



KATHY HOCHUL  
Governor

**NYSERDA**

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**On-the-Job Training for Energy Efficiency and Clean Technology  
Program Opportunity Notice (PON) 3982**

**\$5.5 Million Available**

***NYSERDA reserves the right to extend and/or change funding to the Solicitation should other program funding sources become available***

**Applications accepted through December 31, 2024, by 3:00 PM Eastern Time.**

**PROGRAM SUMMARY**

The New York State Energy Research and Development Authority (NYSERDA) is seeking applications to advance the goals of the Clean Energy Fund (CEF) by developing a workforce equipped to perform jobs in energy efficiency and clean technology. Through the On-the-Job Training (OJT) program, NYSERDA will provide incentives to eligible energy efficiency and clean technology businesses throughout the supply chain to hire and provide on-the-job training for new workers.

Registering for the OJT program consists of a two-step process. First, a business must register to participate in the OJT program by completing the online Business Application. Once the business passes the eligibility review and is successfully registered for the program, the business submits individual applications to hire each new employee through the OJT program.

Definitions for the purposes of this solicitation:

1. **“On-the-job-training”** is defined as energy efficiency and clean energy training provided by an eligible business to a new employee while the employee is engaged in full-time, productive work in a job in New York State.
2. **“Eligible Energy Efficiency and Clean Technologies”**:
  - High efficiency heating, ventilation, and air conditioning (HVAC)
  - Renewable heating and cooling
  - High efficiency water heating
  - Insulation and/or air sealing
  - High efficiency lighting and controls
  - Building automation and controls
  - Smart grid
  - Energy storage
  - Building operations and maintenance
  - Solar electric photovoltaics, solar thermal, and related areas
  - Offshore and Land-Based Wind and related areas
  - Electric vehicle charging stations

Additional areas related to energy efficiency and clean technology may be considered, however, activities focused on community outreach efforts are not eligible.

- **“Eligible businesses”** must provide services in one or more of the eligible energy efficiency and technology areas.

See the Eligibility section below for a complete list of requirements to be considered an eligible business.

3. **“Worker”** includes those individuals who design, manufacture, specify, sell/distribute, install, operate, maintain, repair, audit, inspect, and train people on eligible energy efficiency and clean energy technologies and systems. Workers hired through the OJT Program must be hired to perform one or more of these activities and primarily work in one of the eligible energy efficiency and clean technology areas.
4. Additional incentives are available for businesses:
  - Hiring from **“Priority Populations”** and **Disadvantaged Communities**<sup>1</sup>.
  - Hiring new employees working on **heat pumps** (design, installation, sales, etc.)
  - Registered in New York State or Certified in New York City as a **Minority-Owned Business (MBE) or Women-Owned Business (WBE)**.
  - Registered in New York State as a **Service-Disabled Veteran Owned Business (SDVOB)**.
5. Business size is based on the number of employees of the business who receive an IRS W-2 form and in accordance with the following criteria:
  - a. Principals of corporations and owners of businesses such as sole proprietors or partners are not considered to be employees for this total.
  - b. Workers who are independent contractors, subcontractors, contract employees (i.e., 1099 employees), or interns are not included in the employee count.
  - c. Eligible businesses with multiple branches, locations and/or related companies under separate names with unique Federal Employer Identification Numbers (FEINs) will generally be considered single entities but may be considered separate eligible businesses at the sole discretion of NYSERDA. National or chain accounts are considered a single "eligible business."
  - d. Businesses must have at least two employees who receive an IRS W-2 form and who work full-time (defined as at least 35 hours per week) to meet the 2 full-time employee minimum for participation in the program. Businesses that are New York State registered or New York City certified as a WBE/MBE/SDVOB are not subject to the 2 full-time employee minimum.

## INTRODUCTION

NYSERDA’s OJT for Energy Efficiency and Clean Technology program will provide wage subsidies to eligible businesses to help reduce the financial risk of hiring and training new workers. This program enables New York State to meet the objectives of the Clean Energy Fund and advance the climate equity and just transition goals of New York’s Climate Leadership and Community Protection Act (CLCPA) by developing a workforce equipped to perform jobs in energy efficiency and clean technology and supporting Disadvantaged Communities and Priority Populations as defined on the [NYSERDA Definitions Page](#).

