

WDI Response to Renewable Energy Credits Request for Information OSW-2018

The Workforce Development Institute submits this response to NYSERDA’s Offshore Wind Renewable Energy Credits Request for Information OSW-2018 dated July 19, 2018 (the “RFI”). WDI thanks NYSERDA for the opportunity to provide feedback in its efforts to develop a request for proposal under the newly developed Offshore Wind Standard.

WDI strongly supports New York State’s goal to generate 50% of its electricity by renewable sources by 2030 and the newly established Offshore Wind Standard. We commend Governor Cuomo for setting a goal of developing 2,400 MWs of offshore wind by 2030. In addition, WDI appreciates the Public Service Commission’s consideration of issues surrounding the workforce, such as prevailing wages and/project labor agreements and local content requirements in creating the Offshore Wind Standard. Best practices dictate that as we seek to meet our states laudable and lofty clean energy goals, those energy programs should also create high quality employment.

WDI’s comments are organized as follows: 1) information about WDI; 2) general comments; and 3) comments in response to specific points outlined in the RFI.

I. About WDI

Respondent for WDI

Ross Gould
Energy Program Manager
433 River Street, Suite 1009
Troy, NY 12180
Phone: 518-272-3500 x 105
Email: rgould@wdiny.org

WDI Background and Experience

The Workforce Development Institute (“WDI”) is a statewide non-profit that works to grow and keep good jobs in NYS. We use a range of tools — including ground level information, workforce expertise, and funding — to facilitate projects that build skills and strengthen employers’ ability to hire and promote workers. Our work often fills gaps not covered by other organizations and is accomplished through partnerships and collaborations with businesses, unions, other non-profits, educational institutions, and government.

Although our work covers many sectors of the economy, we have a special interest and focus on manufacturing and energy – offshore wind in particular. WDI brings almost 20 years of experience in offshore wind energy and over 55 years of experience to the areas of stakeholder engagement, supply chain, and workforce development. WDI has closely followed and participated in the Reforming the Energy Vision process and has undertaken workforce-related projects to support Governor Cuomo’s clean energy and emission reduction goals.

Our energy sector workforce development efforts led us to get involved in offshore wind energy, first in convening stakeholders, then in developing an online supply chain database and map, then most recently in preparing a research paper which explores the jobs of offshore wind energy from a New York State perspective.

Below is a relevant, illustrative sampling of WDI's recent work:

- Studying and facilitating workforce-related grants for hundreds of New York State businesses each year. These grants often involve certifications, training, and services that enable businesses to expand into broader supply chains.
- Convening stakeholders to discuss different types of energy technology, such as solar, offshore wind, and smart grid. Stakeholders include labor, industry, environmentalists, community-based organizations, and academics. Our purpose in convening the stakeholders is finding common interest that will stimulate responsible and sustainable job growth. WDI has gained a reputation as a convener and as an organization that can be an honest, effective broker among diverse groups.
- Chaired and moderated a panel on offshore wind workforce development at the 2018 Advanced Energy Conference.
- Researching and developing a report on the jobs of the offshore wind industry and the skills gaps in New York that need to be addressed in order to build a highly skilled offshore wind industry workforce.
- Developing an offshore wind supply chain online map and database.
- Developing a New York State transit manufacturing company map and database with an emphasis on suppliers to the Metropolitan Transportation Authority. This work is on-going; WDI is also in the process of interviewing participating manufacturers and stakeholders to learn about the workforce, training, and procurement dynamics that influence suppliers. We have advised the Long Island Regional Economic Development Council and Suffolk Community College on manufacturing supply chain.
- *Long Island Manufacturing.* WDI's Long Island Regional Director convened state and local officials, labor leaders, manufacturing CEO's, Economic Development officials, students and other stakeholders to obtain feedback and information and hold an ongoing dialogue with stakeholders around the state of manufacturing on Long Island. Through this process she learned that a barrier to employment was a lack of understanding on the part of both educators and the public about career opportunities in manufacturing. In response, the WDI Regional Director created several events including production of a video highlighting careers in manufacturing and a Manufacturing Technology symposium in order to educate academia, workforce professionals, and the public on the jobs in manufacturing.
- *Southern Tier Manufacturing.* In response to a regional workforce gap in machining, the WDI convened manufacturers, academics, and local workforce professionals to develop and launch an 800+ hour multi-employer pre-employment machining program. The program has been running for three years and serving between four and six employers each year.

II. General Comments on the RFP

In creating an a request for proposal, NYSERDA needs to consider, the minimum required information a proposal must contain, what type of documentation to support a proposal and how

it will compare (or evaluate) proposals. WDI provides the following principles, minimum requirements and evaluation criteria for NYSERDA's consideration.

