



Cornell University



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## **Request for Proposal**

C003719

New York Higher Education Large Scale Renewable Energy

(NY HE LSRE) Procurement

June 15, 2020

Questions Due:

June 29, 2020, by 5:00 PM EST

Proposals Due:

August 10, 2020 by 3:00 PM EST

## SUMMARY INFORMATION FORM

**NOTE: Four (4) participants in the NY HE LSRE Consortium are private higher education institutions; their process may deviate as appropriate for their campus as noted throughout this RFP.**

**THIS PAGE MUST BE SIGNED AND RETURNED WITH PROPOSER'S RESPONSE**

<b>RFP Number:</b> C003719	<b>RFP Title:</b> NY HE LSRE Procurement	<b>RFP Release Date:</b> June 15, 2020
<b>Key Events</b>		
Questions due	June 29, 2020, by 5:00 PM EST	
Answers provided on approximately	July 13, 2020	
Pre-Proposal Conference (if applicable)	N/A	
Site Visit (if applicable)	N/A	
Notice of Intent to Bid Due <i>(Due by email to the technical contact below noting proposer name, intended project names, and MW ac size.)</i>	July 20, 2020, by 5:00 PM EST	
Proposal Due Date and Time ("Proposal Due Date")	August 10, 2020, by 3:00 PM EST	
Notification of Award	TBA	
Guaranteed Contract Start Date	no later than December 31, 2023	
Length of Power Purchase Agreement ("PPA") Contract	10-15 years following project operational date, as awarded in contract	
<i>The Consortium reserves the right, in sole discretion, to modify the above schedule. Proposers will be notified via email of any changes in a timely manner.</i>		
<b>Contact Information</b>		
<b>Primary Contact:</b> <i>(for procurement process questions only)</i> Jordan Lohre Senior Contract Manager State University of New York <a href="mailto:jordan.lohre@suny.edu">jordan.lohre@suny.edu</a> 518-320-1341	<b>Secondary Contact:</b> <i>(for procurement process questions only)</i> Heather Loukmas Contract Assistant State University of New York <a href="mailto:heather.loukmas@suny.edu">heather.loukmas@suny.edu</a> 518-320-1341	<b>Technical Contact:</b> <i>(for technical and subject-matter questions only)</i> Grace Morrissey Senior Analyst Edison Energy <a href="mailto:grace.morrissey@edisonenergy.com">grace.morrissey@edisonenergy.com</a> 617-670-5026
<b>Restricted Period (applicable to all NY HE Consortium participants)</b>		
In accordance with the requirements of New York State Finance Law Sections 139j and 139k ("Lobbying Law"), the restricted period for this procurement is now in effect and shall continue until the approval of a contract by SUNY, or if applicable, by the Office of		

the State Comptroller. Therefore, all communications regarding this procurement must be handled through the State University of New York's designated contacts only, even related to the private universities and community colleges.

**Proposer Information**

Legal Business Name of Company Bidding:		Proposer's Federal Tax Identification Number:
D/B/A – Doing Business As (if applicable):		NYS Proposer ID Number:
Street Address:	City/State:	Zip Code:
<p>If applicable, place an "x" in the appropriate box: <i>(check all that apply)</i></p> <p> <input type="checkbox"/> Small Business (if checked, provide number of employees ____)  <input type="checkbox"/> Disabled Veteran Owned Business  <input type="checkbox"/> Minority Owned Business (NYS Certified)  <input type="checkbox"/> Women Owned Business (NYS Certified)         </p>		
<p>If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> We are unable to bid at this time because:</p>		
Proposers Signature:		Title:
Printed Name and Name of Firm:		Date:

**By signing this form, Proposer acknowledges (a) that the RFP instructions are understood; (b) that the Proposer is committed to servicing the needs of the Consortium in the required time period; and (c) that all information required by this RFP has been included in Proposer's proposal.**

## Section 1: Relevant Definitions & Acronyms

*Best Value* = “Best Value” shall mean the basis for awarding a Contract to a Proposer(s) which best optimizes the technical, qualitative, and financial performance of a bid(s) among Responsive and Responsible proposers. See State Finance Law § 163(1)(j).

*Bid* = a component to a Proposer’s proposal; the discrete offer, provided in one complete column within the Developer Response Workbook, “Bid Information” Tab.

*Buyer* = offtaker; renewable energy purchaser; within this RFP the intended buyers include all members of the NY HE LSRE Consortium.

*Capacity* = the maximum output an electricity generator can physically produce; measured in MW; for the purposes of this RFP, the term ‘capacity’ is used referring to either (a) the total output of an electricity generator (also referred to as the “nameplate capacity”), or (b) the capacity market, wherein ‘capacity’ represents a commitment of resources to deliver when needed, particularly in case of a grid emergency

*Commercial Operations Date (COD)* = date upon which the renewable energy asset begins commercial operation, wherein the asset begins producing electric energy on a sustainable basis.

*CP* = Condition(s) Precedent; an event or state of affairs that is required before something else will occur; in contract law, it is an event which must occur, unless its non-occurrence is excused, before performance under a contract becomes due.

*Edison Energy, LLC* = the renewable energy consultant to the NY HE LSRE Consortium, working as an advisor and subject matter expert. Note: Altenex, LLC is a wholly owned subsidiary of Edison Energy, LLC, and is synonymous with Edison Energy, LLC, herein referred to as Edison Energy.

*Evaluation Committee* = Representatives selected by the NY HE LSRE Consortium, representing eight participating entities (one representative from SUNY System Administration, four state-operated campuses, one community college, two private institutions), who will be evaluating the proposals.

*Federal Energy Regulatory Commission (FERC)* = independent government agency, officially organized as part of the Department of Energy, that regulates the interstate transmission of electricity, natural gas, and oil.

*Generation* = for the purposes of this RFP, generation refers to the electricity generated from renewable resources such as solar panels or wind turbines; measured in MWh.

*Megawatt (MW)* = unit of energy measurement equal to one million watts based on which a large-scale renewable energy project installed capacity is defined.

*Megawatt hour (MWh)* = a unit of measurement for energy production or consumption at a rate of one megawatt per hour.



*New York State Independent System Operator (NYISO)* = A Federal Energy Regulated Commission (FERC) regulated wholesale electric market. NYISO is responsible for managing New York's electric grid and its competitive wholesale electric marketplace.

*NY HE LSRE Consortium ("Consortium")* = New York Higher Education Large Scale Renewable Energy Consortium; refers to the consortium members of the initiative stipulated within this RFP, inclusive of the state-operated campuses, community colleges, and private institutions outlined herein

*OSC* = Office of State Comptroller; head of the state government's Department of Audit and Control; within this RFP, references to OSC refer to New York State's Office of State Comptroller

*P50* = statistically given analysis and modeling, the expected outcome; the median of the results wherein 50% of the outputs from the model perform better than this value and 50% of the outputs perform worse than this value.

*P50 12x24 Report* = the expected (statistically, the median) generation from a renewable energy asset which accounts for weather data and time of production; simulated as the expected hourly generation for 24 hours in a typical day within a given month, for 12 months; for each month, a typical hourly generation is simulated across a 24-hour period specific to a given month, resulting in 12 average monthly days.

*PIA* = Participating Institution Agreement; is an administrative instrument binding participating institutions, specifically state-operated campuses and community colleges, to a contract executed between SUNY Administration and a third party such as an LSRE developer.

*PPA* = Power Purchase Agreement; an agreement between a buyer (offtaker, being SUNY or a participating private campus) and a seller (renewable energy developer's large-scale project). A PPA can be either a physical transaction where an injection point and a withdrawal point of the energy produced by a large-scale project are defined, or a financial transaction where the financial settlement between buyer and seller is based on the amount of energy produced and a predefined energy index pricing formula.

*Project* = a renewable energy asset to be developed by the Proposer; note: a Project may have more than one Bid associated with it, and more than one Project may be included within a Proposer's Proposal.

*Proposal* = the full response from a Proposer, including all documents and materials requested as part of this competitive solicitation. A proposal can include more than one Project, and can also include more than one bid per Project, tethered to respective accompanying specifications (e.g. settlement location, term length, COD, project details) that is offered as a response to this competitive solicitation in accordance with the stipulated ask; synonymous with "bid package".

*REC* = Renewable Energy Credit; environmental attributes in MWh units, which are associated with renewable power generation. RECs are the mechanism by which a buyer may claim renewable energy. 1 REC = 1 MWh of renewable power generation.

*Seller* = developer, large scale renewable energy asset LLC; within this RFP, the prospective sellers include the proposer, bidder, vendor. While these other terms may be used, this RFP chiefly uses the term “Proposer” to encompass this definition.

*Steering Committee* = Representatives selected by the NY HE Consortium, representing seven participating campuses to assist SUNY System Administration and Edison Energy, the NY HE Consortium consultant, with technical matters and project management.

*Virtual Power Purchase Agreement (vPPA)* = a financial transaction where the financial settlement between buyer and seller is based on the amount of energy produced and a predefined energy index pricing formula.

*8760 Report* = an hour-by-hour analysis that simulates a renewable energy asset’s performance for all 8,760 hours in a given 12-month period; this method uses the sequence of days and weather data instead of averages.

## Section 2: Overview

### 1. Project Overview

To address the increasing threat of climate change, thirteen (13) State University of New York (“SUNY”) state-operated campuses, two (2) community colleges, SUNY System Administration, and four (4) private institutions of higher education set goals to procure renewable energy to offset their campuses’ greenhouse gas emissions. These institutions operate some of the largest educational and research facilities within (and outside of) the State of New York. These public and private institutions are looking to be leaders in taking positive action against climate change.

The SUNY System is the largest comprehensive university system in the US, serving nearly 1.3 million students with a combined building space of 59 million square feet.

Cornell University’s main campus is located in Ithaca, New York. It is a member of the Ivy League and its colleges and schools – including four “contract colleges” (operated by Cornell under contract with New York state) – encompass more than 100 fields of study, many of which provide opportunities for learning and engagement that span the state, the nation and the world. It is a private endowed university and the land-grant institution of New York State. Cornell has approximately 3,000 faculty, 11,000 staff and 20,000 students.

Skidmore College is a highly ranked, residential, liberal arts college situated on 1,000 acres of natural beauty in Saratoga Springs, New York. With 2,500 students from 40 states and 70 countries, 43 majors, more than 100 student clubs, funded research and internship opportunities, and 118 study abroad programs, it offers a dynamic college experience. Consistently acclaimed in national rankings, Skidmore has been recognized as one of “America’s Most Entrepreneurial Colleges,” a “Best Value” school and a “Hidden Ivy.”

Ithaca and Bard Colleges, with a combined total student population of over 9,000, are also members of this consortium. These campuses are located in some of the most pristine areas of New York State and share a sense of urgency to preserve the environment for future generations.

Accordingly, these institutions of higher education are cooperating to achieve these common objectives and have formed the New York Higher Education Large Scale Renewable Energy Consortium (“Consortium”) to procure offsite large-scale renewable energy (“LSRE”) projects.

The Consortium is requesting proposals for cost-effective large-scale renewable energy projects. The Consortium will consider new-build electric generation projects utilizing only non-combustion based renewable technologies such as solar photovoltaic and wind, in varying sizes and stages of development provided the successful proposer(s) (“Proposer(s)”) presents a suitable opportunity for the Consortium campuses to enter into a virtual Power Purchase Agreement(s) (“PPA(s)”).

The Consortium seeks to source an estimated maximum of 676,000 megawatt hours (MWh) of renewable energy annually through this procurement, with maximum sizing specifications outlined in the Table (“Table 1”) below:

**Table 1**

<b>Offtaker Entity</b>	<b>Maximum Offtake Capacity (MWh annually)</b>
SUNY System Administration (signing on behalf of state-operated campuses & community colleges)	400,000
Bard College	19,000
Ithaca College	32,000
Cornell University	200,000
Skidmore College	25,000

The SUNY System Administration will sign PPAs with the selected developer(s) as one offtaker counterparty on behalf of the State operated campuses and community colleges. The private institutions will each sign individual contracts with the selected developer(s).

## 2. The Intent of this RFP

The Consortium seeks to solicit cost-effective renewable energy projects to meet their sustainability goals, mitigate the risks against volatile electric and gas prices, and provide academic and research opportunities to their faculty, staff, and students. SUNY System Administration (“SUNY System”), as the lead entity for the Consortium members, is seeking Proposal submissions for long-term virtual power purchase agreement (“vPPA”) contract(s) with offsite LSRE projects to meet the Consortium goals. The Consortium reserves the right to select multiple Bids to meet the aggregated needs of the campuses, as a means of reducing risk through diversification or for other reasons in accordance with the evaluation criteria.

The product specifications, RFP process schedule, and selection criteria are provided in the following sections. While SUNY System will sign the agreement(s) on behalf of itself, the SUNY state-operated campuses, and community colleges with the selected renewable energy developer(s) (“Proposer(s)”), this agreement(s) will be subject to review and approval by the New York State Attorney General, New York State Inspector General, and the New York State Office of the State Comptroller to be legally binding. Furthermore, state-operated campuses and community colleges represented by SUNY System will individually decide on the offtake volume based on their financial and sustainability goals and commit to that volume through signed Participating Institution Agreements (“PIAs”). The total SUNY-contracted MWhs will be the sum of all offtake volumes that are bound by signed PIAs. The (4) New York private institutions of higher education will independently sign their respective contracts with the Proposers. In total, between one (1) and five (5) vPPAs may be executed for each successful project(s).

The following are NY HE LSRE participants. The Consortium selected representatives from seven (7) participating campuses to serve on the Steering Committee to assist SUNY System Administration with technical matters and project management. An asterisk (\*) denotes each of the Steering Committee member institutions:

- SUNY System Administration\*

### **SUNY State-Operated Campuses (collectively aggregated through SUNY System Administration):**

- University at Albany\*
- Binghamton University\*

- SUNY Cobleskill
- SUNY Cortland\*
- SUNY Delhi
- SUNY Empire State College
- SUNY ESF
- SUNY Fredonia
- SUNY Geneseo
- SUNY Maritime
- SUNY New Paltz
- SUNY Oneonta
- Purchase College\*

**SUNY Community Colleges:**

- Hudson Valley Community College\*
- Onondaga Community College

**NYS Private Higher Education Institutions:**

- Bard College
- Cornell University\*
- Ithaca College\*
- Skidmore College

To assist the Consortium with the development of this RFP, solicitation for LSRE projects, evaluation and selection of the LSRE projects, and execution of resulting contracts, the Consortium, through a New York State procurement process selected Altenex, LLC (doing business as and herein referred to as “Edison Energy”). Accordingly, Edison Energy has assisted in developing specifications for the Consortium’s LSRE procurement process and will continue to act as an advisor and consultant throughout this process. Thus, throughout this RFP procurement and contract awards process, Edison in accordance with its contract with the Consortium will provide services including, but not limited to strategy development and implementation, relevant educational sessions, documentation creation, commercial support, market expertise, communications and public relations, as well as analyses on risk management, risk mitigation, expected project economic forecasting, project diligence, counterparty diligence, etc. Each successfully executed PPA resulting from this RFP will include a fee, payable by the successful Proposer, to Edison Energy as detailed within the Term Sheet [Attachment 5].

## Section 3: Product Specifications

### 1. Introduction / Context

This Request for Proposals (“RFP”) seeks Proposers willing to contract with multiple counterparties as listed in Table 1, who will select from the LSRE project proposals received through this competitive solicitation process. Project(s) may be either new build or new expansion of existing generation interconnected with the NYISO.