NYSERDA is working closely with the New York State Department of Labor (NYSDOL) to deliver the OJT program and help develop job skills for new workers in energy efficiency and clean technology businesses. The NYSDOL assists participating businesses with developing OJT training plans as well as assessing necessary skills and identifying available workers that match those skills.

**The primary purpose of OJT funding is to train new hires for clean energy work.** The program cannot support workers already employed by the business. All new hire applications must be submitted to NYSERDA no later than 7 days after the new hire’s start date to be eligible for funding. See guidance related to transitioning interns hired

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<sup>1</sup> Definitions of Disadvantaged Communities and Priority Populations are subject to change. For the most up-to-date definition, including an interactive map of Disadvantaged Communities, see the [“Definitions”](#) page of the NYSERDA Workforce Development website.

through NYSERDA’s PON 4000 Clean Energy Internship Program and NYSERDA’s PON 4772 Climate Justice Fellowship Program to full time hires through the PON 3981 On the Job Training Program under the “Worker Eligibility” section below.

All program questions should be directed to Peter Tompkins, [PONOJT@nyserda.ny.gov](mailto:PONOJT@nyserda.ny.gov) at (518) 862-1090, ext. 3585. All contractual questions should be directed to Nancy Marucci at (518) 862-1090, ext. 3335 or [NancySolicitations@nyserda.ny.gov](mailto:NancySolicitations@nyserda.ny.gov). Program requirements contained in this PON may change at any time and notification will be sent to all businesses under contract with NYSERDA to inform them of any changes that will apply to their agreement.

**FUNDING, FUNDING LIMITS, AND PAYMENTS**

**I. Funding**

This program provides funding to advance worker skills through OJT. Funding and program services facilitate worker recruitment, hiring and on-the-job training of clean energy workers, including individuals from Disadvantaged Communities and Priority Populations. NYSERDA reserves the right to extend and/or add funding should other program funding sources become available.

For eligible workers hired through the program, NYSERDA pays a percentage of that new hire’s hourly wage for the eligible OJT period as a reimbursement to the business. The eligible reimbursement rate and reimbursement period per worker are based on 1) the technology area of focus for the new hire, 2) the business classification, 3) the business size based on number of employees, and 4) the worker classification. The following table summarizes the reimbursement rates and durations offered for each category.

See the Definitions section on page 1 for details on determining Business Size and definitions for Disadvantaged Communities and Priority Populations. Minority-Owned Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) organizations must have a current registration with New York State and/or be certified in New York City to qualify for the higher reimbursement rates under the Business Classification category. Service-Disabled Veteran-Owned Business (SDVOB) must have a current registration with New York State to qualify for the higher reimbursement rates under the Business Classification category.

Position Type	Business Classification	Business Size	Reimbursement Rate	Reimbursement Period	
				Non-Disadvantaged Community/Priority Population Worker	Disadvantaged Community/Priority Population Worker
General Clean Energy	Business not registered/certified as MBE/WBE/SDVOB	2 – 100 employees	50%	16 Weeks	24 Weeks
		101 or more employees	50%	Not Eligible	24 Weeks
	Business registered/certified as MBE/WBE/SDVOB	Any Size	75%	16 Weeks	24 Weeks
Solar Electric, Solar Thermal, or Wind	Business not registered/certified as MBE/WBE/SDVOB	2 employees or more	50%	Not Eligible	24 Weeks
	Business registered/certified as MBE/WBE/SDVOB	Any Size	75%	16 Weeks	24 Weeks
Heat Pumps	Business not registered/certified as MBE/WBE/SDVOB	2 employees or more	75%	16 Weeks	24 Weeks
	Business registered/certified as MBE/WBE/SDVOB	Any Size	75%	16 Weeks	24 Weeks

## II. Funding Limits

NYSERDA issues reimbursement on the specified portion of worker wages per the contract established between the participating business and NYSERDA, and all businesses, regardless of size, classification, or worker technology type, are required to provide a cost share for all wage subsidies. NYSERDA's cost share is capped at a maximum of \$24 per hour for each hire.

