential for high-quality employment opportunities and therefore presents a significant potential benefit to New York State. What measures or arrangements do you consider the most efficient and effective ways to:*

*a. Ensure that the maximum potential high-quality employment opportunities are available to New Yorkers?*

*b. Ensure that a properly trained, highly-skilled and qualified workforce is available to fill the various labor needs throughout the duration of the project?*

*c. Ensure opportunities for the participation of New York small businesses?*

### **Response:**

CJNY submits that the resources that organized labor can bring to this industry are best achieved through requiring developers, contractors, and other businesses to partner with organized labor in the areas of training, skilled labor supply, prevailing wage compliance, labor harmony provisions, and protections against predatory employers. Organized labor historically has provided

### **Project Labor Agreements**

With respect to the physical development of port infrastructure, and the onsite construction/installation of offshore wind turbines and related structures, CJNY submits that Project Labor Agreements (PLAs) should be a requirement for any developer and its contractors engaged in this work.

Generally, nearly all public PLAs include provisions for the following terms:

- Applicability to all successful bidders and subcontractors regardless of their union or non-union status on any other project upon acceptance of the terms of the PLA
- Access to skilled and trained workers from the union referral systems
- Non-discrimination provisions
- Prohibition against strikes and lock-outs
- Labor Management Committees to address any labor relations issues
- Dispute resolution provisions for contractual interpretation, worker discipline, and inter-union disputes
- Uniform conditions for many economic terms, such overtime, shift work, holidays, etc.
- Apprentice and veteran opportunities

The economic benefits of PLAs was addressed in a report from Cornell's ILR,<sup>1</sup> The author, Fred Kotler, summarizes the impact of PLAs as follows:

The recent experience in New York demonstrates the significant social and economic value of these agreements. The PLAs are preserving work and jobs, improving public infrastructure, sustaining the flow of tax revenues, reducing pressure on public support services, providing "bottom-up" economic stimulus through fair labor standards, advancing industry training and skills, opening avenues for workforce development and increasing opportunities for women and minority owned businesses.<sup>2</sup>

The use of a PLA negotiated with a local Building and Construction Trades Council (BCTCs), which consists of all local construction trades in an area, ensures the employment of local workers affiliated with those trades. Most, if not all, PLAs include a provision for union referral of workers to contractors for use on a specific project. Construction workers generally affiliate with the unions that offer the best opportunities to work closest to where they live. These unions offer a supply chain of trained and skilled workers that have participated in their New York State approved and registered apprentice programs. The unions have the ability to adjust their recruitment numbers based on work opportunities in the pipeline. The more work opportunities that result from a PLA, the more apprenticeship opportunities that are opened up for local recruitments. The apprentice programs can open their recruitments based on projected workforce needs. These programs can also coordinate with pre-apprenticeship programs that refer new candidates to the apprentice programs through direct entry privileges.

The dispute resolution provisions in PLAs provide for a private dispute resolution system that is administered and paid for by the contracting parties. This private dispute system handles everything from delinquent benefit payments to, to contract interpretation disputes under the PLA, to jurisdictional disputes between unions. The parties to a PLA are entitled to request information that would help to investigate compliance with the PLA, as well as the prevailing wage requirement. Union representatives responsible for monitoring compliance with the PLA frequently work together with state agencies and law enforcement on issues related to prevailing wage and contract compliance. Essentially, unions become partners with the public entity and developer in ensuring contract compliance and compliance with the law.

Several recent PLAs covering public private partnerships include provisions for minority workforce participation and Minority, Women, Small, Disadvantaged and Veteran Business Enterprises ("MWSDVBE") participation opportunities.<sup>3</sup> In some public private partnerships, the entity responsible for overseeing the project, either the design builder, construction manager,

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<sup>1</sup> <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1035&context=reports>

<sup>2</sup> Id, at 4, For a more detailed discussion of the economic benefits see pp. 6-25.

<sup>3</sup> LaGuardia; Penn-Farley Station, and Jacob Javits Convention Center PLAs are examples.

or other entity, has developed and implemented programs to encourage the success of MWSDVBE companies. Affiliated unions with signatory MWSDVBE contractors have contributed to the increased size and scope of the opportunities afforded those contractors.