The successful Proposer shall be required to secure all necessary permits, applications, and approvals from local utilities and governing agencies.

To be considered for evaluation, an eligible proposal must address all components of this RFP, completed and submitted as stipulated in Section 3. Upon selection, the successful Proposer(s) scope of services will include bringing the project to operation under prudent industry practices by agreed upon Commercial Operations Date (“COD”); delivery of products as agreed upon in the PPA, and associated Term Sheet, throughout the term of the agreement (energy, RECs, other products if included); and fulfillment of any and all educational collaboration agreed upon by the Consortium and the Proposer.

As stipulated in the definitions section, a Proposal refers to any and all material submitted by a Proposer in accordance with this RFP, including at least one discrete PPA price, along with the accompanying specifications (e.g. settlement location, term length, COD, project details) that is offered in response to this solicitation. A Proposal may have more than one Project and/or more than one Bid associated with the submitted Project(s). A Project refers to a renewable energy asset to be developed by the Proposer; a Project may have more than one Bid associated with it. A Bid is considered the price and subsequent information submitted for a Project in one of the Bid columns within the Developer Response Workbook, “Bid Information” Tab. Each bid will be evaluated separately.

### 2. Term Sheet

See attached Term Sheet [Attachment 5: Term Sheet] for the primary commercial terms of the PPA. The Term Sheet describes certain commercial terms and conditions of a potential PPA between the buyers and sellers of contracts resulting from this RFP.

The terms set forth in this Term Sheet will establish the basis for the execution of a virtual PPA between a Consortium campus and any successful Proposer whose proposal is selected as a result of this RFP, with necessary changes to accurately reflect any minor alterations set forth in Proposer’s Term Sheet mark-up that are accepted by a Consortium campus. The Consortium will provide the vPPA template to the successful Proposer(s) (if any) at the beginning of contract negotiations. Any Term Sheet mark-ups will be evaluated and scored based on the degree to which the mark-up deviates from the original ask. The following parameters apply to Term Sheet mark-ups:

- a. Proposals are awarded full points for conforming to the original Term Sheet parameters with no markups
- b. Proposals are deducted points based on the severity of the mark-ups provided, relative to the original terms provided in the Term Sheet

- c. If a Proposer is selected and a Condition Precedent (“CP”) is listed and then acted upon, at least twenty-five (25%) of pre-COD damages shall be paid to the Buyer.

### **3. Product Specifications**

To meet their goals and requirements, the Consortium intends to procure renewable energy via vPPA contract(s). While there is Consortium interest in projects in close proximity to Consortium campuses, the expected economics of the project and associated financial risks are of highest importance. The Consortium is seeking Bids with Projects and proposed pricing that include the terms stipulated in the Term Sheet [Attachment 5], with key criteria outlined in the Table (“Table 2”) below. Proposers are encouraged to offer several individual Bids within their Proposal if Project(s) can accommodate various Bid options to fulfill the requirements & preferences noted below.

**Table 2**

Row	Category	Product Specifications
1	Product	<p>The vPPA product submitted must be one of the following options and priced in the unit of \$/MWh ac:</p> <p>NYISO project <b>options</b>: (Proposers may submit only one option per Bid, with no limit on number of Bids submitted)</p> <ol style="list-style-type: none"> <li>1. NYISO Energy + bundled NYISO Tier 1 Project RECs</li> <li>2. NYISO Energy + NYISO Replacement RECs (eg. Tier 2, RECS from existing assets)</li> <li>3. NYISO Energy + Replacement RECs from any market in the United States</li> </ol> <p><b>NOTE:</b> Replacement RECs must be either Green-e Energy certified or meet Green-e Energy’s technical requirements (or local equivalents) and are verified as such by a third party.</p> <p><b>NOTE:</b> Preference for any replacement RECs to be delivered to NYGATS.</p> <p>Please reference the Term Sheet [Attachment 5] for further details on terms and conditions for the vPPA contract.</p>
2	Contracting Counterparties	<p>The Consortium may optimize around a portfolio of projects so as to include the maximum number of interested Consortium counterparties. The maximum number of individual counterparties is five (5):</p> <ol style="list-style-type: none"> <li>1. SUNY System (on behalf of SUNY state-operated campuses and community colleges)</li> <li>2. Bard College</li> <li>3. Cornell University</li> <li>4. Ithaca College</li> <li>5. Skidmore College</li> </ol> <p>Contract volume of executed PPA varies by counterparty.</p> <p>Through this RFP process, Bidders may not bid to one of these Consortium members but not others; all Bids will be considered by all members of the Consortium.</p>
3	Market	NYISO



4	<b>Technology</b>	<p>Wind, solar, or other non-combustion based renewable electricity generation technologies may be submitted.</p> <p>LSRE projects submitted must be new-build or new expansion to existing projects.</p> <p>Existing or repowered projects will not be considered.</p> <p>LSRE projects submitted must not impede the production and/or output delivery of an existing renewable energy generator(s).</p>
5	<b>Target Aggregated Volume (MWh ac annually) And Minimum vPPA Contract Size</b>	<p>Up to a maximum of 676,000 MWh annually. Bidders are encouraged to submit offers for a range of generation volumes to support the Consortium's portfolio optimization.</p> <p>The Consortium cumulatively may choose to contract for less than 676,000 MWh annually and will settle on a desired volume based on best value, founded on both economic analysis and resulting bid offer evaluation.</p> <p>The minimum individual vPPA contract size is 10,000 MWh annually. The intent of the concerted Consortium effort is to divide each jointly selected project based on percentages of total volumetric needs. Smaller private institutions may only execute one (each) vPPA chosen from the list of consortium-determined awarded projects. To the extent that a Proposer cannot offer a standalone contract of the minimum contract size stated, Proposers are asked to specify a minimum contract size per project, providing any pricing changes for different sized bid offers.</p>
6	<b>Settlement Location</b>	Any NYISO Zone
7	<b>Market Settlement</b>	Real-Time Market
8	<b>Guaranteed COD</b>	<p>Guaranteed COD no later than 12/31/2023.</p> <p>Within this timeframe, bidders may offer multiple CODs as Bid variations. Proposers are encouraged to offer Bids that are optimized for pricing.</p>
9	<b>Contract Term</b>	<p>Term length between 10 and 15 years.</p> <p>Alternative durations will not be considered.</p>
10	<b>Minimum Floating Price</b>	<p>\$0/MWh, with capped Make Whole Payment Structure.</p> <p>Reference the Term Sheet [Attachment 5] for details.</p>

11	<b>Price Escalation</b>	Bidders are required to propose pricing that stays flat (0% escalator) over the contract term.
12	<b>Seller Credit Support</b>	\$75,000 per MWac
13	<b>Buyer Credit Support</b>	Please provide required amount of Public Credit Assurance, if any, if buyer falls below an investment-grade credit rating.  Refer to details in Term Sheet [ Attachment 5].
14	<b>Edison Energy Fee</b>	0.75% of total contract value = $0.75\% \times \text{expected p50 annual generation volume} \times \text{PPA price} \times \text{contract term}$ .  To be paid at NTP.  Refer to details in Term Sheet [ Attachment 5].

#### 4. Additional Product Components

##### a. Data Access

The Proposer shall provide Consortium participants downloadable real-time generation data access throughout the term of the PPA at no additional cost. The Consortium requires that data access would be available to all Consortium participants, not just the campus(es) which contract with the Proposer. The Proposer shall provide details surrounding characteristics and capabilities of the data monitoring platform intended to be used: i.e. external or internal provider, client access abilities, energy generation, interval data, data granularity, real-time data availability versus historic summary, or any other information the Proposer's monitoring system can provide. The overall monitoring program and systems shall be fully established at the time of COD.

##### b. Benefit to Disadvantaged Communities

The Consortium seeks LSRE projects that are appropriately sited and that demonstrate consideration and mitigation of impacts on the host community. Of importance is identifying and capitalizing on opportunities to benefit disadvantaged communities. Proposer shall supply the following information:

- I. Is the project in or near any community meeting state or federal criteria to be, or potentially be, designated as an environmental justice area, opportunity zone, or other disadvantaged community (e.g. NYS DEC Policy 29 on Environmental Justice and Permitting)?
- II. Include a plan that clearly demonstrates a direct, meaningful, and assured benefit to the affected communities. Plan must demonstrate how the project connects the disadvantaged community(ies) to identified benefits. Provide a map that delineates the specific community that will benefit from the project in relationship to the project site. Provide a narrative on how

the Proposer will engage residents in the decision-making process. Plan must also clearly state any negative impacts on affected communities as a result of the project and how such impacts will be mitigated.

- III. Describe and quantify how Minority and Women-Owned Business Enterprises will participate in the project development, construction, and/or operation.

### c. Educational & Research Opportunities

The proposal should include available educational and research opportunities associated with the proposed project(s), as well as any information pertaining to what the Proposer has done in the past in this regard. The Proposer shall provide or participate in these opportunities at a cadence agreed upon per opportunity throughout the term of the contract. The Consortium is willing to consider any suggestions the Proposer offers, as the intention is to provide educational and research opportunities for the Consortium's students, faculty, staff, and/or community. **The Consortium expects that all educational and research opportunities would be available to all Consortium participants, not just the campus(es) which contract with the Proposer.** Opportunities could include but not be limited to the following sample list:

- I. Proposer provides monthly development and construction reports until the COD, including specified non-confidential information that the Consortium may distribute on its website and other social media, including photos and/or videos to the extent available.
- II. Proposer participates in webinars, lectures or discussions about the project, the renewable energy industry, or other related topics as reasonably requested by the Consortium, but no more than a certain number (as specified in the proposal) of webinars, lectures or discussions per year.
- III. Proposer provides internship(s) awarded in the Consortium's and Proposer's reasonable discretion to qualified student(s).
- IV. Proposer installs kiosks or other educational displays at contracted campuses to educate the campus community about renewable energy project(s).
- V. Proposer allows physical and virtual tours of the LSRE facility site for the Consortium's aggregate students, staff, and faculty upon thirty (30) days' prior written notice to Proposer on or before the COD and upon fourteen (14) days' prior written notice to Proposer following the COD but no more often than a certain number (as specified in the proposal) of hosted or independent visits each semester/academic year.
- VI. Provide the opportunity for Consortium members to install, at their own cost, any data measurement and communication devices, provided that said devices do not void any warranties, do not interfere with operation of the Facility and are consistent with prudent electrical practices.

- VII. Provide Consortium's employees, students and agents the right to access the Facility for academic and research purposes. Such access would follow a process to identify mutually agreeable protocols for site access including timing, notification, safety and training, escorts and consideration of lease holder agreements.
- VIII. Allow Consortium members to conduct research on any and all aspects of renewable energy generated by the Facility, provided that said research does not void warranties, is consistent with prudent electrical practices, and that Parties can identify mutually agreeable methods to mitigate or avoid any impacts on operations or Energy output.
- IX. Proposer participates in identification of renewable energy technician / vocational education opportunities at the LSRE facility for the Consortium members.

**d. Productive Land Use**

The Consortium seeks LSRE projects that are appropriately sited and prefers LSRE projects with the ability/intention to accommodate productive land use opportunities within the project footprint, such as but not limited to agricultural co-production, livestock grazing, native flora and fauna habitat, pollinator habitat, carbon farming, siting on brownfields, flood plains, or the like.

Proposer shall supply any information on this topic as it pertains to what the Proposer has done in the past in this regard, and what the Proposer can offer in this regard for any projects submitted.

## Section 4: Proposal Requirements & Submission Information

### 1. Minimum Requirements

The following are the minimum requirements for bid submission; if these requirements and stipulations are not met, the bid will be considered nonresponsive:

- a. New-build or new expansion of existing facility
- b. Designated interconnection queue #/ID
- c. At least 50% site control
- d. Guaranteed COD on or before 12/31/2023
- e. Data access granted to all Consortium campuses, regardless of Consortium counterparty
- f. Conforms to ask as stipulated in RFP Table 2
- g. Includes trackable RECs or carbon offsets
- h. Acknowledgement of the following: if Conditions Precedent are included in a bid offer that is selected for award, and are then acted upon, at least 25% of pre-COD damages must be paid as a penalty
- i. Acknowledgement of the following: Edison up-front origination fee is included

Bid proposals that do not include all the items above will be considered non-responsive and may be disqualified.

### 2. Submission Information

Proposals ***must*** be submitted by the Proposal Due Date and include a completed Proposer Response Workbook, Proposer Profile, Safety Record, and Gantt Chart / Timeline as described below:

- a. A Proposer Response Workbook [Attachment 4, "Proposer Response Workbook"] with the following tabs completed:
  - I. "Bid Information" tab: the proposed PPA Price must be entered in this tab. Proposers must not modify the Proposer Response Workbook. PPA Price quoted must include all travel and out-of-pocket expenses required to perform in accordance with the terms of the PPA. The Consortium will make no reimbursement for travel or travel-related expenses. PPA Prices are considered submitted via the Proposer Response Workbook. Each Bid must provide a PPA Price in \$/MWh ac.
  - II. "(Project Name) Generation" tab: project(s) equipment specifications and generation data: each individual project's P50 typical year 8760 & each individual project's P50 12x24. Proposers should create a copy of this tab for each individual project and name accordingly.
  - III. "Development Status" tab: project(s) development status information, including but not limited to land use, resource assessment, site control, interconnection status, environmental studies, permitting, long term owner, operations & maintenance plan, Production Tax Credit (PTC)/ Investment Tax Credit (ITC) qualification method, community outreach, offtake status.
  - IV. "Educational Proposal" tab: Proposer's proposal regarding educational opportunities, including but not limited to intended data sharing approach; educational opportunities;

research opportunities; site visits; internship opportunities.

b. A Proposer Profile [Attachment 6, "Proposer Profile"] with responses for the following:

I. General information:

- 1) Name of your organization
- 2) Mailing address
- 3) Name of primary contact and contact title
- 4) Contact email
- 5) Contact phone number
- 6) Contact address (if different from mailing address)
- 7) Legal status (corporation, partnership, joint venture, etc.)
- 8) Credit rating: please provide information detailing financial health of the Parent Company (e.g. credit rating, other financials)

II. Renewable energy development experience, measured in MW, developed and financed by Proposer (or principals of Proposer while at another firm; if this is the case, please clearly state at which firm experience was gained):

- 1) MW developed and financed in US
- 2) MW developed and financed in NYISO

III. Relevant Experience: Provide minimum three (3) project case studies detailing work performed of a similar scope and nature within the past ten (10) years, providing the following information (Note: It is preferred that case studies include any experience working with higher education institutions or New York State agencies, if applicable):

- 1) Organization name
- 2) Proposer team members involved in engagement
- 3) Type of engagement (e.g. onsite, scope, location, etc.)
- 4) Project size/capacity (MWac)
- 5) Year project was placed in service
- 6) Indicate duration of engagement with the Organization (please provide the date range)
- 7) If renewable energy contract, note the term length
- 8) Please detail any educational and/or research offerings provided to the Organization, if relevant
- 9) Please detail any Productive Land Use measures implemented at the project site, if relevant (e.g. agricultural coproduction, pollinator support, native habitat support, etc.)