- NYSERDA funding through the OJT program is capped at \$150,000 per business for traditional workers (those that are not members of a Disadvantaged Community or Priority Population).
- Reimbursements for hires that are residents of a Disadvantaged Community and/or Priority Populations are not counted toward the \$150,000 cap.
- Under the General Clean Energy category, businesses with 101 or more employees that are not registered in New York State or certified in New York City as an MBE/WBE/SDVOB, incentives are only available to hire residents of Disadvantaged Communities and Priority Populations.
- Businesses hiring workers related to solar electric, solar thermal, or wind technologies can receive incentives only for hiring residents of Disadvantaged Communities and Priority Populations, unless the business is a New York State-registered or New York City-certified MBE/WBE/SDVOB business.
- There is no maximum cap for any size business when hiring residents of Disadvantaged Communities and Priority Populations.

Applications for funding under this PON are ineligible if other sources of funding, including but not limited to, federal grants or incentives have already been awarded for the same staff or project.

NYSERDA retains the right to limit participation in this program, including, but not limited to, limiting the number of hires at any time, for any reason. All awards will be made on a first come first-served basis and are subject to funding availability.

## III. Payments

Contract payments will be made to the eligible business only and will be on a reimbursable basis (i.e., the employee must be paid full wages before the business requests an allowable reimbursement payment from NYSERDA). The eligible business must submit requests for reimbursement of wages that have been paid in accordance with the approved contract budget. Eligible businesses are only permitted to invoice once a month for each hire.

If funding becomes limited, if interest is limited as evidenced by lack of response to this PON, or if there is no longer a valid need for the services, the program may be modified and can be suspended with notice in the New York Contract Reporter and posted on NYSERDA's web site:

<https://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities>. Applications received after the suspension date will not be considered for funding.

## **ELIGIBILITY**

### I. Business Eligibility

Businesses must:

1. Be an energy efficiency and clean technology business, training provider, or labor management organization working on behalf of energy efficiency or clean technology businesses. Municipalities are not eligible for this PON.
2. Provide services in one of the eligible energy efficiency and clean technology areas.

3. Have the legal authority to hire employees and conduct business in NYS.
4. Have at least one physical business location in NYS.
5. Have at least two employees who receive an IRS W-2 form and who work full-time (defined as at least 35 hours per week). This two full-time employee requirement is waived for businesses who are New York State registered or New York City certified as a WBE/MBE/SDVOB. Reference the Definitions section in the Program Summary for instructions on determining qualifying employees.
6. Have met and continue to meet all requirements and deliverables under any prior or existing NYSERDA contract or NYSDOL grant.
7. Provide all information requested in the Business Application process outlined in this PON and have clearly set objectives for the use of funds.
8. Attest to compliance with all applicable labor laws, and not have failed to file any applicable local, state, or federal tax returns, nor failed to pay New York State Unemployment Insurance. NYSDOL will conduct a due diligence search to confirm this information.
9. Eligible businesses that are training entities must be a private for-profit business (including LLPs and LLCs), a private not-for-profit business, or a private for-profit or private not-for-profit training provider (including private colleges and universities).

Additional Business Eligibility Criteria:

1. Eligible businesses providing design, construction or operation and maintenance services on large-scale (5 MW or greater), wind or solar generation projects may be asked to provide documentation to demonstrate that they have a contract or direct subcontract with a NYSERDA contractor on a generation project funded by NYSERDA/Clean Energy Standard.
2. Businesses or organizations that use outside agencies for hiring and payment of employees are **not** eligible. The business participating in the OJT program must be the entity employing and paying the employees.
3. Organizations who hired climate justice fellows through NYSERDA's PON 4772 can be approved through the OJT Program to hire those fellows under PON 3982 at the conclusion of the fellowship term to extend their work on fellowship projects and initiatives. These organizations must follow the standard OJT Program process, including the submission of both a business application and new hire application, to reserve funding for hiring a climate justice fellow graduate under the OJT program.