A. Guiding principles for preparing an RFP

The following are suggested principles for use to guide the preparation of an RFP:

Labor Standards: Paying prevailing wage is currently applied to all large scale renewable energy projects and should also apply to all offshore wind projects. Requirements for Project Labor Agreements (PLAs), joint labor-management training program, labor standards, responsible contracting, and health and safety should also be a condition for project eligibility.

Workforce Impact:

An RFP should seek to meet employment goals and local content requirements are a reasonable tool to use to prioritize New York jobs on offshore wind projects. NYSERDA has already pointed out that to meet the 5,000 jobs and \$ 6 billion to NYS-- "To meet this number the report provides that policymakers must include "significant incentives for investment and/or local supply **including imposing local supply requirements.**" (emphasis added) As such, it is imperative that the program being designed in this matter to include local supply requirements.

A workforce impacts analysis should be completed to determine the workforce impact of the offshore wind procurement program. Such an analysis would provide information regarding the impacts to the workforce from different program design options. Questions such as the number of in-state jobs vs. out of state jobs, duration of jobs, wages, and occupations should be included in the impact statement. This analysis would also assess how different program design elements would influence this mix and the difference in the workforce impact when offshore wind is utility owned as compared with the other options set out in the policy options paper.

Community Benefits: New York State's offshore wind projects will be most successful when a constructive and collaborative conversation occurs between developers, the state and local communities. Requiring local community outreach plans should be a requirement for all projects. Additionally, participation in community benefit agreements and investments in local hiring, sourcing from the local supply chain, ports, and staging areas should be required and considered in the overall contract scoring process.

Environmental Protection: To help ensure that all projects built to meet NY's offshore wind target are developed responsibly, WDI urges the Commission to include an environmental eligibility requirement for all projects. NYSERDA, the Department of Environmental Conservation, and stakeholders should establish Best Management Practices (BMPs) for offshore wind development. Requiring BMPs as part of the eligibility threshold criteria that all projects would have to meet would create a national model for state leadership in advancing environmentally responsible offshore wind development.

Net Economic Benefit for Ratepayers: The RFP should strive to meet New York's energy goals while providing net positive economic benefits to New York ratepayers. NYSERDA should build requirements into the contract with an eye toward having the greatest local economic

impacts and job creations. This can be done either by making certain conditions required from the developer, by using that category as part of the evaluation process or both. In order to achieve the greatest economic benefits the state must include policies and requirements that create local instate jobs, facilitate workforce development programs, funds local economic development, provide community benefits and invest in infrastructure such as ports and manufacturing facilities.

Transparency and Accountability: For a the Offshore Wind Standard to be successful it must be transparent and accountable. New Yorkers must be able to see that the program not only creates environmental benefits but they must be able to verify that it creates jobs and other economic benefits. Winning bidders must be required to provide information that is accessible to the public that shows the actual number of jobs created and the type and amount local content used in each winning project. Currently, there is no way to determine the actual number of New York jobs created by the Clean Energy Standard or its predecessor the Renewable Portfolio Standard. Indeed, no data is collected that provides the actual jobs. As a result we are left guessing and estimating the jobs based upon the dollar amount invested in a project. This dollar amount is run through a model to give a jobs estimate. Instead, a winning project should be required to provide after the fact information to NYSERDA that shows the actual number of jobs created. This information can be obtained in a number of ways including using payroll records and/or work logs.

Proposals should be publicly posted on NYSERDA's website. A developer can submit two versions of their proposal, including one that redacts confidential information. Other states follow this procedure as well.

WDI supports the Commission's call for a report after the first two rounds of solicitations. The emphasis on transparency and accountability will assist in preparing the report in a swift and efficient manner. The RFP should seek to require developers provide information provided that can form the basis report. Developers should also be required to provide a report 3 months after commencing operation that provides information documenting status for meeting requirements.

B. Minimum & Threshold Requirements¹

WDI provides the following minimum requirements to consider in an RFP:

- Project Eligibility Requirements
 - Site control –lease or an agreement for the development rights
 - Feed into NYCA
 - Community benefits agreement
 - Opens a New York project office
 - Reasonable and appropriate MWBE goals
 - Agreement to adhere to Responsible contracting principles
 - Require subcontractors to follow community benefits agreement, and MWBE commitment goals

¹ Should NYSERDA not consider any of the items under this section as a minimum or threshold requirement than the category could be considered and weighed as part of the evaluation process.