- IV. **Owning, Operating, & Sub-contractors:** indicate whether you will self-perform or sub-contract each of the following project tasks. To the best of your knowledge, please document if you will / intend to self-perform, or with whom you plan to sub-contract. In the event it has yet to be decided, list firms you typically work with:
- 1) Long-term Owner
    - If Proposer will not be the long-term owner of the asset, please note experience selling assets to long-term owners (in MW ac).
  - 2) Long-term Operator
  - 3) Design
  - 4) Engineering
  - 5) Construction
  - 6) Operations & Maintenance
  - 7) Other
- V. **Productive Land Use:** Please provide any intention or willingness to accommodate agricultural coproduction, pollinator support, native habitat support, and the like. When able, provide examples of past experience in this area and/or concrete plans to accomplish these features at the project site.
- VI. **Benefit to Disadvantaged Communities:** The Consortium wishes to maximize all benefits and value that can accompany renewable energy development. As able, please provide clear, direct plans to assist disadvantaged communities (either project-adjacent communities or Consortium-adjacent communities), along with metrics to measure that plan's success:
- 1) Is the project in or near any community meeting state or federal criteria to be, or potentially be, designated as an environmental justice area, opportunity zone, or other disadvantaged community (e.g. NYS DEC Policy 29 on Environmental Justice and Permitting)?
  - 2) Include a plan that clearly demonstrates a direct, meaningful, and assured benefit to the affected communities. Plan must demonstrate how the project connects the disadvantaged community(ies) to identified benefits. Provide a narrative on how the Proposer will engage residents in the decision-making process. Plan must also clearly state any negative impacts on affected communities as a result of the project and how such impacts will be mitigated.
  - 3) Provide a map that delineates the specific community that will benefit from the project in relationship to the project site. Map should be provided as a PDF, marked "Attachment 6a: Benefit to Disadvantaged Communities"
  - 4) Describe and quantify how Minority and Women-Owned Business Enterprises will participate in the project development, construction, and/or operation.

VII. If applicable, provide any additional information via PDF, marking it "Attachment 6, Additional Information".

c. A detailed Safety Record [Attachment 7, "Safety Record Documentation"]

Safety Record must detail any safety incidents that have been reported within the past five (5) years, along with the results of the incident and any corrective actions taken. Please provide a PDF, entitled "Attachment 7: Safety Record" with submission.

d. A detailed Gantt Chart / Timeline [Attachment 8, "Gantt Chart / Timeline"] that includes:

- I. A backward-looking view of project development milestones that are complete thus far, such as but not limited to the following processes: site control, interconnection queue position / interconnection process, environmental studies, permitting, community outreach, opposition instances / resolutions, project finance.
- II. A forward-looking view of project development milestones and processes, including but not limited to the following processes: site control, interconnection queue position / interconnection process, environmental studies, permitting, community outreach, project finance, engineering design, construction, COD.



## Section 5: EVALUATION AND SELECTION

### 1. Method of Award

This RFP is part of a competitive procurement process designed to serve the best interests of the Consortium. It is also designed to provide all Proposers with a fair and equal opportunity to have their services considered. The Consortium will conduct a comprehensive review of each responsive proposal submitted in accordance with the terms of the RFP. To be deemed “responsive” to the RFP, a Proposer must meet all of the mandatory requirements and qualifications and its written proposal must address all points and questions appearing in the RFP. In the event a bidder’s proposal is determined by the Consortium to be “non-responsive,” SUNY is required by its contracting procedures to disqualify the proposal. A disqualified proposal will not be further evaluated or considered for contract award by SUNY.

#### a. Bid Review

Each proposal received by the due date and time will be screened for responsiveness and completeness of submission in accordance with the RFP to ensure the Proposer has met the minimum requirements of the RFP. Incomplete bids or those not meeting the minimum requirements will be considered non-responsive and may be disqualified.

#### b. Initial Cost Evaluation

Each proposal remaining after the Proposal Review will be advanced for Initial Cost Evaluation screening by Edison Energy (consultant to the project) using the method agreed upon given Edison Energy’s contract with the Consortium as advisor.

#### c. Technical Evaluation

Concurrent with the Initial Cost Evaluation, each proposal remaining after the Proposal Review will be advanced for technical evaluation by the Consortium.

Concurrently, the participating private institutions have the opportunity, should they choose, to conduct a technical evaluation of the proposals using the qualitative evaluation approaches outlined in this document or other institutional criteria.

#### d. Finalist Determination

The Consortium will tabulate a subtotal score by adding together the Initial Cost Evaluation score and the average Technical Evaluation score. Proposals will be sorted in descending order based on these subtotals.

The Finalist Cohort is considered complete after the last project’s expected generation exceeds 2,000,000 megawatt hours (MWh) in the aggregate (approximately three times the maximum MWh procurement goal of the Consortium). Only those projects that, in aggregate meet the 2,000,000 MWh threshold, will advance to step 5, the Advanced Analytics phase.

**e. Advanced Analytics Evaluation: Cost Evaluation Revision**

All Finalist bids will advance to the stage of probabilistic Advanced Analytics analysis, providing an additional level of risk assessment of each project. Finalist bids will be scored using the method agreed upon given Edison Energy's contract with the Consortium as advisor. This score is considered the final Cost Evaluation score, and as such replaces the initial cost score for the final calculations.

**f. Commercial Mark-Up Evaluation**

All Term Sheet mark-ups provided by Proposers in the Finalist Cohort are reviewed and evaluated at this stage by the Consortium. Edison Energy will provide subject matter expertise and commentary to the NY HE Evaluation Committee, who will use this commentary to score the mark-ups as they see fit. The final scores for this component will be the average of the individual scores provided by the Consortium.

**g. Selection**

The final scores and associated analysis will be shared with all Consortium members in order for each participating entity to make their decisions.

The bids will be ranked in descending order of their final composite score(s) (Final Cost Evaluation score plus average Technical Evaluation score plus average Commercial Mark-Up score). The NY HE Steering Committee will create a final portfolio of top ranked projects for SUNY, assuming that all participating SUNY and CC campuses involved will procure 100% of their annual grid-purchased electricity usage. This percentage amount may change based on individual participating entity preference.

Concurrently, each private institution will create their own list of ranked bids. However, unlike SUNY, these institutions reserve the right to supplement or change their list's ranking order as they see fit.

The NY HE Steering Committee will review the Privates' and SUNY's rankings and selections. If any project(s) or bids overlap, the overlapping project(s) will be divided among SUNY and the privates based on a percentage of their respective loads relative to the aggregation total.

Once the Consortium's offtake levels are met, the Consortium, with support from Edison Energy, will calculate the weighted average score for the selected project portfolio. Based on minimum offtake volume size typically seen in vPPAs, Ithaca College, Bard College, and Skidmore College may only sign one vPPA each to satisfy their Consortium member objectives. In that case, to maintain equity, these private institutions will have the opportunity to contract with the project that is closest in aggregate score to the weighted average score for the respective portfolio.

SUNY System Administration will send the Participating Institutions Agreement (PIA) to each participating state-operated campus and community college that includes anticipated SUNY fees and the

selected portfolio. The Steering Committee and/or SUNY System Administration, with the help of Edison Energy, will also provide the range of economic outcomes if the final SUNY aggregate load is between 25% and the 100%. Based on these scenarios, each campus will decide if they wish to participate, and if so, what amount of their entity’s electricity load they wish to procure with the portfolio. SUNY represented campuses (state-operated campuses and community colleges) will commit to their level of interest through the signing of Participating Institution Agreement (PIA) with SUNY.

Once the offtake commitment is known for all consortium members (by deadline), one or multiple projects will be selected to contract with NY HE Consortium members, based on the ranked projects in descending order, until the desired offtake MWh amount is fulfilled. If multiple awards are to be made, their combined expected term cashflow (p50) will be calculated as a portfolio. This will be shared with all participating institutions for their records. Award shall be made by issuance of an award letter. SUNY reserves the right to award no contract.

**2. Selection Criteria**

	<b>Points</b>	<b>%</b>
<b>Technical Proposal</b>	<b>50</b>	<b>50%</b>
<b>Cost Proposal</b>	<b>40</b>	<b>40%</b>
<b>Commercial Mark-Up</b>	<b>10</b>	<b>10%</b>
<b>Total</b>	<b>100</b>	<b>100%</b>

## Section 6: PROPOSAL SUBMISSION REQUIREMENTS

1. Proposals are to be submitted to the following individual only:

Jordan Lohre  
Senior Contract Manager  
Office of Business Operations, S112  
SUNY System Administration  
State University of New York  
SUNY Plaza  
Albany, New York 12246

Proposals sent to any other person or any other address will not be accepted.

2. **Proposers must submit ten (10) hard copies of their proposal and two (2) electronic copies on thumb drives to the address provided above. The electronic copies must be exact replicas of the hard copies.** Proposals must be received in the office identified above by the Proposal Due Date and time provided on the Summary Information Form (page 1 of this RFP). Proposers mailing their proposals must allow sufficient time to ensure receipt by the due date and time. Proposers are cautioned that even when using a trackable mailing/courier/messenger service, proposals must be received by the due date and time.

**Late Bids:** For purposes of bid openings, a bid must be received at the address identified above on or before the proposal due date and time indicated above. A late bid is one that is not received at the location, date and time specified in this RFP. Any bid received at the specified location after the time specified in this RFP will be considered a late bid. Determinations relative to bid timeliness shall be at the sole discretion of the SUNY Chancellor or her designee.

3. To be deemed “responsive” to this RFP, a Proposer must meet all mandatory requirements and qualifications and its written proposal must address all points and questions appearing in this RFP. In the event a Proposer’s proposal is determined by the Consortium to be “non-responsive,” the Consortium may disqualify the proposal. A disqualified proposal will not be further evaluated or considered for contract award. Responses should be labeled to correspond to the numbers/letters of the sections and subsections of this RFP.
4. Prepare a clearly readable proposal that includes all required information.
5. Proposers must submit all information requested by the Consortium in written form. Proposals must be complete, accurate, and in the form requested.
6. Indicate any deviations from the product specifications and if necessary, attach separate documents and/or explanation.
7. Proposals should be submitted in a sealed package clearly labeled on the exterior with the RFP number and title. Proposals not labeled as instructed risk being opened prior to the bid opening date, which may result in the proposal being rejected. All bids and accompanying documentation shall become the property of the Consortium and shall not be returned.
8. No telephone, facsimile, emailed or otherwise electronically submitted proposals will be accepted.

9. The proposal must be fully and properly executed by an authorized person, and the authorized person's signature must be notarized. By signing, you certify (i) your express authority to sign on behalf of yourself, your company, or other entity; (ii) your full knowledge and acceptance of this RFP, Exhibit A (State University of New York Standard Contract Clauses), Exhibit A-1 (State University of New York Affirmative Action Clauses), State Finance Law §139-j and §139-k (Procurement Lobbying Certification); and (iii) that all information provided is complete, true and accurate. By signing you further affirm that you understand and agree to comply with the procedures on permissible contacts relating to this procurement as required by State Finance Law §139-j (3) and §139-j (6) (b). These procedures may be accessed at: Procurement Lobbying: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>
10. Proposers unable or unwilling to submit a proposal are asked to complete the Summary Information Form (Page 1 of this RFP) and check the box indicating that no bid is being submitted.
11. All prices and conditions must be included in the original proposal. Prices and conditions not included in the original proposal will be rejected.
12. The submission of a proposal constitutes a nonrevocable, binding offer to perform and provide said services. Such binding offer shall be firm and not revocable for a period of one hundred twenty (120) days from the due date for bids. After one hundred twenty (120) days, the proposal may remain in effect, subject to withdrawal communicated in writing signed by the Proposer.
13. Proposer is responsible for all costs that it incurs, direct or indirect, related to the preparation and submission of a proposal in response to this RFP.
14. Each copy of the proposal must be accompanied by the following:
  - a. Summary Information Form (page 1 of this RFP)
  - b. Attachment 1: Notary Acknowledgement Form
  - c. Attachment 2: Proposal Submission Checklist (and the documents indicated thereon)
  - d. Attachment 3: Submission Identification Form
  - e. Attachment 4: Proposer Response Workbook
  - f. Attachment 5: Term Sheet
  - g. Attachment 6: Proposer Profile
    - Attachment 6a: Benefit to Disadvantaged Communities
  - h. Attachment 7: Safety Record
  - i. Attachment 8: Gantt Chart/Timeline
  - j. Attachment 9: Procurement Lobbying Act Certification
  - k. Attachment 10: Non-Collusive Bidding Certification
  - l. Attachment 11: NYS Finance Law 139-l Certification
  - m. Attachment 12: NYS Human Rights Law Executive Order 177 Certification
  - n. Vendor Responsibility documentation as set forth in Section 8, Part 16

## Section 7: GENERAL INFORMATION

### 1. Proposer Questions

If a Question and Answer period is provided for this solicitation, the schedule will be shown on the Summary Information Form (page 1 of this RFP). All questions must be submitted in writing by email, citing the particular RFP page, section, and paragraph numbers where applicable. Questions must be **EMAILED** to arrive no later than 5:00 pm Eastern time on the date indicated and must be emailed to all three Designated Contacts shown on the Summary Information Form. Questions received after the closing date for inquiries may not be answered. Only written answers are official. All Questions and Answers will be provided in writing to all potential Proposers.

### 2. Pre-Bid Conference

If a Pre-Bid Conference is held for this solicitation, the date, time, and whether the conference or visit is mandatory or optional is noted on the Summary Information Form (page 1 of this RFP).

### 3. Bid Opening

Bids may, as applicable, be opened publicly. The Consortium reserves the right at any time to postpone or cancel a scheduled Bid opening.

### 4. Extraneous Terms

Bids must conform to the terms set forth in this RFP. Extraneous terms or deviations (including additional, inconsistent, conflicting or alternative terms provided, Commercial Mark Up component) will render the Bid non-responsive and result in rejection of the bid. This requirement does not apply to the Commercial Mark-up component, whereby the Consortium requests Proposers to review and provide streamlined redline commentary where appropriate or necessary. Extraneous term(s) submitted or augmented on RFP documentation or materials (including but not limited to: Excel workbooks, Word documents) shall render the Bid(s) nonresponsive, as they must conform to the terms set forth herein. Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the bid or resulting contract but shall be deemed included for informational or promotional purposes only.

### 5. Silence of Specifications

The apparent silence of any specifications in the RFP and any supplemental specifications as to any details or the omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial/professional practices are to prevail and that only materials of first quality and correct type, size and design are to be used. All workmanship is to be first quality. All interpretations of the specification shall be made upon the basis of this statement.

### 6. Addenda

It is the responsibility of the Proposer to inquire about any requirement of this RFP that is not understood. Responses to inquiries if they change or clarify the RFP in a substantial manner will be forwarded by addendum from purchasing all Proposers who have received a copy of the RFP. The NY HE Consortium will not be bound by oral responses to inquiries or written responses other than addenda.

## 7. Confidentiality

The information contained in any bid submitted for NY HE Consortium's consideration will be held in confidence and only shared with advisors of the Consortium, including Edison Energy (Altenex, LLC), until all evaluations are concluded, and an award(s) is made. The Consortium will respect any requests for confidentiality for information of a proprietary nature. Clearly mark any information considered proprietary.