II. Worker Eligibility

Worker candidates must:

1. Be hired to design, manufacture, specify, sell/distribute, install, operate, maintain, repair, audit, inspect, and/or train people on energy efficiency and clean energy technologies and systems. General administration and driving positions are not eligible for reimbursement. Traditional trades positions are not eligible unless the job and the related OJT plan are directly connected to one or more of the eligible energy efficiency and clean energy technology categories.
2. Reside in NYS.
3. Be a new hire, not a previous employee or contractor. Individuals who worked as interns for a business previously under NYSERDA's PON 4000 may be hired under the OJT program. Individuals who worked as fellows through NYSERDA's PON 4772 may be hired by the same host organization under the OJT program to extend their work on fellowship projects and initiatives. All new hire applications must be submitted to NYSERDA no later than 7 days after the new hire's start date as a full-time hire to be eligible for OJT program funding, including individuals transitioning from PON 4000 internships and PON 4772 fellowships.
4. Not be a relative of any employee at the business. "Relative" shall include the following relationships: relationships established by blood, marriage, or legal action. Examples include spouse, mother, father, son, daughter, sister, brother, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, aunt, uncle, nephew, niece, grandparent, grandchild, or cousin. The term also includes domestic partners (a person with whom the employee's life is interdependent and who shares a common residence) and a daughter or son of an employee's domestic partner.

## PROGRAM PROCESS

There is a two-step process to reserve funds for a new hire through the OJT Program:

*Step 1* - Business Application (completed one time per business)

*Step 2* - New Hire Application (completed for each new hire a business brings through the program).

The OJT program process begins with a business submitting the Business Application. NYSERDA will accept Business Applications on a continuous basis until all funds for this program have been committed. Once NYSERDA approves a Business Application, the business is eligible to hire employees through the OJT program. Businesses must submit individual New Hire applications for each new hire.

### I. Business Application

The On-the-Job Training Program (PON 3982) and [NYSERDA's Clean Energy Internship Program \(PON 4000\)](#) have a combined Business Application. Businesses may be approved for one or both programs.

Businesses submit their Business Application by completing the online application found here:

[https://portal.nyserda.ny.gov/CORE\\_CONAPP\\_Program\\_Page?programFamily=Workforce%20Development&programName=Workforce%20Development%20and%20Training](https://portal.nyserda.ny.gov/CORE_CONAPP_Program_Page?programFamily=Workforce%20Development&programName=Workforce%20Development%20and%20Training)

If a business does not meet the program eligibility requirements based on the information provided in the Business Application, the application will be rejected. NYSERDA will notify the business of their application status along with reasons for the decision. Businesses may address deficiencies and reapply.

For businesses who meet the program eligibility criteria, the NYSDOL will complete a due diligence review. The NYSDOL due diligence review process will include a review of the business' Unemployment Insurance records; WARN notices<sup>2</sup>; ongoing investigations with NYSDOL's Public Works, Labor Standards and/or Safety and Health Divisions; registration with the NYS Department of State's Division of Corporations; Workers Compensation Insurance and Disability Insurance coverage; federal OSHA records; and contracts/agreements from NYSDOL received during the past three years.

NYSERDA notifies businesses if the business passes the NYSDOL due diligence review, or the NYSDOL directs the business how to resolve issues found during the review. Once a business passes the due diligence review, either at the time of initial review or after resolving deficiencies, the business is registered to participate in the OJT Program. NYSERDA portal login information will be sent to the email address provided in the Business Application.

### II. New Hire Application

Businesses must submit a New Hire Application for each individual worker they seek to bring into the OJT program. New Hire Applications are submitted through the businesses' NYSERDA Portal account. New Hire Applications must be submitted no later than 7 days after the new hire's start date. Businesses work with their assigned NYSDOL Business Service Representative (BSR) to complete each New Hire Application.

New Hire Application steps include:

- a. Identify Potential Candidates (if necessary) – If the business already has candidate in mind, the BSR will help the business develop a training plan and job description. If the business does not have a candidate in mind, the BSR will provide resources to assist the business in finding a suitable candidate.

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<sup>2</sup> Information on WARN notices can be found here:

<http://www.labor.ny.gov/workforcenypartners/warn/warnportal.shtm>.

- b. Interviewing and Selection of Desired Candidate – The business will conduct interviews and determine the candidate they are interested in hiring.
- c. Training Plan Development – The business will work closely with their assigned BSR to develop a training plan for the desired candidate focused on energy efficiency and clean energy technology topics needed for their position. The BSR conducts a skills assessment of the candidate and assists with designing an OJT plan to teach the worker the skills needed to perform their job responsibilities effectively. Once the training plan is complete, it must be signed by the candidate who is being hired and the BSR.
- d. New Hire Application – Once the business has completed the training plan document, they will log into the NYSERDA portal to submit a New Hire Application. The business will upload the signed training plan and a job description for the position.
- e. Application Review and Contract Development – NYSERDA reviews the submitted New Hire Application. If approved, NYSERDA issues an award letter and contract between the business and NYSERDA for participation in the OJT program. The New Hire Application will be used as the basis for the contract. If the application is not approved, NYSERDA will provide notification via email.