- Agree to pay prevailing wages and PLAs
- A plan to engage the local communities and historically under-represented groups, such as women and people of color.
- Local Content Requirement
 - Agree to invest in and use local labor and supply chain
 - Independent review and analysis
 - Commit to providing feedback and open to transparent review
 - Require subcontractors to commit to LCR
- Workforce Requirements
 - PLAS or prevailing wages—labor and safety standards
 - Create a workforce development plan
 - Invest in registered apprentice programs
 - Develop internship programs
 - Participate in NYS public-private partnership for workforce development
- Economic Development Plan Requirements
 - Demonstrate net positive economic impacts through cost benefit analysis
 - Report from an independent consultant
 - Set aside funds for a NYS business economic development grants
 - Community investment in local economic development projects that stimulate the supply chain.
 - Agree to invest in and use New York ports for projects. Maryland made this a contractual pre-condition for the award of an OREC.
- Project Viability
 - The project technology is viable
 - Interconnection viability
 - Developer experience
- Other requirements:
 - Independent Evaluator- developer must be required to submit the findings of an independent evaluation
 - Bidder Certification – agreement to meet terms and conditions set by NYSERDA, certify that information is true and accurate to best of their knowledge.
 - Bidder Disclosures- information about corporate affiliations, parents, subsidiaries, partnerships, development rights agreements etc.

C. Evaluation

1. *Cost-Benefits & Prices*

In evaluation WDI again would like to caution against over emphasis on “price” as the defining characteristic of cost of a project. There is much more to New York’s investment in offshore wind to the pure dollars and cents of the transaction there are all the benefits: a) public health savings, b) avoiding carbon; 3) economic benefits in terms of jobs and instate expenditures to name a few. The costs in not acting also must be considered such as environmental damage and missed economic opportunities must be factored into “price” as well. Social cost of carbon must also be considered when evaluating a bid price.

When evaluating RFI response use the broadest definition of ratepayer benefits.

2. *Economic Benefit Criteria*

WDI applauds the PSC for increasing the value given to economic benefits and jobs by increasing the scoring weight of the economic benefit criteria from the 10% in the renewable energy standard program (RES) to 20% for the offshore wind standard. The vast increase in the size, scope, and logistics of offshore projects when compared to onshore provides ample justification for such a score increase.

The current economic benefits scoring criteria used under the RES includes 4 categories.² WDI suggests 6 categories that are based upon changes to the current 4 categories already familiar to New York. Those categories are:

1. Long-Term New York State Jobs
2. Short-Term New York State Jobs
3. Payments to the benefit of New York State and its municipalities and communities
4. Instate Purchase and Consumption of Goods
5. Investments in enabling supply chain and commitments to offshore wind industry and supply chain activities
6. Workforce Development

For the most part categories 1, 2, 3 and 4 can obtain their definitions as described in the RES RFP 18-1, of course separating out the definition of short-term jobs out of its current combined category under instate purchases.

² See

<https://www.nyserda.ny.gov/All%20Programs/Programs/Clean%20Energy%20Standard/Renewable%20Generators%20and%20Developers/RES%20Tier%20One%20Eligibility/Solicitations%20for%20Long%20term%20Contracts>

The third category WDI proposes is relatively the same as category 2 in RES RFP 18-1. In the offshore wind RFP NYSERDA should include community benefits agreements and investments into local community development in this category.

The fourth category is similar to category 4 in RES RFP 18-1 except would remove the language relating to short-term jobs.

The fifth category would seek to provide a score for investments and commitments to build New York supply chain. These include agreements to use New York ports or investments into New York ports such as partnership agreements with New York companies that include investments into the New York companies to build out its capabilities for the offshore wind industry.

The sixth category for workforce development is intended to be a way to score a proposal for the robustness of its workforce development plan, its commitment to workforce development, planned investments it will make, its partnerships with labor and other training providers, as well as workforce focused academic partnerships.

In addition, WDI encourages NYSERDA to consider adders or bonus points to those proposals that go above and beyond the minimum local content requirements. As an additional incentive could try to use a sliding scale for adders that gives additional points as the percentage of New York supply chain companies and instate expenditures increases above certain designated levels.

In terms of scoring WDI suggests the following for the 20 points:

- | | |
|--|-----|
| 1. Long Term Jobs: | 4.0 |
| 2. Short Term Jobs: | 3.0 |
| 3. Payments to the benefit of New York State | 3.0 |
| 4. Instate Purchase and Consumption of Goods | 3.0 |
| 5. Investments in enabling supply chain | 4.5 |
| 6. Workforce Development | 2.5 |

Alternatively, WDI suggests considering combining its proposed Nos. 5 and 6 above into a single category and providing that category and Long Term jobs categories with a 5 point scale for each scoring.

III. Response to specific questions in RFI

The following is WDI's response to specific questions set out in RFI, as requested we have used the same numbering found in NYSERDA's RFI and include a page number.

A. Procurement Schedule

Response:

WDI provides a general comment for consideration when considering the procurement scheduler. Reviews of program in other countries provide evidence that regular procurement schedule builds supply chain and lowers costs. Conversations with experts in the industry also support the notion that a regular procurement schedule provides market certainty needed for stable growth.