## 8. Electronic RFP

Electronic copies of this RFP and related forms are available at the New York State Contract Reporter at <https://www.nyscr.ny.gov/>

## 9. SUNY'S Reserved Rights

SUNY reserves the right to:

- a. Reject any and all proposals received in response to this RFP.
- b. Reject any or all portions of any proposal, to negotiate terms and conditions consistent with this RFP and to make an award for any or all remaining portions.
- c. Withdraw the RFP at any time, at SUNY's sole discretion.
- d. Make an award in whole or in part Disqualify any Proposer whose conduct and/or proposal fails to conform to the requirements of the RFP.
- e. Use proposal information obtained through site visits, management interviews and the state's investigation of a Proposer's qualifications, experience, ability or financial standing, and any material or information submitted by the Proposer in response to SUNY's request for clarifying information, in the course of evaluation and/or selection under the RFP.
- f. Prior to the bid opening, amend the RFP specifications to correct errors of oversights, or to supply additional information, as it becomes available.
- g. Request certified audited financial statements for the past three (3) completed fiscal years and/or other appropriate supplementation including, but not limited to, interim financial statements and credit reports.
- h. Request references and contact any or all references.
- i. Adjust or correct cost or cost figures with the concurrence of the Proposer if mathematical or typographical errors exist.
- j. Advise the successful Proposer of an objectionable employee(s) and/or subcontractor(s).
- k. Waive requirements or amend this RFP upon notification to all Proposers. Mandatory requirements may be eliminated if unmet by all Proposers.
- l. Negotiate with Proposers responding to this RFP within the requirements necessary to serve the best interests of SUNY.

- m. Begin contract negotiations with another Proposer in order to serve the best interests of SUNY should contract negotiations with the successful Proposer be unsuccessful within a time frame acceptable to SUNY.
- n. Request clarifications from Proposers for purposes of assuring a full understanding of responsiveness, and permit revisions from all potential awardees prior to award.
- o. Decide to Award no contract during any stage of the RFP and project evaluation and selection.

## 10. Contract Award

Receipt of this RFP does not indicate that SUNY has predetermined Proposer's qualifications to receive a contract award. A contract award, if made, shall be based on evaluation of the bid in accordance with the criteria set forth in this RFP. The successful Proposer will be notified in writing.

## 11. Post Award Procedures

### a. Debriefing

Proposers who responded to this RFP will be given written notice as to whether their bid was successful or unsuccessful. Upon being notified of their unsuccessful bid, Proposers may request a debriefing in writing within 15 calendar days of such notice. The 15-day period starts once unsuccessful Proposers are notified. Upon a Proposer's request for a debriefing:

- I. SUNY will schedule the debriefing within a reasonable time of such request.
- II. The debriefing will be conducted in person with the Proposer, unless the University and the Proposer mutually agree to use another method such as by telephone, video conference or another type of electronic communication.
- III. Proposers' written request must state whether the Proposer will be attending with counsel, to allow the University to arrange for University counsel attendance if so determined.
- IV. The debriefings will cover, but are not limited to the following:
  - 1) The reason why the bid was unsuccessful.
  - 2) The quantitative and qualitative analysis that was used by the campus to assess the relative merits of the bid, proposal or offer.
  - 3) How the selection criteria were applied to the unsuccessful bid.
  - 4) If the request for debriefing is made prior to contract award, the debriefing shall be limited to review of that Proposer's bid.
  - 5) If the debriefing is held after the final award (which means OSC approval, if applicable), it may cover the reason for the selection of the winning proposal.
  - 6) To the extent practicable, general advice and guidance on the ways the Proposer can improve future proposal submission or be more responsive.

### b. Contract Award Protest Procedures

Proposers wishing to protest a contract award may do so in accordance with the University's procedures, available at: [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=699](http://www.suny.edu/sunypp/documents.cfm?doc_id=699).



## Section 8: GENERAL TERMS AND CONDITIONS

### 1. Free and Open Competition

The Consortium encourages free and open competition. Whenever possible, terms, specifications, and conditions are designed to accomplish this objective, consistent with the necessity to satisfy the Consortium's needs.

### 2. Notification of Errors, Inquiries and Interpretation

Proposer is responsible to bring to the Consortium's attention any deviations in the technical specifications and to make recommendations for any additional requirements deemed necessary as standard, or for work indicated in the specifications contained in this RFP. If the Consortium in its discretion finds the deviations to be significant so as to require a change in the necessary specifications for the work, the Consortium will notify all Proposers in writing of the change in specifications. No deviations from the technical specifications provided herein shall be made without written approval of the Consortium.

### 3. No Claims or Rights

By submitting a proposal, Proposer agrees that it will not make any claims for or have any right to damages because of any misinterpretation or misunderstanding of the specifications or because of any misinformation or lack of information.

### 4. Conflict of Interest

Proposer may be requested to provide evidence that the award of a contract will not result in (i) a conflict of interest regarding other work performed by Proposer; or (ii) a potential conflict of interest among Proposer's staff.

### 5. Acceptance of RFP Content

The applicable terms and conditions included in this RFP as well as the applicable portions of Proposer's proposal shall become contractual obligations if contracts are awarded. **PROPOSER'S FAILURE TO ACCEPT THESE TERMS AND CONDITIONS AND OBLIGATIONS SHALL RESULT IN REJECTION OF PROPOSER'S PROPOSAL.**

### 6. Services Outside Scope of the Contract Awarded

The Consortium shall not be responsible for any services provided by the successful Proposer that are outside the scope of the contract(s) awarded. The Consortium shall not be responsible for any additional costs other than the costs for the services outlined herein, or for any work performed that has not been properly authorized in writing by the Consortium.

### 7. Standard Contract Clauses

Any SUNY or Community College contract awarded resulting from this RFP shall include Exhibit A (State University of New York Standard Contract Clauses) and, for SUNY or Community College contracts in excess of \$25,000, Exhibit A-1 (State University of New York Affirmative Action Clauses). The provisions of Exhibit A and Exhibit A-1 shall take precedence over any provision in this RFP or any provisions in the SUNY contracts awarded. Any Private Institution contract awarded resulting from this RFP shall include Exhibit B (Private Institution Terms and Conditions of Purchase Order). Exhibit A is attached to this RFP.

### 8. Binding Effect

The contracts awarded shall be binding upon their execution by both parties and, if required by New York State law for SUNY contracts, upon the written approvals of the Attorney General and the Office of the State Comptroller.

## 9. Confidentiality/Freedom of Information Law

All proposals submitted for the Consortium's consideration will be held in confidence and will become the property of SUNY. However, SUNY's resulting contract is subject to the New York State Freedom of Information Law (FOIL), contained in Article 6 of the New York State Public Officer's Law. Therefore, if a Proposer believes that any information in its proposal constitutes a trade secret, should be treated as confidential and should not be disclosed upon a request pursuant to FOIL, Proposer shall submit with its proposal a separate letter addressed to: *Holly Liapis, Records Access Officer, State University of New York, State University Plaza, Albany, NY, 12246*, specifically (i) identifying the page number(s), line(s) or other appropriate designation(s) containing such information; (ii) explaining in detail why such information is a trade secret or confidential; and (iii) formally request that such information be held as confidential. Proposer's failure to submit such a letter with its proposal will constitute a waiver by the Proposer of any rights it may have under Section 89(5) of the Public Officers' Law relating to protection of trade secrets. The proprietary nature of the information designated confidential by the Proposer may be subject to disclosure if ordered by a court of competent jurisdiction. A request that an entire proposal be kept confidential is not advisable, because a proposal cannot reasonably consist exclusively of proprietary information.

## 10. Data Privacy and Security

### a. Data Privacy

- I. Proposer will use any information it creates, receives, maintains or transmits on behalf of Consortium participants ("Consortium Data") only for the purpose of fulfilling its duties under this contract and will not share such data with or disclose it to any third party without the prior written consent of the Consortium participant, except as required by the contract or as otherwise required by law.
- II. Consortium Data will not be stored outside the United States without prior written consent from the Consortium participant.
- III. Proposer will provide access to Consortium Data only to its employees and subcontractors who need to access the data to fulfill its obligations under the contract.
- IV. Proposer will ensure that employees who perform work under the contract have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of the contract.
- V. FERPA: If Proposer will have access to Education Records as defined under the Family Educational Rights and Privacy Act (FERPA), Proposer acknowledges that for the purposes of the contract it will be designated as a "school official" with "legitimate educational interests" in the Education records, as those terms have been defined under FERPA and its implementing regulations, and the Proposer agrees to abide by the limitations and requirements imposed on school officials. Proposer will use the Education Records only for the purpose of fulfilling its duties under the contract for Consortium participant's benefit and will not share such data with or disclose it to any third party except as provided for in the contract, required by law, or authorized in writing by the relevant Consortium participant.
- VI. Proposer, as well as any subcontractors the Proposer employs to process data on behalf of Consortium participants, shall comply with the European Union General Data Protection Regulation ("GDPR") (EU) 2016/679.
- VII. If Proposer will receive, maintain, process or otherwise will have access to confidential information on employees of Consortium participants. Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314), and to the extent the Proposer is a covered entity or applicable service provider under these regulations with respect to student or customer data, the Proposer will implement and maintain a written Information Security Program ("Program") in order to protect such confidential customer information. Customer information is defined as "any record containing nonpublic personal information as defined in 16 CFR §313(n)" (the FTC's Privacy Rule) "about a customer of a financial institution, whether in

paper, electronic, or other form” (16 CFR§314.2). Examples of nonpublic personal customer information include, but are not limited to, name, address, phone number, social security number, bank and credit card account numbers and student identification numbers.

**b. Data Security**

- I. Proposer agrees at all times to maintain network security which at a minimum, includes: network firewall provisioning, intrusion detection, and regular (three or more annually) third party vulnerability assessments, and provide a copy of the annual Attestation of Compliance (AOC) document, if requested. Further, Proposer agrees to maintain network security that conforms to generally recognized “Industry Standards “and best practices that Proposer applies to its own network. Generally recognized industry standards include but are not limited to the current standards and benchmarks set forth and maintained by the Center for Internet Security (see <http://www.cisecurity.org>) or Payment Card Industry/Data Security Standards (PCI/DSS) *see* <http://www.pcisecuritystandards.org>. Proposer will maintain a data security plan (“Data Security Plan”), which will comply with Payment Card Industry Data Security Standards (“PCI DSS”) requirements (as discussed in more detail below) and all applicable legal and regulatory requirements for data protection. In addition, the Data Security Plan will protect against any anticipated threats or hazards to the security or integrity of information stored on its servers and unauthorized access to or use of such information that could result in harm or inconvenience to the person who is the subject of such information. Proposer will review, at least annually, its Data Security Plan and update and revise it as needed. A copy of Proposer’s Data Security Plan will be made available to Consortium participants upon request.
- II. Proposer shall maintain mandatory procedures and protocols outlined in its “Information Security Incident Response Policy” to be undertaken in the event of an identified or suspected breach of credit card information or current or former student information that is not Directory Information. A copy of Proposer’s Information Security Incident Response Policy will be made available to Consortium participants upon request. In the event a breach is suspected, Proposer will: (i) immediately contain the possible exposure while not compromising any data on its system; (ii) contact all members of its Corporate Security Committee; (iii) initiate a local analysis within 24 hours of the suspected breach to determine the type of information that has been potentially compromised, the individuals and Consortium participants at risk, the incident timeframe at risk and the suspected cause of the incident; and (iv) if a breach is identified, immediately contact affected parties with details of the breach.

**c. New York Information Breach and Notification Requirements**

Proposer hereby acknowledges and agrees to use commercially reasonable efforts to maintain the security of private information (as defined in the New York State Information Security Breach and Notification Act, as amended “ISBNA”(General Business Law § 889-aa; State Technology Law § 208) that it creates, receives, maintains or transmits on behalf of Consortium participants and to prevent unauthorized use and/or disclosure of that private information; and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic private information that it creates, receives, maintains or transmits on behalf of Consortium participants (“Consortium Participant Data”). Proposer hereby acknowledges and agrees to fully disclose to Consortium Participants pursuant to the ISBNA, and any other applicable law any breach of the security of a system where Proposer creates, receives, maintains or transmits private information on behalf of Consortium Participants following discovery or notification of the breach in the system as to any resident of New York State whose private information was, or is reasonably believed to have been acquired by a person without valid authorization (“Security Incidents”). The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or any meres necessary to determine the scope of the breach and restore the reasonable integrity of the system. Proposer shall be liable for the costs associated with such breach if caused by Proposer’ negligent or willful acts or omissions, or the negligent or willful acts or omissions of Proposer’s agents, officers, employees or subcontractors. In the event of a Security Incident involving Consortium Participant Data pursuant

to the ISBNA, Consortium Participants have an obligation to notify every individual whose private information has been or may have been compromised. In such an instance, the Proposer agrees that Consortium Participant will determine the manner in which such notification will be provided to the individuals involved pursuant to the ISBNA and agrees to indemnify Consortium Participants against any cost of providing any such legally required notice. Upon termination or expiration of the contract, the Proposer will follow Consortium Participant's instructions relating to any Consortium Participant Data remaining in Proposer's possession. Upon authorization from Consortium Participants, the Proposer will use data and document disposal practices that are reasonable and appropriate to prevent unauthorized access to or use of Consortium Participant Data and will render the information so that it cannot be read or reconstructed.

**d. Service Levels (Applicable to Cloud Based, Remotely Hosted or Technology as A Service Contracts)**

The Consortium understands that the Services will not be uninterrupted or error free. Proposer will use commercially reasonable efforts to ensure availability of the Services in accordance with the provisions of the Service Level Agreement (when applicable).

**e. Disaster Recovery**

Proposer shall maintain disaster recovery services at the dedicated facility that is able to handle Consortium participant data center and business continuity needs under the Proposer in the event disaster recovery is needed. Throughout the term of the contract, Proposer shall maintain contracts or arrangements that are substantially equivalent or an improvement to those currently in effect. Proposer shall test disaster recovery capabilities, at least once every calendar year and provide Consortium participants with a copy of its disaster recovery plan upon request.

**f. Data Portability**

Proposer agrees to do whatever is reasonable and necessary to facilitate the orderly and professional transfer of the Services and Consortium Data upon the expiration or termination of the contract to SUNY or a Consortium participant, or to whatever subsequent vendor Consortium participants may select to provide similar services on their behalf.

**g. Electronic Information Technology**

Consortium participants are committed to providing an accessible, usable and integrated experience for their students, staff and community. Electronic and information technology ("EIT") consists of information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information that will be deployed. EIT includes, but is not limited to, telecommunication products, information kiosks and transaction machines, Internet and Intranet websites, web-delivered content, software, electronic books and electronic book reading systems, search engines and databases, multimedia, classroom technology and office equipment. Consortium participants expect that all such products, if supplied under the awarded contract, will be accessible as defined under Sections 504 and 508 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended.

**11. Diversity Contracting Requirements**

**a. Executive Order 162 (EO 162)**

Governor Cuomo's Executive Order 162 requires state Proposers to disclose data on the gender, race, ethnicity, job title, and salary of employees performing work on state contracts issued on or after June 1, 2017.

Proposer agrees to submit Workforce Utilization Report (Form 7557-110) and to require the same information to be submitted by any of their subcontractors on the state contract, in such format as shall be required by SUNY

on a monthly basis for all construction contracts and quarterly basis for all other contracts during the term of the contract. Empire State Development has provided specific details on this requirement at <https://esd.ny.gov/doing-business-ny/mwbe/mwbe-executive-order-162>.

**b. Executive Order 177 (EO 177)**

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to: (i) all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment; (ii) employers with fewer than four employees in all cases involving sexual harassment; and (iii) any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, prior to contract award, successful Proposer must submit a certification that it does not have institutional policies or practices that fail to address harassment and discrimination as described above. SUNY is electing to obtain the certification with the bid documents to avoid unnecessary delay in the contract award process. All Proposers must sign and submit the certification attached to this RFP as Attachment 12.