### III. Employment and Reimbursement

Businesses must maintain documentation of OJT activities related to the approved Training Plan throughout the OJT training period. NYSERDA may request documentation of training activities at any time. NYSERDA reserves the right, in its sole discretion, to terminate any agreement with a business that does not demonstrate implementation of the approved Training Plan, in accordance with the terms of the attached Sample Agreement.

Businesses must submit invoices to NYSERDA for wage reimbursements per the terms of the contract. To be eligible for reimbursement, the OJT hire must complete a minimum of 5 days on the job. The business may begin invoicing NYSERDA for reimbursement after 4 weeks on the job. Businesses are only allowed to invoice NYSERDA once a month for each hire. If a participating business does not invoice NYSERDA within ten weeks after a candidate starts, the agreement can be terminated. The participating business has 60 days after the contracted OJT end date to invoice for the remaining awarded amount. After the 60 days, NYSERDA reserves the right to terminate or close the agreement and release any remaining funds back into the program budget.

NYSERDA and NYSDOL will conduct monitoring over the term of the contract. See reporting requirements below.

### **REPORTING**

When a business is awarded a contract with NYSERDA, the business becomes the “Contractor.” The Contractor must agree to the following terms and conditions regarding OJT reporting and reimbursement:

1. The Contractor must keep records of the trainee’s progress according to the application/training plan and must make these records available to NYSERDA and NYSDOL upon request.
2. The Contractor must acknowledge that failure to maintain the required OJT records will result in disallowance of OJT costs.
3. The Contractor also must acknowledge that on-site and/or remote fiscal and programmatic monitoring of contract activities may take place at regular intervals during the contract by either NYSERDA or NYSDOL staff. Requested records must be made available to representatives during these monitoring visits.
4. The Contractor must complete and submit mid-point and final evaluations of each OJT hire when requested to NYSERDA and NYSDOL following guidance provided by NYSDOL. Failure to submit completed evaluations in a timely manner may result in disallowance of OJT funds.
5. The Contractor must notify NYSERDA in writing if any approved OJT candidate is terminated or quits. This notification must be made within two weeks of the change in employment status.
6. Based on past experience with OJT programs, NYSERDA anticipates job retention rates for new hires to be 70 to 80 percent. Contractors that are unable to retain a minimum of 70 percent of their new hires may be terminated from the program or subject to additional requirements related to reporting, monitoring, and minimum employment periods before wages will be reimbursed. NYSERDA reserves the right to

terminate Contractors from the program who receive complaints or other serious charges from employees or new hires.

## REQUIREMENTS & ASSURANCES

### I. Requirements

1. The on-the-job training must occur at a physical business location in NYS.
2. The on-the-job training must be for a new hire in a full-time job (defined as 35 hours or more per week).
3. The business must be able to demonstrate that the on-the-job training is related to CEF goals of increasing energy efficiency, increasing the use of clean energy technologies, and decreasing greenhouse gas emissions.
4. The maximum duration of OJT funding is 16 weeks or 24 weeks depending on business and worker eligibility.
5. Wage calculations to determine OJT reimbursement cannot include payment for holiday or overtime hours worked. In addition, NYSERDA will not reimburse for wages covered by any federal or state loan or grant program.
6. New hires must become employees of the business and not independent contractors or contract employees.
7. The business may not apply for positions based on the addition of commission or tips to a sub-minimum wage base salary.
8. The business receiving OJT funds must be and remain in good standing regarding the following for the duration of their participating in the program: Unemployment Insurance records; WARN notices<sup>3</sup>; ongoing investigations with NYSDOL's Public Works, Labor Standards and/or Safety and Health Divisions; registration with the NYS Department of State's Division of Corporations; Workers Compensation Insurance and Disability Insurance coverage; federal OSHA records; and contracts/agreements from NYSDOL and NYSERDA received during the past three years. Applicants that are on probation in or have been expelled from other NYSERDA utility or other state programs are not eligible to participate in the OJT program.