A PLA requirement in the RFP is important to leveling the playing field for all potential responders to the RFP. There are several ways that public entities have included PLAs in bid documents. Some of have negotiated the PLA directly and executed the PLA with the local BCTC, and included the executed PLA in the bid documents. Some entities have negotiated the PLA directly, or through a consultant, and make the award subject to willingness to comply with the pre-negotiated PLA. These two models ensure a level playing field for all responders to the RFP. All responders to the RFP will know the terms of the PLA and can bid accordingly. These two options are the preferred method for labor since it resolves any uncertainty about the work opportunities that will be created for their members, as well potential opportunities for apprentice recruits. Other entities have included in the RFP or bid specifications the obligation to negotiate a PLA after award of the contract. This is not a preferred method because it is unknown how long it would take to negotiate a PLA, what the terms are. This creates a great deal of uncertainty for contractors and their response is generally to hedge against uncertainty by raising their price.<sup>4</sup>

### **Neutrality Agreements**

With respect to non-construction employment in manufacturing, operations and maintenance, the developer, manager, operator, or contractors engaged in the non-construction sector of the industry, should be required to enter neutrality agreements. These agreements require that employers commit to remain neutral with respect to their employees' rights to form or join a union in exchange for the union's commitment to refrain from conduct such as strikes, boycotts, work stoppages, picketing or other economic action against a signatory employer. Such agreements provide assurances that there will not be any interruption in the employer's operation due to organizing drives. This type of agreement would also level the playing field for all responders to the RFP and remove uncertainty with respect to labor relations issues. Given the state's proprietary interest in the success of the development of the offshore wind industry, and the accomplishment of important milestones related to the development of this industry such agreements prevent disruptions to progress.<sup>5</sup>

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<sup>4</sup> A model PLA(s) can be provided upon request.

<sup>5</sup> A model neutrality agreement can be provided upon request.

## PROJECT VIABILITY

**Question 30. What information and documentation should be required of proposers to demonstrate viability (please be specific as to the type of information and the level of detail which should be submitted), as follows, based on the criteria listed in the Order (Order, p. 53):**

In addition to a record of providing for labor harmony through PLAs or Neutrality agreements as described above, Responsible Contracting Policies (“RCPs) ensure that all contracts are awarded to reputable, responsible firms that have the qualifications, resources and personnel required to successfully perform the work that has been awarded to them. New York State needs to protect the substantial investment it is making in the creation of the offshore wind industry and the marketplace for ORECs. Responsible Contracting Policies (RCPs) improve the viability of that industry through ensuring the quality of goods and services procured.<sup>6</sup>

In this regard, developers will be proposing a methodology to achieve 800 MW of offshore wind capacity. Offshore wind developers will be contracting for goods and services in order to deliver on their obligations under the RFP. The RFP should require the proposers to include RCPs in their solicitations to vendors and contractors.

The RCPs should require vendors to verify important aspects of their business history, such as the following;

1. All business, trade and professional licenses, registration or certificates required by law;
2. All bonding and insurance required by applicable law or contract specifications;
3. An acceptable past performance record showing it has not been debarred or defaulted by any government agency and has not had license revoked in the past three years;
4. A clean record on law compliance;
5. A bonafide apprenticeship training program for craft workers registered and approved by the New York State Department of Labor or the United States Department of Labor, that has a record of successful graduation of apprentices;
6. All other technical qualifications, equipment, financial resources and personnel needed to successfully perform the project.<sup>7</sup> A model RCP is included in the document cited in footnote 7.

In summation, PLAs, neutrality agreements and RCPs are each a form of progressive procurement policies that can positively affect the economic benefits and the viability of the offshore industry and the RFP being developed by NYSERDA. CJNY welcomes the opportunity to engage in further discussions on these very important policies that should be included in the RFP.

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<sup>6</sup> <http://www2.lecet.org/mura/clearinghouse/assets/File/Responsible%20Contractor%20Policy.pdf>

<sup>7</sup> <http://www2.lecet.org/mura/clearinghouse/assets/File/Responsible%20Contractor%20Policy.pdf>

Sincerely,

/Ya-Ting Liu/

Ya-Ting Liu  
Executive Director