**12. Office of Federal Contract Compliance Programs**

This Proposer and subcontractor shall abide by the requirements of 41 C.F.R. §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime Proposers and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

**13. State Finance Law § 139-1 Certification**

Pursuant to N.Y. State Finance Law § 139-1, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the Proposer has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model

sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combatting-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-l, any bid by a corporate Proposer containing the certification required above shall be deemed to have been authorized by the board of directors of such Proposer, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the Proposer.

If the Proposer cannot make the required certification, such Proposer shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Proposer cannot make the certification. After review and consideration of such statement, SUNY may reject the bid or decide that there are sufficient reasons to accept the bid without such certification.

The certification required above can be found on Attachment 11.

#### **14. Governing Law**

This RFP, Proposers' proposals and any resulting contract shall be governed, construed and enforced in accordance with the laws of the State of New York, excluding New York's choice of law principles in a court of competent jurisdiction in New York State. Proposer agrees to submit itself to such court's jurisdiction.

#### **15. Omnibus Procurement Act of 1992**

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as Proposers, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers and a directory of minority and women-owned business enterprises is available from:

NYS Empire State Development                      Website: <https://esd.ny.gov/doing-business-ny/small-business-hub>  
Division for Small Business  
625 Broadway, Albany, NY 12207  
Phone: 1-800-782-8369  
Email: [nylovesmbiz@esd.ny.gov](mailto:nylovesmbiz@esd.ny.gov)

#### **16. Determination of Vendor Responsibility**

New York State procurement law requires that state agencies award contracts only to responsible Proposers. Additionally, the New York State Comptroller must be satisfied that a proposed Proposer is responsible before approving a SUNY contract award under Section 112 of the State Finance Law. Section 163 of the New York State Finance Law ("SFL") requires that SUNY contracts for services and commodities be awarded on the basis of lowest price or best value "to a responsive and responsible bidder." Section 163 (9)(f) of the SFL requires that prior to making a contract award, each contracting state agency shall make a determination of responsibility of the proposed Vendor.

In accordance with these procurement laws, SUNY will conduct an affirmative review of vendor responsibility for all organizations or firms with which it conducts business. In doing so, Proposers are required to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the VendRep System, see the VendRep System Instructions on the Office of State Comptroller (OSC) website, available at: [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Proposers opting to file a paper questionnaire may obtain

the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact SUNY System Administration for a copy of the paper form.

In addition:

- a. *General Responsibility.* The Proposer shall at all times during the contract awarded term remain responsible. The Proposer agrees, if requested by the SUNY Chancellor or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- b. *Suspension of Work for Non-Responsibility.* The SUNY Chancellor, in his or her sole discretion, reserves the right to suspend any or all activities under the contract awarded, at any time, when he or she discovers information that calls into question the responsibility of the Proposer. In the event of such suspension, the Proposer will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Proposer must comply with the terms of the suspension order. Contract activity may resume at such time as the SUNY Chancellor or his or her designee issues a written notice authorizing a resumption of performance of the contract awarded.
- c. *Termination for Non-Responsibility.* Upon written notice to the Proposer and a reasonable opportunity to be heard with appropriate SUNY officials or staff, the contract awarded may be terminated by the SUNY Chancellor or his or her designee at the Proposer's expense, where the Proposer is determined by the SUNY Chancellor or his or her designee to be non-responsible. In such event, the SUNY Chancellor or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

#### **17. State Consultant Services Reporting**

State Finance Law Section 163(4)(g) imposes certain reporting requirements on Proposers doing business with New York State. In furtherance of these reporting requirements, Proposer agrees to complete and submit to SUNY an initial planned employment data report and an annual employment report, which are attached as Consulting Reporting Forms A and B, respectively.

#### **18. Electronic Payment Authorization**

Proposer shall provide complete and accurate billing invoices to SUNY, Private Institutions, or Community Colleges in order to receive payment for its services. Billing invoices submitted to SUNY, Private Institutions or Community Colleges must contain all information and supporting documentation required by SUNY, the Private Institution, or the Community College, and the Office of State Comptroller (OSC). Payment for invoices submitted by Proposer shall only be rendered electronically unless payment by paper check is expressly authorized by the Vice Chancellor for Business and Finance of the State University of New York or designee, in her/his sole discretion, or the Private Institution, or the Community College due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary New York state or Private Institution or Community College procedures and practices. Proposer shall comply with the OSC procedures to authorize payments. SUNY authorization forms are available at the OSC website at [www.osc.state.ny.us/epay](http://www.osc.state.ny.us/epay), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by telephone at 518-474-4032. Proposer acknowledges that it will not receive payment on any invoices submitted under SUNY contract(s) if it does not comply with the OSC's electronic payment procedures, except where the Vice Chancellor or designee has expressly authorized payment by paper check as set forth above.

#### **19. Timeliness of Payment and Interest**

Interest for late payment with respect to SUNY contracts shall be governed by Section 179g of New York State Finance Law.

## 20. Exhibits

The following documents will be incorporated into, and made part of, any SUNY contract awarded:

- a. Exhibit A, State University of New York Standard Contract Clauses
- b. Exhibit A-1, State University of New York Affirmative Action Clauses (for contracts valued at greater than \$25,000)
- c. The Agreement including the vPPA and term sheet(s)
- d. Exhibit B, this RFP, along with all attachments
- e. Exhibit C, the successful Proposer's proposal and Statement of Work

The requirements of this RFP and responses in Proposer's proposal will be incorporated into any Private Institution contract awarded.

In the event of any inconsistency in or conflict among the document elements described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the order set forth above.

## 21. Independent Contractor

The successful Proposer and its agents or employees or any entity or person acting on behalf of the Proposer engaged in the performance of work shall at all times be deemed to be performing as independent contractors. The Proposer hereby covenants and agrees to act in accordance with that status. The Proposer and its agents or employees or any entity or person acting on behalf of the Proposer shall neither hold themselves out as, nor claim to be, officers or employees of SUNY or Consortium participant and shall make no claim for, nor be entitled to, Workers' Compensation coverage, medical and unemployment benefits, social security, or retirement membership benefits from SUNY or Consortium participant.

## 22. Subcontracting

In the event the successful Proposer uses partners, subcontracts or subcontractors, the Proposer will remain responsible for compliance with all specifications and performance of all obligations under the contract resulting from this RFP. For the resulting agreement, the successful Proposer will be the prime Proposer.

The Proposer shall be solely responsible to SUNY, or the applicable Private Institution or Community College for the acts, omissions or defaults of such subcontractors and of such subcontractors' officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Proposer to the extent of its subcontract. No provisions of the awarded contract shall create or be construed as creating any contractual relation between any Consortium participant and any subcontractor or sub-subcontractor or with any person, firm or corporation employed by, contracted with or whose services are utilized by the Proposer.

The Proposer shall be fully responsible for the administration, integration, coordination, direction and supervision of all of its subcontractors and of all work. Proposer shall check requirements of the work and coordinate and adjust as required so that conflicts in time, work space, equipment and supplies do not occur in the work being performed by the Proposer with its own employees and the work being performed by its subcontractors.

## 23. Compliance

Proposer shall comply with all laws, rules, orders, regulations, and requirements of federal, state and municipal governments applicable hereto, including the provisions of Exhibit A, State University of New York Standard Contract Clauses, attached hereto and made a part hereof, for agreements with a value of \$25,000 or more Exhibit A-1, State



University of New York Affirmative Action Clauses, and Exhibit B Private Institution Terms and Conditions attached hereto and made a part hereof.

## 24. Liability and Indemnification

- a. Neither Proposer, SUNY, nor the State of New York nor any Consortium participant shall be deemed in default of this Contract, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, an act of war whether declared or undeclared, acts or threats of terrorism, contamination by radioactivity, pressure waves from devices travelling at supersonic speeds or damage caused by any aircraft or similar device, armed conflict, labor strike, lockout, boycott, electrical, internet or telecommunications outage that is not caused by the obligated party; or government restrictions, or other force majeure or other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected party to take precautions and which the affected party cannot avoid even by using its best efforts, provided that the Party relying upon this provision: (i) gives prompt written notice thereof to the other Party; and (ii) takes all steps reasonably necessary to mitigate the effects of the force majeure event. If a force majeure event extends for a period in excess of more than 90 days, either party may terminate all or any agreed upon portion of the Contract immediately upon written notice. This Section does not excuse any party's obligation to take reasonable steps to follow its normal disaster recovery procedures, or SUNY's, a Private Institution's, or a Community College's obligation to pay for Services provided by Proposer which have been approved by SUNY, the Private Institution, or the Community College respectively.
- b. Proposer shall be fully liable for any act or omission of Proposer and its Staff and shall fully indemnify, defend, and hold harmless SUNY, each Private Institution, each Community College, and the State, their officials, agents, and employees, without limitation, from suits, actions, damages, and costs of every name and description (including reasonable attorney's fees and expenses) arising from any act or omission of Proposer or its Staff, including bodily or personal injury (including wrongful death); damage to real or tangible personal property (including electronic systems, software and databases); damage to intellectual property; and infringement or violation of a third party's patent, copyright, license, or other proprietary or intellectual property right; provided however that Proposer shall not be obligated to indemnify SUNY, a Private Institution, or a Community College for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act of SUNY, that Private Institution or Community College. For third party claims, Consortium participants shall give Proposer:
  - I. Prompt written notice of any action, claim, suit, proceeding, or threat of such action for which Proposer is liable relating to this Contract;
  - II. The opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at the Proposer's sole expense; and
  - III. Reasonable assistance in the defense of any such action, claim, suit, or proceeding at the expense of the Proposer.
- c. Notwithstanding the foregoing, the State of New York reserves the right to join such action, claim, suit or proceeding at its sole expense, if it determines there is an issue involving a significant public interest.
- d. Notwithstanding the above, neither the Proposer nor SUNY, nor any Consortium participant shall be liable for any consequential, indirect, or special damages of any kind that may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by SUNY, the Proposer, or by others.

- e. SUNY, a Private Institution or a Community College may, in addition to other legal remedies available to it, retain from amounts otherwise due Proposer such monies as may be necessary to satisfy any claim for damages SUNY, the Private Institution or Community College may have against the Proposer.

## 25. Insurance

During the term of any awarded contract, the successful Proposer must obtain and maintain insurance coverage at its own expense as provided in this paragraph and shall deliver certificates of insurance in a form satisfactory to SUNY, the Private Institution, and/or the Community College before commencing any work under this contract. Certificates shall reference the Contract Number. Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Certificates shall be mailed to the address indicated in the contract. For SUNY, this address is: State University of New York, System Administration, Heather Loukmas, Contract Assistant, Office of Business Operations, Room S113, SUNY Plaza, Albany, New York, 12246.

The policies of insurance set forth below shall be written by companies authorized by the New York Department of Financial Services to issue insurance in the state of New York ("admitted" carriers) with an A.M. Best company rating of "A-" or better. Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to the address indicated in the contract. For SUNY, this address is: State University of New York, System Administration, Heather Loukmas, Contract Assistant, Office of Business Operations, Room S113, SUNY Plaza, Albany, New York, 12246.

All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to SUNY, the Private Institution or the Community College for any claim arising from the successful Proposer's work under the awarded contract, or as a result of the successful Proposer's activities. Any other insurance maintained by SUNY, the Private Institution or the Community College shall be excess of and shall not contribute with the successful Proposer's insurance, regardless of any "other insurance" clause contained in any SUNY, Private Institution, or Community College policy of insurance.

At least two weeks prior to the expiration of any policy required by the awarded contract, evidence of renewal or replacement of policies of insurance with terms no less favorable to Consortium participants than the expiring policies shall be delivered to Consortium participants in the manner required for service of Notice under the contract.

- a. Workers Compensation, Disability Benefits, and Paid Family Leave Coverage for the life of this Agreement for the benefit of employees required to be covered by the New York State Workers Compensation Law and the New York State Disability Benefits and Paid Family Leave Law. Evidence of coverage must be provided on forms specified by the Commissioner of the Workers Compensation Board in New York.
- b. All risk property insurance providing coverage for the full replacement value of the Facility, excluding the Facility site, subject to industry standard sub-limits.

- c. Commercial General Liability Insurance with limits no less than FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence and which shall include specific coverage for broad form contractual liability including Proposer's indemnification obligations under the Agreement and a separation of insured provision. Such policy shall name the State University of New York, the Private Institutions, and the Community Colleges as an additional insured, and shall contain a provision that the State University of New York, Private Institutions and Community Colleges shall receive at least thirty (30) days written notice prior to material change, cancellation or expiration of such policy.
- d. Business Automobile Liability insurance covering liability arising out of the use of any motor vehicle in connection with the work, including owned, leased, hired and non-owned vehicles bearing, or under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least ONE MILLION DOLLARS (\$1,000,000.00) and shall name the State University of New York, Private Institutions, and Community Colleges as additional insured. The limits may be provided through a combination of umbrella/excess liability policies.
- e. Contractor Bonding and Construction Risk Management with limits no less than ONE MILLION DOLLARS (\$1,000,000.00) per claim and TWO MILLION DOLLARS (\$2,000,000.00) in the aggregate. Such policy shall name the State University of New York, Private Institutions, and Community Colleges as an additional insured, and shall contain a provision that the State University of New York, Private Institutions, and Community Colleges shall receive at least thirty (30) days written notice prior to material change, cancellation or expiration of such policy.

## 26. Termination

The Contract(s) awarded to the successful Proposer(s) may be terminated by SUNY or the Private Institution, for any of the following reasons, provided that the entity terminates in good faith, makes earned or accrued payments, and pays appropriate unavoidable costs and/or applicable termination values:

- a. *Convenience of SUNY or the Private Institution:* The contract may be terminated at any time upon receipt of thirty (30) days prior written notice given by the entity.
- b. *Events of Default:* The contract will contain an Events of Default section which will include, without limitation, provisions allowing SUNY, or the Private Institution, to terminate the contract in the event of a material breach, misrepresentation, unauthorized assignment, or bankruptcy of the Proposer.
- c. *Deficient Certifications:* If the awarded contract has a value greater than \$15,000, SUNY, shall have the right to terminate in the event the State Finance Law sections 139-j and 139-k certifications executed by the Proposer are found to be intentionally false or incomplete. If the contract has a value of greater than \$100,000 and Proposer's sales for the immediately preceding four quarters were greater than \$300,000, or if the contract has a value of \$125,000 or greater, SUNY shall have the right to terminate in the event the successful Proposer's Department of Taxation and Finance Proposer Certification form, ST 220-CA, statements are found to be false or incomplete.
- d. *Lack of Funds:* If for any reason the State of New York terminates or reduces its appropriations to SUNY, the awarded contract may be terminated or reduced at SUNY's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Proposer where funds are available to the SUNY for payment of such costs. In any event, no liability shall be incurred by the State (including SUNY) beyond monies available for the purposes of the awarded contract.

- e. The vPPA will include provisions restricting the assignment of the vPPA or transfer of control of the Facility except certain financing circumstances, or to parties meeting minimum standards of creditworthiness and operational experience.