B. Procurement Quantity

Page No 2 Question 5. The Order notes that NYSERDA could award more than 800 MW in the first year alone to secure economic develop benefits or to accept low bid prices that take advantage of the expiring federal tax credits. What should the RFP include to promote these benefits?

Response:

The RFP should promote learning by doing and the use of local supply chain content (products, services and workforce) in large projects. Learning by doing is an invaluable workforce development experience that provides institutional capabilities and lower cost of future projects. RFP should also promote workforce development plans, analysis of impacts on workforce and analysis of any hiring difficulties they predict from New York workforce, and an analysis that explains work flow. The RFP should also promote public private partnership.—investment in infrastructure.

C. Interconnection and Deliverability

Not our area of expertise.

D. OREC Pricing Options under the Index OREC Structure

Not our area of expertise.

E. OREC Pricing Options under the Fixed OREC Structure

Not our area of expertise.

F. Bid Price Evaluation

Response:

Bid prices is an important component because one of REV's tenants is to ensure affordable energy for consumers so it is important that projects that consumer benefits and retail price

impacts are considered. Setting a maximum bid price is a smart decision for consumer protection. However, we caution against using a narrow view on price. The price paid for offshore wind is an investment of ratepayer funding upon which the state is seeking a return. The Offshore Wind Opportunity study prepared in developing the Master Plan provides that New York can expect \$6 billion in return for its investment in meeting the state's newly adopted offshore wind standard. Price should be viewed under the investment lens and a focus on return on investment.

The Maryland RFP award stated "It is our sincere intent and expectation that the conditions we impose on both U.S. Wind, Inc. and Skipjack Offshore Energy, LLC will ensure a maximum return on the investment of our ratepayers, while minimizing any potential negative impacts stemming from the ratepayer-funded incentives that will flow to the developers as a result of this Order." *In the Matter of the Applications of U.S. Wind, Inc. and Skipjack Offshore Energy, LLC for a Proposed Offshore Wind Project(s) Pursuant to the Maryland Offshore Wind Energy Act of 2013* Order dated May 12, 2017 at p. 2.

Page No. 3 Question 16. How should the Benefit Cost Analysis Framework set forth in Case 14-M-0101 (Reforming the Energy Vision) be applied or otherwise refined in the 2018 RFP regarding price evaluation?

Response:

The bid price evaluation should be performed as part of an overall cost benefit analysis that includes an evaluation of price. The analysis should also include as costs associated with inaction, such as cost of carbon, cost of environmental impacts, cost to public health, lost tax revenues from not building a windfarm, lost employment opportunities and other economic opportunities. The cost benefit analysis must also consider the value of the offshore wind resource and look to the analysis performed by Lawrence Berkeley National Laboratory (LBNL) that demonstrated that the value of offshore wind is the highest in New York.³

Page 3 Question No. 18. What bid price evaluation process "lessons" have been learned from offshore wind procurements in other jurisdictions that NYSEDA should take note of for purposes of the 2018 RFP?

Response:

While New York is among the early U.S. adopters, Maryland, Massachusetts, Connecticut and Rhode Island have already provided awards to developers. New York should analyze the minimum standards and threshold requirements contained in those RFPS. In addition, lessons can be obtained from the European experience as well. The following are some lessons learned from other jurisdictions:

- Bid prices are declining but it is still a best practice to set a maximum price.
- Good prices can be achieved with significant investments into local supply chain, workforce development and instate expenditures on projects. The UK has

³ *Estimating the Value of Offshore Wind Along the United States' Eastern Coast* See https://www.energy.gov/sites/prod/files/2018/04/f50/offshore_eri_lbnl_format_final.pdf (last visited Aug. 9, 2018)

incorporated a good process for incorporating local content and has also seen decreasing costs.

- Other procurements have provided developers with experience in awards that contain local content requirements and with instate employment and spending requirements. In addition, developers have been willing to agree to economic development, workforce development, instate expenditures and using and building a local workforce for prior projects and investments in port infrastructure.
- Many current renewable energy solicitations, such as the large scale renewable solicitations in New York fail to obtain after the fact actual instate employment for the project. To overcome this issuers of RFP's can require developers to provide information after operation commences such work logs, payroll records, supplier contracts, etc. that provide actual information about who worked on a project, when and for how long.
- Maryland required that the prices it would pay to developers include a set number of jobs for the projects, in state expenditures, port infrastructure investments, and investments in workforce and business development.

Page No. 4 Question No. 22. NYSERDA retains the authority to reject all bids (Order, p. 43). What factors other than the maximum acceptable bid metric should be considered when determining whether to select or reject bids?

