



**Policy Regarding OREC Agreement Termination, Contract Security and Eligibility to Submit Proposals into ORECRFP23-1**

NYSERDA's current policy regarding OREC agreement termination, contract security and eligibility to submit proposals into ORECRFP23-1 is described below. **Please note, the policy described herein is based on special and unique current circumstances and is not expected to apply to future solicitations.**

Eligibility and Timing of Termination. To be eligible to submit a proposal in ORECRFP23-1, a proposer cannot have an active agreement with NYSERDA or another entity with respect to the ORECs being offered in that solicitation, **unless** the proposer has entered into a binding agreement that will cause the active agreement to automatically terminate if the proposer is not awarded under ORECRFP23-1.

This approach allows for the energy capacity associated with any project that has an OREC agreement in place that bids in ORECRFP23-1 but is not awarded to be made available to be awarded to any other selected proposer(s) in ORECRFP23-1 or a future solicitation.

The eligibility criteria will be satisfied if such a binding agreement is signed by the Seller and submitted to NYSERDA prior to submission of the proposal.

Conditional Termination Agreement. NYSERDA has prepared a [form of conditional termination agreement](#) that can be utilized by any Seller with an OREC agreement in place with NYSERDA (an "Existing NYSERDA Agreement") that elects to submit a proposal into ORECRFP23-1.

The form of conditional termination agreement is available [here](#) and includes the following key terms:

1. If the project subject to the Existing NYSERDA Agreement is **not** awarded in ORECRFP23-1:
  - a. the Existing NYSERDA Agreement will be automatically terminated; and
  - b. NYSERDA will have the right to retain the contract security provided pursuant to the Existing NYSERDA Agreement (the "Posted Contract Security").
2. If the project subject to the Existing NYSERDA Agreement is awarded under ORECRFP23-1:
  - a. the Existing NYSERDA Agreement will terminate concurrently with the execution of a new OREC agreement for the project's award under ORECRFP23-1; and

- b. the Posted Contract Security will be **added** to the amount of contract security required to be posted in connection with the ORECRFP23-1 award and will be drawable in accordance with the same terms and conditions that apply to such award.

For the avoidance of doubt, prior to the time at which the Existing NYSERDA Agreement terminates, the Seller would be required to continue to post contract security pursuant to the Existing NYSERDA Agreement to the extent required by the Existing NYSERDA Agreement, to avoid a default and to maintain the Existing NYSERDA Agreement in effect.