**27. Procurement Lobbying Act – State Finance Law §§ 139-j and 139-k**

Prior to approval of the contract for which this RFP has been issued by SUNY, or if applicable, the Office of the State Comptroller, a Proposer shall not communicate with Consortium participants other than with the persons identified in this RFP as Designated Contacts or with a person who the Designated Contacts has advised the Proposer in writing is also a Designated Contact. Generally, the New York State Finance Law restricts communications between a Proposer or a person acting on behalf of a Proposer, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a “Contact”) which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the “restricted period” (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a Proposer involved in a knowing and willful Contact.

SUNY has developed procedures regarding Contacts and their reporting and investigation. SUNY’s procurement record must demonstrate compliance with these requirements. A determination that a Proposer or a person acting on behalf of a Proposer has intentionally made a contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§ 139-j and 139-k, is likely to result in denial of the award of contract under this RFP. Additional sanctions may apply. A complete copy of SUNY’s Procurement Lobbying Policy and Procedure and its accompanying forms is available for review at [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=430](http://www.suny.edu/sunypp/documents.cfm?doc_id=430)

Each Proposer shall submit with its proposal a written affirmation of its understanding of SUNY’s procurement lobbying procedures and agreement to comply with such procedures. The requisite form is provided at Attachment 11.

**28. Restrictions on the Activities of Current and Former State Officers and Employees**

All Proposer employees must be aware of and comply with the requirements of the New York State Public Officers Law, all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State.

Proposers and their employees are cautioned that the hiring of former state employees may violate the Ethics Law. The governing provisions are set forth in the New York State Public Officers Law §§ 73 and 74, and the underlying principle of law is to prevent conflicts of interest and encourage ethical behavior. The law may be found on the website of the New York State Joint Commission on Public Ethics at: <https://jcope.ny.gov/post-employment-restrictions>. Failure to comply with these provisions may result in termination of the Agreement.

**29. Diesel Emissions Reduction Act of 2006**

If Proposer operates any diesel powered heavy duty vehicle(s) on behalf of SUNY pursuant to the awarded contract, Proposer certifies and warrants that all such heavy duty vehicles, as defined in New York State Environmental Conservation Law (ECL) Section 19-0323 will comply with the specifications and provisions of ECL section 19-0323 and any regulations promulgated pursuant thereto, including but not limited to 6 NYCRR Part 248, which requires the use of Best Available Retrofit Technology (“BART”) and Ultra Low Sulfur Fuel (“ULSD”). If needed, qualification for a waiver will be Proposer’s responsibility. If applicable, annually, but no later than March 1st, Proposer shall complete and submit directly to SUNY, via electronic mail, the “Regulated Entity and Proposer Vehicle Inventory Form” and “Regulated Entity and Proposers Annual Report Form” that can be found at the New York State Department of Environmental Conservation

("DEC") website: <http://www.dec.ny.gov/chemical/4754.html>, SUNY reserves the right to require Proposer to periodically certify compliance with the provisions of ECL Section 19.0323.

**30. Compliance with Consortium Participant Policies**

At all times when on Consortium participant premises, all Proposers and subcontractor personnel shall be required to comply with SUNY regulations, policies and procedures including (i) the requirement to wear an identity tag clearly identifying them as being an employee or agent of the Proposer; (ii) there will be no smoking within the buildings or on the grounds owned or leased by SUNY. The Proposer must communicate this policy to its employees, subcontractors, and any other individuals assigned to enter upon Consortium participant grounds and premises in connection with the services to be performed in connection with the contract awarded; and (iii) Parking regulations: Parking violations are subject to fines and are the sole responsibility of Proposer. All vehicles must be registered with the relevant Consortium participant.

**31. Trademarks and Service Marks**

The trademarks, service marks and logos owned by each Consortium participant (the "Licensed Marks") may not be used without written permission from that Consortium participant. In the event that the awarded contract requires Proposer to use the Licensed Marks, each Consortium participants will grant a limited license for use of the Licensed Marks only in connection with the contracted work. Such license shall not be construed as permission from a Consortium participant to use its name or the Licensed Marks for any other purpose.

**33. Right to Audit**

Throughout the term of this Agreement, and for a period of three years after final payment, or longer if required by law, Consortium participants, at their own expense, shall be entitled to perform, or to have performed by a third party of their choosing, during normal business hours and upon five (5) business days' notice, an on-site audit of any and all records of Proposer necessary to permit the Consortium participant to evaluate and verify Proposer's compliance with the requirements of this Agreement. Proposer grants Consortium participants permission to view and/or copy any books, documents, records, data and information (including data and information stored in electronic form) of Proposer which relate to or have been used in connection with the performance of this Agreement. Proposer also grants Consortium participants permission to interview Proposer's staff and agents as part of the audit. Proposer agrees to provide Consortium participants with adequate and appropriate workspace for conducting the audit. If Consortium participants, in their sole discretion, determine that an on-site audit is not necessary, Proposer agrees to complete, within 30 days of receipt, an audit questionnaire provided by the Consortium participant. Any overcharges discovered by the Consortium participant, or by a third party of their choosing, shall be paid within 30 days of Proposer's acceptance of the Consortium participant's written notification of audit findings. Proposer may not unreasonably withhold acceptance of audit findings. Proposer shall include this audit provision in any subcontracts that it may issue under contracts resulting from this RFP.

**Attachment 1: Notary Acknowledgement Form**

*This Attachment must be completed and submitted with your proposal.*

**(ACKNOWLEDGEMENT BY INDIVIDUAL)**

STATE OF NEW YORK)  
COUNTY OF \_\_\_\_\_ ) ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

Notary Public

**(ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION)**

STATE OF NEW YORK)  
COUNTY OF \_\_\_\_\_ ) ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of \_\_\_\_\_ and that he/she executed the foregoing instrument in the firm name of \_\_\_\_\_ and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of \_\_\_\_\_ for the uses and purposes mentioned therein.

Notary Public

**(ACKNOWLEDGEMENT BY CORPORATION)**

STATE OF NEW YORK)  
COUNTY OF \_\_\_\_\_ ) ss.:

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who being duly sworn, did depose and say that he/she resides in \_\_\_\_\_; that he/she is the \_\_\_\_\_ (title) of \_\_\_\_\_ (firm), the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

**THIS PAGE MUST BE COMPLETED, SIGNED AND NOTORZIED AND THE ORIGINAL DOCUMENT MUST ACCOMPANY EACH COPY OF YOUR PROPOSAL.**

## Attachment 2: Proposal Submission Checklist

***This Attachment, as well as the forms indicated, must be completed and submitted with your proposal.***

✿	Description
<input type="checkbox"/>	Page 1: Summary Information Form
<input type="checkbox"/>	Attachment 1: Notary Acknowledgement Form
<input type="checkbox"/>	Attachment 2: Proposal Submission Checklist
<input type="checkbox"/>	Attachment 3: Submission Identification Form
<input type="checkbox"/>	Attachment 4: Proposer Response Workbook (complete, do not modify)
<input type="checkbox"/>	Attachment 5: Term Sheet
<input type="checkbox"/>	Attachment 6: Proposer Profile
<input type="checkbox"/>	Attachment 6a: Benefit to Disadvantaged Communities
<input type="checkbox"/>	Attachment 7: Safety Record
<input type="checkbox"/>	Attachment 8: Gantt Chart / Timeline
<input type="checkbox"/>	Attachment 9: Procurement Lobbying Act Certification
<input type="checkbox"/>	Attachment 10: Non-Collusive Bidding Certification
<input type="checkbox"/>	Attachment 11: NYS Finance Law § 139-l Certification
<input type="checkbox"/>	Attachment 12: NYS Human Rights Law Executive Order 177 Certification
<input type="checkbox"/>	<p>Vendor Responsibility Questionnaire:</p> <p>File either the required Vendor Responsibility Questionnaire online via the New York State VendRep System or complete and submit a paper questionnaire.</p> <p><b>Select one:</b></p> <p><input type="checkbox"/> completed online questionnaire</p> <p><input type="checkbox"/> paper copy of questionnaire included in Proposal.</p>

**Attachment 3: Submission Identification Form – RFP C003719**

***This Attachment must be completed and submitted with your proposal.***

**YOU ARE INVITED TO SUBMIT A PROPOSAL TO THE STATE UNIVERSITY OF NEW YORK.  
PROPOSERS MUST SUBMIT THE FOLLOWING:**

1. This page, along with all the forms and information as requested in both Parts 1 and 2 of this IFB/RFP.

**PLEASE RESPOND TO THE FOLLOWING:**

1. Is the price quoted the same as or lower than that quoted other corporations, institutions or governmental agencies for similar services and/or like equipment or supplies? YES  NO   
If no, explain. \_\_\_\_\_

2. Does your firm agree that all presentations and materials will be free of racial, religious or sexual bias? YES  NO

3. Are you a New York State (NYS) resident business? YES  NO

4. Total number of people employed by firm: \_\_\_\_\_

5. Total number of people employed by firm in NYS: \_\_\_\_\_

6. Is your firm a: NYS Minority-owned Business? YES  NO

NYS Certified? YES  NO

7. Is your firm a: NYS Women-owned Business? YES  NO

NYS Certified? YES  NO

8. Please indicate on the reverse side of this form if you or any officer of your organization, or any party owning or controlling more than ten (10) percent of your stock if you are a corporation, or any member if you are a firm or association, is an officer or employee of the State of New York or of a public benefit corporation of the State of New York.

FIRM'S NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

FEDERAL ID NUMBER: \_\_\_\_\_ NYS PROPOSER ID  
NUMBER: \_\_\_\_\_

PHONE NUMBER: (\_\_\_\_) \_\_\_\_\_ E-MAIL ADDRESS: \_\_\_\_\_

PROPOSER'S NAME/ TITLE \_\_\_\_\_

PROPOSER'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_



**Attachment 4: Proposer Response Workbook – RFP C003719**

**Please see the Excel Workbook, entitled “Attachment 4 Proposer Response Workbook”**

## **Attachment 5: Term Sheet**

*This Attachment must be completed and submitted with your proposal.*

The Term Sheet, beginning on the next page, is ten (10) pages in length, when blank and without redlines. Proposers must provide a redline of this document in accordance with the terms and stipulations provided in the RFP.

## Attachment 5: Term Sheet

This Term Sheet sets forth certain key commercial terms for a proposed transaction between Buyer and Seller. This term sheet is non-binding but shall be the basis for any awarded contract between Buyer and Seller. These terms do not include a complete set of contract terms for a final, definitive agreement.

<i>Project Information</i>	
Seller:	[Project LLC]
Buyer:	[Buyer]
Facility:	[PROJECT NAME], a [wind][solar] energy generation facility located in [COUNTY], [STATE]
Anticipated Nameplate Capacity:	[XX] MWac
Pro-Rata Capacity:	[XX] MWac
Pro-Rata Fraction:	Percentage equal to Pro-Rata Capacity divided by the Anticipated Nameplate Capacity.
Interconnection Point:	[XX]
Independent System Operator ("ISO"):	[New York Independent System Operator] [PJM Interconnection] or its successor
<i>Contract-for-Differences</i>	
Contract Structure:	A unit-contingent, financially settled, fixed-for-floating contract-for-differences, with the right for the Buyer, at its sole discretion, to elect Bi-lateral Physical Delivery. Buyer's election of Bi-lateral Physical Delivery shall have no impact on Seller's operation of the Facility.
Term:	Commencing on the effective date of the Agreement executed by the Parties and continuing through the end of the Settlement Term, subject to earlier termination in accordance with the terms of the Agreement.
Settlement Term:	[XX] years, beginning on the Commencement Date
Settlement Point:	[XX]
Settlement Market:	Real-Time Market
Fixed Price:	<u>Flat Pricing</u> : 0% escalation per Contract Year

Floating Price:	For each Calculation Interval, the Locational Marginal Price in the [Real-Time Market][Day-Ahead Market] (as defined in the ISO protocols) at the Settlement Point.
Calculation Interval:	The period of time utilized by the ISO/RTO as the basis for settlement calculations in the Real-Time Market.
Interval Quantity:	Pro-Rata Fraction of Energy generated by the Facility as measured by the ISO/RTO meter at the Interconnection Point, provided that the Interval Quantity shall equal zero when the Floating Price is less than the Minimum Floating Price.
Minimum Floating Price:	The Minimum Floating Price is \$0/MWh.
Make Whole Payment:	<p>In order to mitigate the impact of negative Floating Prices on Buyer, the Interval Quantity shall be deemed to equal zero megawatt-hours (0 MWh) during any Calculation Interval when the Floating Price is less than the Minimum Floating Price. In consideration therefore, for each Calculation Interval during which the Floating Price is less than the Minimum Floating Price, Buyer shall pay to Seller a Make-Whole Payment equal to the product of (X) the Fixed Price, and (Y) the quantity of Energy the Facility was capable of producing during such Calculation Interval; provided, however, that the annual Make Whole Payments from Buyer to Seller shall not exceed [\$XX] per Contract Year.</p> <p>For any Calculation Interval where Buyer owes a Make Whole Payment to Seller, Seller shall provide a Renewable Energy Credit, which shall come from the Facility if available or a comparable replacement, in an amount equal to the MWh quantity of Energy the Pro-Rata Fraction of the Facility was capable of producing during such Calculation Interval.</p>
Settlement Period:	Monthly
Fixed Price Payment:	For each Settlement Period, the sum over all Calculation Intervals of (X) the Interval Quantity, multiplied by (Y) the Fixed Price.
Floating Price Payment:	For each Settlement Period, the sum over all Calculation Intervals of (X) the Interval Quantity, multiplied by (Y) the Floating Price.
Settlement Amount:	An amount equal to the (Fixed Price Payment + Make Whole Payment) – (Floating Price Payment). If Settlement Amount is positive, Buyer shall pay Seller the Settlement Amount; if Settlement Amount is negative, Seller shall pay Buyer the absolute value of the Settlement Amount.

Invoicing Process:	Seller to issue invoices within 15 days of end of each Settlement Period
Buyer Payment Due Date:	30 days after Buyer's receipt of Seller's invoice.
Seller Payment Due Date:	45 days after the end of each Settlement Period.
Dodd-Frank:	Seller shall be the reporting counterparty for the purpose of compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act and related regulations and shall bear the costs associated therewith. Seller shall indemnify, defend and hold Buyer harmless from and against any and all Damages of any nature whatsoever directly attributable solely to Seller's breach of its reporting obligations with respect to the Dodd-Frank Wall Street Reform and Consumer Protection Act and related regulations.
<i>Products</i>	
Product(s):	Pro-Rata Fraction of Energy and Environmental Attributes (subject to replacements permitted under Buyer's Environmental Attributes)
Energy:	Three-phase, 60-cycle alternating current electric energy, expressed in units of megawatt-hours, generated by the Facility as measured by the ISO meter at the Interconnection Point
Environmental Attributes:	Shall mean any emissions, air quality or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with the Facility's benefits to the environment and capable of being measured, verified or calculated, including Renewable Energy Credits and the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person, including under any present or future federal, state or local law, regulation or bill or any international or foreign emissions trading program. Notwithstanding the foregoing, Environmental Attributes do not include federal, state or local tax credits, grants or other tax incentives or other incentives.
Renewable Energy Credits ("RECs"):	Shall have the meaning set forth in the Green-e Energy Renewable Energy Standard for Canada and the United States Version 3.3 or its successor and be eligible under the Green-e Energy Code of Conduct and Customer Disclosure Requirements.