Response:

NYSERDA should retain authority to reject any and all bids that do not meet minimum eligibility and threshold requirements. This procedure has been applied in other jurisdictions, such as in Massachusetts, Maryland, Connecticut and Rhode Island. In the Massachusetts RFP the first stage of evaluation seeks to verify eligibility and whether applications meet threshold requirements, if it does not then the bid can be rejected. This is a good practice to follow in New York.

NYSERDS should reject any proposal from a developer that is currently in violation of any rules or regulations promulgated by NYS Department of Labor, fail to pay prevailing wages or enter into PLAs and for a developer's failure to use responsible contracting principles.

Other factors to consider include: Project eligibility, project viability, states environmental goals, state's economic goals; and labor standards. Suggest that NYSERDA consider the following categories among the criteria and minimum thresholds:

- Project Eligibility Requirements
 - Demonstrated Site control –lease or an agreement for the development rights
 - Feeds into NYCA
 - Community benefits agreement
 - Opens a New York project office

- Reasonable and appropriate MWBE goals
- Agreement to adhere to Responsible contracting principles
- Require subcontractors to follow community benefits agreement, and MWBE commitment goals
- Agree to pay prevailing wages and PLAs
- A plan to engage the local communities and those historically under-represented groups, such as women and people of color.
- Local Content Requirement- developer’s commitment to using local workforce and businesses
 - Agree to invest in and use local labor and supply chain
 - Independent review and analysis
 - Commit to providing feedback and open to transparent review
 - Require subcontractors to commit to LCR
- Workforce Requirements
 - PLAS or prevailing wages and joint labor management training agreement—labor and safety standards
 - Create a workforce development plan
 - Invest in registered apprentice programs
 - Develop internship programs
 - Participate in NYS public-private partnership for workforce development
- Economic Development Plan Requirements
 - Demonstrate net positive economic impacts through cost benefit analysis
 - Report from an independent consultant
 - Set aside funds for a NYS business economic development grants
 - Community investment in local economic development projects that stimulate the supply chain.
 - Agree to invest in and use New York ports for projects. Maryland made this a contractual pre-condition for the award of an OREC.
- Project Viability
 - The project technology is viable
 - Interconnection viability
 - Developer experience
- Other requirements that proposals should include:
 - Independent Evaluator- developer must be required to submit the findings of an independent evaluation
 - Bidder Certification – agreement to meet terms and conditions set by NYSERDA, certify that information is true and accurate to best of their knowledge.

- Bidder Disclosures- information about corporate affiliations, parents, subsidiaries, partnerships, development rights agreements etc.

G. Economic Benefits

Page 4 Question No. 23. In addition to project-specific spending and job creation in New York State, the Order encourages investment in enabling supply chain and infrastructure in New York, and commitments to offshore wind industry and supply chain stimulating activities that create real, persistent and sustainable institutional or labor capabilities in New York State, and that lower the cost of future offshore wind projects (Order, pp. 52-53).

a. What documentation of such commitments should be required in the RFP to demonstrate real and verifiable investments in these categories?

b. How should NYSERDA evaluate whether any investment is likely to lower the cost of future offshore wind projects?

The following is a list of categories of documents proposers should supply:

- Documents that show expenditures of funds into contracts with new York state companies, agreements with labor unions and/or other training providers, New York colleges or universities, agreements with New York Ports, vessel operators, and/or consulting companies.
- Documents that show breakdown of labor and businesses used on the project to date in early development phases of project.
- Documents that demonstrate that the developer has expended funds or committed to expending funds in a training program in New York, this include documents demonstrating equipment purchases, curriculum development, trainer fees, etc. for a training program in New York with a vast majority of the attendees being New York residents.
- Documents that show a) direct expenditures; b) investments in enabling supply chain and infrastructure, c) commitments to offshore wind and supply chain stimulating activities.
- Documents sufficient to show expected percentages of local content in each project phase: development, manufacturing, installation & commissioning, balance of plant, operation & maintenance and decommissioning.
- Documents from partners in such training programs demonstrating developers participation and investment in a training program.
- Documents that demonstrate detailed tracking of direct full time equivalent projects and positions created during each phase of the project and report to NYSERDA.
- Documents exhibiting estimates of NY's current workforce and supply chain capabilities.

Those documents can be:

- Agreements, purchase agreements, supply agreements, vendor agreements, PLAs/joint labor management training agreements, labor peace agreements, and/or community benefits agreement. Contracts relating to the proposed project that in their language demonstrate an agreement between the developer and a third party that commit developer to invest in New York labor or in using a New York business on the projects or New York infrastructure improvements or upgrades.
- Project development plans that discusses plan for each phase: project development, installation and commissioning plan, operation & maintenance, decommissioning plan.
- Certification from the developer to certify that it commits to promise that statements facts, figures are true and accurate to the best of knowledge.
- Commitment and support letters from organizations, businesses etc. that have agreements with that demonstrate the use of New York workforce

NYSERDA can evaluate these documents and claims by asking the developers to provide information that demonstrates the investments lower cost for future projects and require they submit an independent analysis of such findings. In addition, NYSERDA should retain an independent evaluator to conduct an analysis of the developer independent analysis.

Page 4 Question No. 24. In accordance with the Order’s guidance to include a local content provision in the evaluation criteria (Order, p. 52), NYSERDA may require that proposers file an Economic Benefits Plan (EB Plan), to demonstrate its commitments. The purpose of this EB Plan is (i) to explain and justify the proposer’s claims, and (ii) to help evaluators consider the viability of claims. What information should be required in an EB Plan to support scoring of:

- a. Supply chain and supportive infrastructure investments?***
- b. Opportunities for New York State businesses to bid on project expenditures?***
- c. Enabling investments in activities, e.g., workforce development, R&D, other?***

Response:

An economic benefits plan is a valuable tool for identifying commitments developers have made and will make. An economic benefits plan should include sufficient details to allow NYSERDA and ratepayers to understand and evaluate developers’ claims. The developer should not only develop economic benefits plan but they should submit an independent analysis of that plan for NYSERDA.

In the Offshore Wind Standard RFP, when NYSERDA issues it’s RFP it should require that to be eligible for the OREC contract an applicant must have an economic benefits plan to: a) invest in workforce development, b) create a workforce development plan, c) engage New York vendors for the project; d) enter into community benefits agreements; and e) invest in local economic development projects related to the offshore wind industry. A workforce development

plan should include a workforce impact analysis that explicitly details how the workforce will be impacted by the project and its supply chain. Such analysis should include an estimate of each occupation involved, duration of occupations engagement with project, overall workforce hours on project, overall wages and benefits, and workplace safety standards in place. This will provide NYSERDA with information it needs to evaluate the cost benefit of a proposed project as well as provide invaluable information for making workforce development decisions.

NYSERDA should require specific commitments to spur economic activity in New York, such as leases for waterside facilities and other properties, capital investment, local manufacturing, or outfitting of project, such as turbine foundations or use of local suppliers and services providers.

The economic benefits plan must also be evaluated by an independent third party, which is to be submitted as part of the proposal.

Information to include in the plan:

- Contractual agreement to pay prevailing wages and/or PLAs and/or joint labor management training agreements
- Community benefits agreements
- Planned economic development expenditures
- Need independent analyses to be conducted in areas that were required in Maryland
- How the project and all the developers agreed to conditions for local and workforce investments provide a net positive economic benefit for ratepayers.

Page 4 Question No. 25. NYSERDA may establish a minimum requirement in the RFP to provide opportunities to New York State firms for project-related expenditures. Options include (i) requiring that opportunities for contracts be communicated to a New York State vendor list maintained by NYSERDA, and (ii) requiring that each proposer provide opportunity for New York State firms to bid on contracts representing some percentage of total project costs. a. What categories of expenditures are reasonable to apply such a requirement to? b. With respect to approach (ii), please comment on the practicality of such a requirement; what level of demonstration would be required; what is a reasonable specified percentage of total project costs to require; and what exceptions would it be reasonable to include.

Response:

Local content requirements (“LCRs”) are a tool policymakers can apply to capture economic benefits from renewable energy projects funded with the ratepayer money. A local content requirement is a practical decision and has been applied in many contexts including renewable energy procurement programs throughout the world and is also used in many other formats, including by New York Industrial Development Authorities. While findings about the impacts of LCRs are inconclusive, studies state that LCRs can be effective means of stimulating local jobs and economic development.

Many countries and states use renewable energy programs to foster local instate economic development and environmental benefits. Other RFPs, such as Maryland, have considered local contents and economic benefits in decision making process. For example Maryland placed preconditions on the contract relating to employment and in-state spending on the projects. These states have included provisions that could form a basis for New York's RFP. For example Maryland criteria found in order dated May 11, 2017.

Maryland PSC required developers to make instate expenditures and create local jobs, as well as make other economic development investments. These decisions were based upon independent analyses submitted with the applications.

In developing LCRS for this RFP, NYSERDA should consider the following best practices:

1. LCRs cannot be too flexible or too restrictive and must be coupled with learning benefits
2. LCRS seem to allow for more technology transfer when it is attached to some form of adequate financial support to those incurring costs.
3. LCRs work better when there is still a high learning-by-doing potential.
4. LCRs work best when coupled with other policies and investments to support training for workforce and infrastructure investments.
5. LCR should include both upstream manufacturing and downstream services.
6. Phase in the local content requirements and phase out after market matures.