<p>Buyer's Environmental Attributes:</p>	<p>Shall mean all Environmental Attributes associated with the Pro-Rata Capacity and any replacement RECs required to be delivered to the Buyer when Make-Whole Payments are made.</p> <p>However, with respect to Renewable Energy Credits, Seller will deliver to Buyer RECs from a wind/solar facility, which may be, at Seller's discretion, but are not required to be, the Facility Renewable Energy Credits.</p> <p>Seller shall be responsible for transferring all applicable Environmental Attributes to Buyer via a tracking system (NYGATS is the most preferred system) or other method of delivery designated by Buyer.</p> <p>If Buyer is unable to receive any Facility Environmental Attributes, Seller will monetize such Environmental Attributes and pay to Buyer the net revenues received for the Environmental Attributes.</p>
<p>Facility REC Purchase Option:</p> <p><b>For Replacement REC Offers Only</b></p>	<p>Seller grants Buyer an exclusive and irrevocable option to purchase all or a portion of the then-available Facility RECs, provided that the Parties will, in good faith, mutually agree on the terms and conditions, including a mutually agreed upon increase in the Fixed Price due solely to the purchase and sale of Facility RECs, for the purchase and sale of such Facility RECs. Buyer may exercise such option by delivery to Seller of written notice of Buyer's election at any time after the Effective Date and during the Term; however, such option is contingent on the Facility RECs being available and not already contracted for sale to a third-party. For the avoidance of doubt, nothing herein shall be deemed to limit or otherwise restrict Seller's ability to enter into contracts for the sale of the Facility RECs, including by forward sale, in its sole discretion at any time prior to the Buyer's exercise of the Facility REC purchase option.</p>
<p>Facility Attributes:</p>	<p>Facility Attributes are all capacity benefits and ancillary services associated with the Facility. Seller will retain all right, title and interest in and to and will have exclusive control over all current or future Facility Attributes.</p>
<p>Collaboration on Educational Opportunities:</p>	<p>Seller and Buyer shall (and Seller shall use reasonable efforts to cause its affiliates to) reasonably collaborate on potential educational opportunities related to the development, construction, and operation of the Facility, (and other businesses of the Seller's affiliates) including but not limited to: student internship programs, on campus lectures and information sharing about the facility, , and reasonable protocols to</p>

	allow representatives of Buyer, such as students, staff, and guests, to access and tour the Facility.
Bi-lateral Physical Delivery:	Seller shall, upon 30-day prior written notice from Buyer, deliver the Interval Quantity to Buyer (or Buyer's market participant) via a physical bi-lateral trade in the [Real-Time Market] [Day-Ahead Market] at the Settlement Point via the ISO. Buyer may, upon a 30-day prior written notice, revert back to financial delivery. If, and for so long as, Buyer has elected Bi-lateral Physical Delivery, the Floating Price Payment shall equal zero.
Third Party Charges:	If Buyer elects Bi-lateral Physical Delivery Buyer shall be responsible for the costs, if applicable, of maintaining its own account with the ISO. For all periods during the Term, all other ISO and other third-party charges (including all costs associated with registering, transferring and tracking the Environmental Attributes) are the responsibility of Seller.
<i>Commercial Operation</i>	
Anticipated COD:	[XX]
Guaranteed COD (after which Delay Damages are paid):	[XX], provided that such date shall be extended on a day-for-day basis to the extent that COD is delayed as a result of force majeure; provided further, however, that such date shall not be extended more than 180 days.
Outside COD (after which Buyer has a termination right):	180 calendar days after the Guaranteed COD
Commencement Date:	First day of the first calendar month immediately following the Commercial Operation Date ("COD"). The Facility must achieve the Guaranteed Pro-Rata Capacity in order to declare COD under the Agreement.
Delay Damages:	For every day after the Guaranteed Commercial Operation Date that the Facility has not achieved Commercial Operation, Seller shall pay an amount equal to the Maximum Pre-COD Damages divided by one hundred and eighty (180) days.
Early Termination Right:	If the Facility has not achieved Commercial Operation within 180 days of the Guaranteed Commercial Operation Date (provided that such 180-day period shall be extended on a day-for-day basis to the extent that the Guaranteed Commercial Operation Date is delayed as a result of force majeure) (as so extended, the "Outside Commercial Operation Date"), then either Buyer or Seller may elect in its sole discretion to terminate the

	<p>Agreement upon written notice to the other party (the “Early Termination Right”).</p> <p>Notwithstanding the foregoing, Buyer’s Early Termination Right shall begin on the day following the Outside Commercial Operation Date and will expire (and no longer apply) on the Commercial Operation Date and Seller’s Early Termination Right shall begin the day that is ninety-one (91) days after the Outside Commercial Operation Date and will expire (and no longer apply) on the Commercial Operation Date. Upon exercise of the Early Termination Right, neither Party shall have any financial or other liability to the other Party arising out of such termination, except that Seller shall pay to Buyer liquidated damages in an amount equal to \$75,000/MW of Buyer’s Pro-Rata Capacity less any Delay Damages paid by Seller in respect of the period prior to such termination (“Early Termination Payment”). Buyer has the right to draw on and retain for its sole benefit the Seller’s Performance Assurance in an amount equal to the Early Termination Payment.</p>
Maximum Pre-COD Damages:	\$75,000/MW of Pro-Rata Capacity; Buyer acknowledges and agrees that Seller’s liability for Delay Damages and its Early Termination Right shall in no event exceed, in the aggregate, the Maximum Pre-COD Damages.
Guaranteed Pro-Rata Capacity:	[XX] MW (90% of the Pro-Rata Capacity)
Decreased Capacity Damages:	<p>In the event that Seller achieves Commercial Operation before the Outside Commercial Operation Date (which requires full operation of the Guaranteed Pro-Rata Capacity) but, on the Commercial Operation Date, the installed capacity attributable to this Agreement is less than 100% of the Pro-Rata Capacity and continues to be less than 100% of the Pro-Rata Capacity as of the Outside Commercial Operation Date, Seller shall pay to Buyer liquidated damages in an amount equal to the product of (A) (1) the Pro-Rata Capacity less (2) the installed capacity attributable to this Agreement as of the Outside Commercial Operation Date, multiplied by (B) \$75,000/MW (the “Decreased Capacity Damages”). For the avoidance of doubt, if this Agreement is terminated for failure to achieve Commercial Operation, Seller shall not owe Decreased Capacity Damages.</p>
<i>Operations and Performance Assurance</i>	



Operations & Maintenance:	Seller shall not during the months of December through March inclusive schedule any non-emergency maintenance that reduces the Energy generation capability of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of December through March, (iii) such outage is required in accordance with prudent electrical practices, or (iv) the Parties agree otherwise in writing.
Seller's Market Participant:	Seller, or Seller's agent, will act as the Facility's market participant for the purpose of bidding and scheduling Energy into the market operated by the ISO. Seller shall be responsible for all charges associated with bidding and scheduling the energy into market, including but not limited to any charges levied by the ISO.
Sharing of Operating Data and Generation Forecasts	Seller shall share with Buyer real-time operating data from the Facility. If Seller delivers forecasts of generation to any entity (e.g. ISO), Seller shall also deliver that forecast to Buyer.
Production-Based Availability Guarantee (damages and termination right):	<p>The Parties shall negotiate an annual availability guarantee using the actual Facility production and the measured wind/solar resource during each Calculation Interval ("Production-Based Availability Guarantee"). The Production-Based Availability Guarantee shall be [XX]% in the first Contract Year, and [XX]% in each subsequent Contract Year. If Seller fails to meet the Production-Based Availability Guarantee in a given Contract Year, for each MWh Seller fails to produce, Seller shall pay Buyer the cost-to-cover, calculated as the Average Weighted Energy Price + Average Environmental Attribute Price – Fixed Price ("Availability Damages"), for the applicable Contract Year, provided that Availability Damages shall never be less than zero; and provided further that the Availability Damages paid during the Term shall not exceed the Maximum Availability Damages.</p> <p>If, after the first Contract Year, over any two consecutive Contract Years the Seller fails to meet eighty percent (80%) of the Benchmark Quantity (to be calculated as expected generation based on the measured wind/solar resource during each Calculation Interval and assuming 100% availability), then Buyer may terminate the Agreement ("Availability Termination Right"). Notwithstanding the foregoing, Buyer's right to exercise its Availability Termination Right in any Contract Year will expire (and no longer apply) ninety (90) days after Seller provides the report for the preceding Contract Year. For the avoidance of doubt,</p>

	<p>Buyer's first opportunity to exercise the Availability Termination Right shall be following Seller's delivery of the report for the third Contract Year (which report must be delivered within 45 days of the close of the relevant Contract Year) and will thereafter continue to be available to Buyer on an annual basis. In the event that Buyer terminates the Agreement, Seller shall pay to Buyer liquidated damages in an amount equal to \$75,000/MW of Buyer's Pro-Rata Capacity less any Availability Damages paid by Seller prior to such termination.</p>
Average Weighted Energy Price:	<p>Shall mean, for any period, (X) the sum over all Calculation Intervals in such period of the product of (i) the Floating Price for each Calculation Interval, multiplied by (ii) Buyer's Pro-Rata Fraction of Energy the Facility was capable of Producing for each Calculation Interval ("Benchmark Quantity"), divided by (Y) the sum of all Benchmark Quantities during such period.</p>
Average Environmental Attribute Price:	<p>With respect to any Environmental Attribute that Seller fails to transfer to Buyer, the amount (expressed in \$/MWh or \$/MW, as applicable) equal to the average of at least two price quotes obtained from nationally recognized brokers within fifteen (15) days of the when the Environmental Attributes were to have been transferred to Buyer, for the sale and delivery of comparable Environmental Attributes in lots of approximately the same quantity as the aggregate number of Environmental Attributes not transferred by Seller by the relevant deadline.</p> <p>Proposals in which the Environmental Attribute portion of Availability Damages are offset by supplying comparable RECs will not be penalized in the Commercial Mark Up evaluation of the RFP.</p>
Maximum Production-Based Availability Damages:	\$75,000/MW of Pro-Rata Capacity
Buyer Performance Assurance:	<p>Beginning ten (10) days after the execution of the Agreement, Buyer must provide one of the following forms of Performance Assurance: (1) maintain an Investment Grade Credit rating (BBB- or better from S&amp;P and Baa3 from Moody's), (2) provide a Public Credit Assurance, or (3) post security in the form of (i) cash collateral, (ii) a letter of credit, (iii) a guaranty (from an entity that directly or indirectly controls Buyer, which has an Investment Grade Credit rating and is acceptable to Seller in its sole discretion), or (iv) any combination thereof, as determined by Buyer in its sole discretion, taking into account the requirements of subsection (iii) above, in the amount of [\$XX,XXX/MW] of Pro-Rata Capacity.</p>

Seller Performance Assurance:	Beginning ten (10) days after the execution of the Agreement, Seller must post security in the form of (i) cash collateral, (ii) a letter of credit, (iii) a guaranty (from an entity that directly or indirectly controls Seller, which has an Investment Grade Credit rating and is acceptable to Buyer in its sole discretion), or (iv) any combination thereof, as determined by Seller in its sole discretion, taking into account the requirements of subsection (iii) above, in the amount of \$75,000/MW of Pro-Rata Capacity. If Buyer draws on Seller Performance Assurance for Delay Damages and/or Decreased Capacity Damages, Seller will replenish the security to \$75,000/MW of installed capacity.
Investment Grade Credit Rating	"Investment Grade Credit Rating" shall mean a Credit Rating of "BBB-" or better from S&P and a Credit Rating of "Baa3" or better from Moody's.
Public Credit Assurance	Buyer shall provide reasonable evidence of its continued financial backing by the State of New York. Buyer shall reaffirm such continued financial backing from time to time if any change in applicable law or regulation gives Seller reasonable basis of uncertainty.
Replacement Contract Losses:	The amount equal to (a) the difference (positive or negative) to such Non-Defaulting Party between the present value of the payments to be made and received under this Agreement (less the costs and expenses to be incurred in performing this Agreement) during the remaining term of the Agreement and the present value of the payments to be made and received (less the costs and expenses to be incurred) under transaction(s) replacing the Agreement, plus (b) attorneys' fees and expenses, brokerage fees and commissions and other third-party transaction costs and expenses to be reasonably incurred by the Non-Defaulting Party in entering into transaction(s) replacing the Agreement, attorneys' fees and expenses to be reasonably incurred by the Non-Defaulting Party in connection with the termination of the Agreement and any other reasonable incremental costs and expenses to be reasonably incurred by such Non-Defaulting Party in connection with the termination of the Agreement and/or in entering into transaction(s) replacing the Agreement; provided, however, that, if the foregoing amount is negative, the Replacement Contract Losses shall be deemed to be zero. For the avoidance of doubt, the Non-Defaulting Party shall not be required to enter into a replacement transaction in order to establish the Replacement Contract Losses owed.

<p>Conditions Precedent on Regulatory Approval (applicable to SUNY affiliates only)</p>	<p>The Buyer's ability to execute the Agreement, and the subsequent effectiveness of the Agreement, is expressly conditioned on the Buyer's final and non-appealable receipt of any approvals by New York State (including those of its officers and agencies) necessary for Buyer to enter the Agreement and perform its associated obligations.</p>
<p>Assignment</p>	<p>Assignment of the Agreement shall only be permitted in the circumstances below (with additional restrictions to be determined in the Agreement):</p> <ul style="list-style-type: none"> <li>(i) With the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld, delayed or conditioned. The non-assigning party may withhold consent if it believes, in good faith that the assignment would materially and adversely impact the benefits or burdens of such Party under this Agreement.</li> <li>(ii) Seller may collaterally assign this Agreement to a Financing Party and, in connection with any such permitted collateral assignment, Buyer shall execute documents evidencing Buyer's consent and agreement.</li> <li>(iii) Either Party may transfer or assign all of its rights and obligations under this Agreement to an Affiliate, which Affiliate's creditworthiness and ability to perform the relevant obligations of this Agreement are equal to or greater than that of such Party at the time of assignment.</li> <li>(iv) Either Party may transfer or assign all of its rights and obligations under this Agreement to any Person succeeding to all or substantially all of its assets, which Person's ability to perform the relevant obligations of this Agreement and creditworthiness are equal to or greater than that of such Party at the time of assignment.</li> </ul>
<p>Altenex, LLC Market Access Fee:</p>	<p>Altenex, an affiliate of Edison Energy, LLC, will collect a success fee from the project developer upon the completion of a renewable energy transaction. To operate in a transparent manner and without bias, Altenex maintains a uniform fee structure with every project developer participating in this RFP. The fee is 0.75% of the contract value, which is calculated as follows: PPA price prior to inclusion of Edison fee x expected p50 annual generation x Settlement Term x 0.0075. The success fee will be due in full contemporaneously with the first funding of debt or equity (including tax equity) financing for construction of the Project. If the construction costs of the Project are not being financed by third party debt</p>

	<p>or equity, then the Project Fee shall be due and payable on the earlier of the full notice to proceed or the start of construction. Seller and Altenex will enter into a separate Market Access Agreement for the payment of this fee.</p>
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**Attachment 6: Proposer Profile Response Form**

***This Attachment must be completed and submitted with your proposal.***

The Proposer Profile, beginning on the next page, is five (5) pages in length when blank. Please refer to the RFP for full instruction regarding this Form's completion.

**Attachment 6: Proposer Profile**

**Proposer Profile Response Form**

Proposals ***must*** complete the Profile below:

I. General information:

1) Name of your organization

2) Mailing address

3) Name of primary contact and contact title

4) Contact email

5) Contact phone number

6) Contact address (if different from mailing address)

7) Legal status (corporation, partnership, joint venture, etc.)