Also of note is that these studies also point out that LCRS cannot be applied in a vacuum and that in order for them to reach maximum gains they must be applied with other policies that focus on a) building a stable and long term market and 2) developing a highly skilled and well trained workforce.

To determine which categories to apply an LCR, NYSERDA should look to information about how supply chain is most likely to be formed in New York and look at experience of the United Kingdom. Look also to the categories in which local content and instate expenditures occurred at Block Island and are proposed for the Maryland projects.

Categories where it is reasonable include an LCR:

- Installation and commissioning,
- Operations and maintenance,
- Project development –consultants, legal, finance, scientists and engineers
- Port infrastructure
- Training programs and workforce development
- Balance of plant and support services

In terms of the suggested options, options (i) and (ii) above are good requirements, however WDI suggests additional options for NYSERDA to consider such as requiring that New York vendors from NYSERDA's supply chain database are used on the project and set a number of New York workers to be used on the project.

Using LCRs that specify percentages of instate expenditure on local content and employment for each phase of project development is a reasonable and practical approach. When developing the percentages of local content NYSERDA should use its understanding of what jobs and supply chain companies in New York are baseline and can most easily be filled locally. To determine the wages and workforce expenditures NYSERDA should refer to its workforce opportunity study and to IRENA *Renewable Energy Benefits: Leveraging Local Capacity for Offshore Wind*, this report provides a breakdown of the workhours/days for occupations in each of the phases of developing a 500 MW wind farm.⁴ In looking at the categories of occupations that are most likely baseline in NY, NYSERDA can use the workhour calculation from *Leveraging Local Capacity* as a way to determine the number of hours that will be worked by instate workers and convert that into a metric for establishing instate expenditures on workforce.

In categories where it is not feasible to set a percentage because of a lack of supply investment or the industry needs a large project pipeline to invest, instead of seeking instate expenditures, NYSERDA should seek developer investments to bolster capabilities in those areas.

To avoid being too restrictive and hampering market development NYSERDA should provide room for exceptions to the LCR in limited circumstances. In determining whether to grant an exception, NYSERDA should consider requiring both developers and an independent analysis that agree that there is no way to adhere to the specific LCR component.

Pages 4 and 5 Question No. 26. In accordance with the Order, NYSERDA is interested in conveying greater weight to those expenditures and investments that (i) create persistent institutional or labor capabilities in NYS, and (ii) lower the cost of future offshore wind projects (Order, pp. 52-53).

Please comment on: a. The proposed approach; b. What information may be reasonable to use as the basis for assigning such additional weight; and c. How much additional weight is appropriate to assign to expenditures or investments that create such benefits.

Providing additional weight for such expenditures is a good approach because the overall value to industry by those types of expenditures. Those expenditures provide immense value to ratepayers. A developer should provide information detailing the capabilities created and the impact on future costs, which should be verified by an independent analysis.

WDI suggests that these types of expenditures that are designated as (i) as its own category in the scoring evaluation for economic benefits and to provide for up to 4.5 points for this category. See pages 6-7.

In addition, WDI could see that this category also has potential to serve as a bonus incentive program in which a proposal receives bonus points for based upon the combined values of the instates supply chain contracts for the project. WDI suggests a 5 point bonus for developers that partner with or use companies found on the NYSERDA NY vendor list.

⁴ See http://www.irena.org/-/media/Files/IRENA/Agency/Publication/2018/May/IRENA_Leveraging_for_Offshore_Wind_2018.pdf (last visited August 10, 2018)

Page No. 5 Question No. 27. NYSEDA may establish penalties or other contractual repercussions, such as those used in its Renewable Energy Standard Tier 1 solicitations, which reduce the contract price in proportion to any shortfall below 85% of the economic benefits claimed, based on the independent audit of benefits realized during the first three years of commercial operations. Here, NYSEDA is considering: (i) reducing the contract price in proportion to the shortfall; (ii) requiring seller to make additional investment to make up a shortfall; or (iii) requiring seller to submit a payment in proportion to a shortfall to fund related activities. Please comment on these alternative approaches.

Response:

The goal of this provision should not be punitive but instead to ensure that New York obtains the economic and employment benefits it had expected. The options listed above are all good options. Option (1), reducing the contract price is the option that provides the least amount of economic benefits as it would reduce the projects overall investment in the state. Therefore it is the least preferred penalty. Options (ii) and (iii) are more in line with such a goal.

Maryland has established a statutory business development fund that provides grants to develop Maryland companies in their efforts to work in supply chain. Maryland program sets as a penalty a requirement that the shortfall be paid into the business development fund. This fund then provides economic development grants. New York should do the same in this RFP.

Best option (iii). It is best because it provides New York State with the flexibility to decide how to invest this money. This flexibility allows the state to choose how to use the funds based upon a determination of the best return for the ratepayer and the industry and guards against a developer using the payment to forward its own interest above the interest of the state and ratepayers.

Page No. 5 Question No. 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:

To ensure high quality jobs New York State must require that developers and subcontractors agree to responsible contracting principles, pay prevailing wages, adhere to health and safety standards, and enter Project Labor Agreements (PLA) and joint labor-management training programs. PLAs are particularly important because they bring coordinated, pro-active planning to complex projects, provide important benefits to local communities in terms of skills training,

employment opportunities and future workforce development, and ensure that the most productive and skilled craft labor is available to work on a project.

For a properly trained and highly skilled qualified workforce, in addition to the above, NYS should look to develop partnerships between developers, academic institutions, community based organizations, as well as for developers to prepare workforce development plans and invest in curriculum development and training equipment.

Finally, measures to provide opportunities for small businesses include requirements for instate expenditures through the phases of the project, requiring developers to establish business development grants, and during evaluation providing additional bonus points for developers that use small New York based businesses.

H. Project Viability

Pages No. 5 and 6 Question No. 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):

***** omitted a-g**

h. Community Outreach: How should proposers be required to credibly demonstrate their community outreach and support? (page 4)

Response:

A community benefits agreement designed in coordination with organized labor and local community organizations can credibly demonstrate outreach and support. In addition, support letters from elected officials, community leaders, and community based organizations, as well as newspaper articles and community outreach plans all can be used to demonstrate outreach and support.

I. Marine, Environmental and Other Impacts

See introductory remarks on environmental protection page 2.

J. Eligibility/Contract Provisions

Page No. 7 Question No. 35. To encourage the greatest participation by offshore wind developers, what specific considerations should be made in defining eligibility and threshold requirements, bid flexibility, and other procurement mechanics?

Response:

See criteria set out in response to No. 22.

Page No. 7 Question No. 36. NYSERDA has the discretion to determine additional eligibility requirements for participation in the solicitation beyond those defined in the Order (Order, p. 46). a. Are there additional eligibility requirements that should be included in the solicitation? If so, what are the (dis)advantages of imposing such eligibility requirements on proposers?

Response:

In addition to having developers and contractors prequalify as contractors that follow responsible contractors principles and we suggest the criteria set out in Response to No. 22.

Page No. 7 Question No. 39. The development of offshore wind is important to New York both economically and environmentally. Timely completion of on offshore wind project, in a cost-effective manner, is critical. What measures or arrangements do you consider the most efficient and effective ways to: a. Ensure that the project proceeds on-time and on budget, and is protected from potential disruption and delays due to labor disputes? b. Ensure construction management flexibility to coordinate the work of multiple trade contractors, including both union and non-union contractors, who might otherwise be subject to different restrictions, and to efficiently respond to any project-specific construction standards?

Response:

The successful track record of PLAs in New York and across the nation is extensive, a fact documented by numerous reports and studies. These benefits include secure supply sources for skill labor, cost-savings, protecting and ensuring timely project delivery, and stability in the project delivery process provided by uniform employment conditions, no strike clauses, and efficient dispute resolution procedures. The extent of the use of PLA construction alone—which includes tens of billions of dollars of projects in New York and hundreds of billions of dollars in projects nationwide—itsself makes an impressive statement.

Labor Peace/Neutrality Agreements: Regarding the operational and other non-construction components of energy projects, progressive labor policies are likewise needed to protect the state's investment and ensure the final delivery of power expected of the project. Labor Peace/Neutrality agreements are the most effective tool for achieving this goal. They require that: (1) Employers refrain from coercing or intimidating employees in the exercise of their rights under the NLRA; and (2) Require labor organizations to refrain from engaging in labor activity that disrupts the employer's operations, including but not limited to strikes, boycotts, work stoppages, corporate campaigns, picketing or other economic action against such covered employer.

Page No. 8 Question No. 41. Are there any other topics or risks that NYSERDA should consider in drafting the RFP?

Response:

The RFP must include a plan to show how the developers will engage the local communities and historically under-represented groups, such as women and people of color. The energy sector has historically lagged other sectors in diversifying. New York can use the developing of a new energy sector as an opportunity to build an industry that's demographics are in line with the population at large. WDI facilitated the development of a pre-employment training program targeting efforts to increase the number of women working in the energy sector. We welcome any conversations about how to apply this type of program to the Offshore Wind Standard or to partner with developers, OEMS, business, labor or community based organizations to develop a similar program targeting offshore wind and historically under-represented groups.

Conclusion

WDI thanks you for this opportunity to submit these suggestions.

August 10, 2018