8) Credit rating: please provide information detailing financial health of the Parent Company (e.g. credit rating, other financials)

II. Renewable energy development experience, measured in MW, developed and financed by Proposer (or principals of Proposer while at another firm; if this is the case, please clearly state at which firm experience was gained):

1) MW developed and financed in US

2) MW developed and financed in NYISO

III. Relevant Experience: Provide a minimum of three (3) project case studies detailing work performed of a similar scope and nature within the past ten (10) years, providing the following information (Note: It is preferred that case studies include any experience working with higher education institutions or New York State entities, if applicable):

1) Organization name

2) Proposer Team Members involved in engagement

3) Type of engagement (e.g. onsite, scope, location, etc.)

4) Project size/capacity (MWac)

5) Year project was placed in service



- 6) Indicate duration of engagement with the Organization (please provide the date range)

- 7) If renewable energy contract, note the term length

- 8) Please detail any educational and/or research offerings provided to the Organization, if relevant

- 9) Please detail any Productive Land Use measures implemented at the project site, if relevant (e.g. agricultural coproduction, pollinator support, native habitat support, etc.)

IV. Owning, Operating, & Sub-contractors: indicate whether you will self-perform or sub-contract each of the following project tasks. To the best of your knowledge, please document if you will / intend to self-perform, or with whom you plan to sub-contract. In the event it has yet to be decided, list firms you typically work with:

- 1) Long-term Owner

- If Proposer will not be the long-term owner of the asset, please note experience selling assets to long-term owners (in MW ac).

- 2) Long-term Operator

- 3) Design

4) Engineering

5) Construction

6) Operations & Maintenance

7) Other

V. Productive Land Use: Please provide any intention or willingness to accommodate agricultural coproduction, pollinator support, native habitat support, and the like. When able, provide examples of past experience in this area and/or concrete plans to accomplish these features at the project site.

VI. Benefit to Disadvantaged Communities: The Consortium wishes to maximize all benefits and value that can accompany renewable energy development. As able, please provide clear, direct plans to assist disadvantaged communities (either project-adjacent communities or Consortium-adjacent communities), along with metrics to measure that plan's success:

1) Is the project in or near any community meeting state or federal criteria to be, or potentially be, designated as an environmental justice area, opportunity zone, or other disadvantaged community (e.g. NYS DEC Policy 29 on Environmental Justice and Permitting)?

- 2) Include a plan that clearly demonstrates a direct, meaningful, and assured benefit to the affected communities. Plan must demonstrate how the project connects the disadvantaged community(ies) to identified benefits. Provide a narrative on how the Proposer will engage residents in the decision-making process. Plan must also clearly state any negative impacts on affected communities as a result of the project and how such impacts will be mitigated.

- 3) Provide a map that delineates the specific community that will benefit from the project in relationship to the project site. Map should be provided as a PDF, marked "Attachment 6: Benefit to Disadvantaged Communities"
- 4) Describe and quantify how Minority and Women-Owned Business Enterprises will participate in the project development, construction, and/or operation.

VII. If applicable, provide any additional Vendor information via PDF attachment if applicable, marking it "Attachment 6, Additional Information".

## **Attachment 7: Safety Record**

***This Attachment must be completed and submitted with your proposal.***

Please provide a PDF, entitled "Attachment 7: Safety Record" with submission

Safety Record must detail any safety incidents that have been reported within the past five (5) years, along with the results of the incident and any corrective actions taken.

## Attachment 8: Gantt Chart / Timeline

***This Attachment must be completed and submitted with your proposal.***

Please include a PDF, entitled "Attachment 8\_ Gantt Chart\_Timeline". The parameters listed in the RFP have been copied below for convenience.

A detailed Gantt Chart / Timeline that includes:

- A backward-looking view of project development milestones that are complete thus far, such as but not limited to the following processes: site control, interconnection queue position / interconnection process, environmental studies, permitting, community outreach, opposition instances / resolutions, project finance.
- A forward-looking view of project development milestones and processes, including but not limited to the following processes: site control, interconnection queue position / interconnection process, environmental studies, permitting, community outreach, project finance, engineering design, construction, COD.

**Attachment 9: Procurement Lobbying Act Certification**  
*This Attachment must be completed and submitted with your proposal.*

State Finance Law §§139-j and 139-k, enacted by Ch. 1 L. 2005, as amended by Ch. 596 L. 2005, effective January 1, 2006, regulate lobbying on government procurement, including procurements by State University to obtain commodities and services and to undertake real estate transactions.

Generally, the law restricts communications between a potential Proposer or a person acting on behalf of the Proposer, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a "Contact") which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the "restricted period" (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a Proposer involved in a knowing and willful Contact. Each agency must develop guidelines and procedures regarding Contacts and procedures for the reporting and investigation of Contacts. The agency's procurement record must demonstrate compliance with these new requirements.

Accordingly, neither a potential Proposer nor a person acting on behalf of the Proposer should contact any individual at State University other than the person designated in this solicitation as State University's Designated Contact, nor attempt to unduly influence award of the contract. State University will make a record of all Contacts, and such records of Contact will become part of the procurement record for this solicitation. A determination that a Proposer or a person acting on behalf of the Proposer has made intentionally a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§139-j and 139-k is likely to result in denial of the award of contract under this solicitation. Additional sanctions may apply.

The University's Procedures are available at [http://www.suny.info/policies/groups/public/documents/policies/pub\\_suny\\_pp\\_039630.htm](http://www.suny.info/policies/groups/public/documents/policies/pub_suny_pp_039630.htm)

Please complete the following:

1. As defined in State Finance Law §§ 139-j (1)(a), has a governmental agency made a determination of non-responsibility with respect to the Offeror within the previous four years where such a finding was due to a violation of State Finance Law §§ 139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility? NO  YES  If yes, attach explanation
  
2. Has a governmental entity terminated or withheld a procurement contract with the Offeror because of violations of State Finance Law §§ 139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility? NO  YES  If yes, attach explanation

**CERTIFICATION:**

By signing below the Proposer affirms and certifies that it: (1) has reviewed and understands the Policy and Procedure of SUNY, related to SFL §§ 139-j and 139-k, (2) agrees to comply with SUNY's procedure relating to Contacts with respect to this procurement, and (3) has provided information that is complete, true, and accurate with respect to SFL §§ 139-j and 139-k. Proposer understands that SUNY reserves the right to terminate any resulting contract in the event it is found that the certification filed by the Proposer in accordance State Finance Law §§139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, SUNY may exercise its termination right by providing written notification to the Proposer in accordance with the written notification terms of the contract.

Firms Name and Address:	
FEIN #:	
Telephone Number: (____)____-____	
Fax Number: (____)____-____	
Email Address:	

Proposer's Name and Title:	
Proposer's Signature:	
Date:	

## Attachment 10: Non-Collusive Bidding Certification

*This Attachment must be completed and submitted with your proposal.*

**By Submission Of This Proposal, Proposer And Each Person Signing On Behalf Of Proposer Certifies, And In The Case Of Joint Proposal, Each Party Thereto Certifies As To Its Own Organization, Under Penalty Of Perjury, That To The Best Of His/Her Knowledge And Belief:**

1. The prices of this proposal have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competitor; and
3. No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

**A Proposal Shall Not Be Considered For Award Nor Shall Any Award Be Made Where [1], [2], [3] Above Have Not Been Complied With; Provided However, That If In Any Case The Proposer(s) Cannot Make The Foregoing Certification, The Proposer Shall So State And Shall Furnish Below A Signed Statement Which Sets Forth In Detail The Reasons Therefore:**

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ as the act and deed of said corporation or partnership.

**IF PROPOSER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:  
NAMES OF PARTNERS OR PRINCIPALS LEGAL RESIDENCE**

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**IF PROPOSER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:  
NAME LEGAL RESIDENCE**

\_\_\_\_\_  
**President:**

\_\_\_\_\_  
**Secretary:**

\_\_\_\_\_  
**Treasurer:**

\_\_\_\_\_  
**President:**



Secretary:

Treasurer

**Identifying Data**

Potential Contractor	
Address	
Telephone	
Name of Responsible Corporate Officer	
Title of Responsible Corporate Officer	
Signature:	

Joint or combined proposals by companies or firms must be certified on behalf of each participant.

\_\_\_\_\_  
Legal name of person, firm or corporation

\_\_\_\_\_  
Legal name of person, firm or corporation

By \_\_\_\_\_

By \_\_\_\_\_

Name:

Name:

Title:

Title:

Address:

Address:

## Attachment 11: NY State Finance Law 139-1 Certification

*This Attachment must be completed and submitted with your proposal.*

By submission of this bid, each Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the Proposer has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such a policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

If the Proposer cannot make the foregoing certification, such Proposer shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Proposer cannot make the certification.

**Proposer Name:** \_\_\_\_\_

**By (signature):** \_\_\_\_\_

**Name:** \_\_\_\_\_

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

**Date:** \_\_\_\_\_, 20\_\_

## Attachment 12: NY Human Rights Law Executive Order 177 Certification

*This Attachment must be completed and submitted with your proposal.*

In accordance with Executive Order No. 177, the Proposer hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

**Proposer Name:** \_\_\_\_\_

**By (signature):** \_\_\_\_\_

**Name:** \_\_\_\_\_

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

**Date:** \_\_\_\_\_, 20\_\_

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State or State University of New York, whether a Contractor, licensor, licensee, lessor, lessee or any other party; the State University of New York shall hereinafter be referred to as "SUNY"):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **PROHIBITION AGAINST ASSIGNMENT.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of SUNY and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. SUNY retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with SUNY. The Contractor may, however, assign its right to receive payments without SUNY's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law and Section 355 of the Education Law, if this contract exceeds \$250,000, or, if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State, and the State shall bear no liability, until it has been approved by the State Comptroller and filed in his or her office, or the pertinent pre-audit review period has elapsed. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.
4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State-approved sums due and owing for work done upon the project.
7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of competitive bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to SUNY a non-collusive bidding certification on Contractor's behalf.
8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 *et seq.*) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).
9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by SUNY, its representatives, or the State Comptroller.
10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as SUNY and any other agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.
11. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**
  - (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to SUNY by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.
  - (b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to SUNY or the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of SUNY contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street,

Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at SUNY's request, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. SUNY shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as

refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.**

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business

Albany, NY 12245  
Tel: 518-292-5100  
Fax: 518-292-5884  
email: opa@esd.ny.gov

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414

email: mwbecertification@esd.ny.gov  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to SUNY;

(b) The Contractor has complied with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain.

NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa; State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

**24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT.** In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

**25. PROCUREMENT LOBBYING.** To the extent this contract is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this contract the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the contract by providing written notification to the Contractor in accordance with the terms of the contract.

**26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.** To the extent this contract is a contract as defined by Tax Law § 5-a, if the Contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the contract, if SUNY determines that such action is in the best interests of the State.

**27. IRAN DIVESTMENT ACT.** By entering into this contract, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:

<https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this contract, it must provide the same certification at the time the contract is renewed or extended. Contractor also agrees that any proposed Assignee of this contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the contract, should SUNY receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, SUNY will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then SUNY shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

SUNY reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**28. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

**THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY**

29. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

30. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

31. Hospital Retained Authority: Hospital Retained Authority: The Hospital retains direct, independent authority over the appointment and/or dismissal, in its sole discretion, of the facility's management level employees (including but not limited to, the Facility/Service Administrator/Director, the Medical Director, the Director of Nursing, the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer) and all licensed or certified health care staff. The Hospital retains the right to adopt and approve, at its sole discretion, the facility's operating and capital budgets. The Hospital retains independent control over and physical possession of the facility's books and records. The Hospital retains independent control over and physical possession of the facility's operating policies and procedures. The Hospital retains full authority and responsibility for, and control over, the operations and management of the facility. The Hospital retains the right and authority to independently adopt, approve and enforce, in its sole discretion, policies affecting the facility's delivery of health care services. The Hospital retains the right to independently adopt, approve and enforce, at its sole discretion, the disposition of assets and authority to incur debts. The Hospital retains the right to approve, at its sole discretion, contracts for administrative services,

management and/or clinical services. The Hospital retains the right to approve, at its sole discretion, any facility debt. The Hospital retains the right to approve, at its sole discretion, settlements of administrative proceeding or litigation to which the facility is a party. No powers specifically reserved to the Hospital may be delegated to, or shared by, the Contractor or any other person. In addition, if there is any disagreement between the parties to this Agreement regarding control between the Hospital and the Contractor, the terms of this Section shall control.



1. **DEFINITIONS.** The following terms shall be defined in accordance with Section 310 of the Executive Law:

**STATE CONTRACT** herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

**SUBCONTRACT** herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken or assumed by a business enterprise not controlled by the prime contractor.

**WOMEN-OWNED BUSINESS ENTERPRISE** herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

**MINORITY-OWNED BUSINESS ENTERPRISE** herein referred to as

"MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

**MINORITY GROUP MEMBER** shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

**CERTIFIED ENTERPRISE OR BUSINESS** shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law.



A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

2. TERMS. The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University:

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State Contracts;(ii) The Contractor

shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination; (iii) At the request of the University the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Form 108 - Staffing Plan To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(e) Form 112 - Workforce Employment Utilization Report ("Workforce Report")

(i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to SUNY of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

(ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

(iii) In limited instances, Contractor

may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

(f) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(g) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(h) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(i) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(j) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(k) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

3. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned

business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority- and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

4. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN. The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding

requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

5. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority



and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

#### 6. MWBE Utilization Plan.

(a) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan prior to the execution of the contract.

(b) MWBE Utilization Plan (Form 7557-107).

Contractors are required to submit a Utilization Plan on Form 7557-107 with their bid or proposal. Complete the following steps to prepare the Utilization Plan:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. insert a description of the contract scope of work which the Contractor intends to structure to increase the participation by NYS Certified minority- and women-owned enterprises on the State contract;
- iii. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and

(c) Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the SUNY University-wide MWBE Program Office.

(d) The University will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;

ii. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;

iii. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program Office has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.

(e) The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the University a written remedy in response to the notice of deficiency.

- i. If the written remedy that is submitted is not timely or is found to be inadequate, the University-wide MWBE Program Office shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by the University-wide MWBE Program Office.
- ii. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(f) The University may disqualify a Contractor as being non-responsive under the following circumstances:

- i. If a Contractor fails to submit a MWBE Utilization Plan;
- ii. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
- iii. If a Contractor fails to submit a request for waiver; or
- iv. If the MWBE Program Office determines that the

Contractor has failed to document Good Faith Efforts.

(g) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

(h) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, SUNY shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

#### 7. Waivers.

(a) For Waiver Requests Contractor should use (Form 7557-114) – Waiver Request.

(b) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete the University shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(c) If University, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the University may issue a notice of deficiency to the Contractor. The contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### 8. Quarterly MWBE Contractor Compliance Report.

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 7557-113) to the University by the 5<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

#### 9. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

#### (b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.

For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and

improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of zero percent (0%) for Certified Minority-Owned Business Enterprises and zero percent (0%) for Certified Women-Owned Business Enterprises.

#### 10. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions.

Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, remedies or enforcement proceedings as allowed by the Contract.

#### 11. DAMAGES FOR NON COMPLIANCE.

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay liquidated damages to the University. Such liquidated damages shall be

calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the

Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.