### II. Assurances

The business must be willing to assure the following:

1. The business' intention in participating is for the newly hired employee to remain employed with the business upon completion of the OJT training plan.
2. On-the-job training will take place during the new employee's work hours (i.e., during the shift/hours for which the worker was hired), and the employee will be compensated at no less than their normal rate of pay.
3. No worker shall be displaced by the OJT employee, including a partial displacement such as a reduction in hours, wages, or employment benefits.
4. The business will comply with New York State labor law and federal law for the protection of workers.

## GENERAL CONDITIONS

**Proprietary Information** - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes.

The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or

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<sup>3</sup> Information on WARN notices can be found here:  
<http://www.labor.ny.gov/workforcenypartners/warn/warnportal.shtm>.



portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <https://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx>. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

**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 Agreements.

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

Empire State Development  
Division for Small Business  
625 Broadway  
Albany, NY 12207

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

Empire State Development  
Minority and Women's Business Development Division  
625 Broadway  
Albany, NY 12207

**State Finance Law sections 139-j and 139-k** - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at <https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx>. Proposers are required to answer questions during proposal submission, which will include making required certification under the State Finance Law and to disclose any Prior Findings of Non-Responsibility (this includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years).

**Tax Law Section 5-a** - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department.

The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. See, ST-220-CA (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>.

**Contract Award** - NYSERDA anticipates making multiple award(s) under this solicitation. NYSERDA anticipates a contract duration of up to six months, unless NYSERDA management determines a different structure is more efficient based upon applications received. A contract may be awarded based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each application should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or

material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA may at its discretion elect to extend and/or add funds to any project funded through this solicitation. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the checklist questions. Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. NYSERDA expects to notify applicants in approximately four weeks from the receipt of an application whether your application has been selected to receive an award. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

**Accessibility Requirements** - If awardees from this solicitation will be posting anything on the web, or if the awardee will produce a final report that NYSERDA will post to the web, the following language must be included. NYSERDA requires contractors producing content intended to be posted to the Web to adhere to New York State's Accessibility Policy. This includes, but is not limited to, deliverables such as: documents (PDF, Microsoft Word, Microsoft Excel, etc.), audio (.mp3, .wav, etc.), video (.mp4, .mpg, .avi, etc.), graphics (.jpg, .png, etc.), web pages (.html, .aspx, etc.), and other multimedia and streaming media content. For more information, see [NYSERDA's Accessibility Requirements](#).

**Limitation** - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest. NYSERDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Agreement. NYSERDA reserves the right to disqualify proposers based upon the results of a background check into publicly available information and the presence of a material possibility of any reputational or legal risk in making of the award.

**Disclosure Requirement** - The proposer shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSERDA after the award of a contract, NYSERDA may exercise its stop-work right pending further investigation or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the circumstances. Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

**Vendor Assurance of No Conflict of Interest or Detrimental Effect** - The proposer shall disclose any existing or contemplated relationship with any other person or entity, including any known relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the proposer or former officers and employees of NYSERDA, in connection with proposer's rendering services as proposed. If a conflict does or might exist, please describe how your company would eliminate or prevent it. Indicate what procedures will be followed to detect, notify NYSERDA of, and resolve any such conflicts.

The proposer must disclose whether it, or any of its members, or, to the best of its knowledge, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

**Public Officers Law** – For any resulting awards, the Contractor and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or

its predecessors (collectively, the “Ethics Requirements”). Proposers are reminded of the following Public Officers Law provision: contractors, consultants, vendors, and subcontractors may hire former NYSERDA employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of NYSERDA may neither appear nor practice before NYSERDA, nor receive compensation for services rendered on a matter before NYSERDA, for a period of two years following their separation from NYSERDA service. In addition, former NYSERDA employees are subject to a “lifetime bar” from appearing before any state agency or authority or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration during their tenure with NYSERDA.

Any awardee will be required to certify that all of its employees, as well as employees of any subcontractor, whose subcontract is valued at \$100,000 or more who are former employees of the State and who are assigned to perform services under the resulting contract, shall be assigned in accordance with all Ethics Requirements. During the term of any agreement, no person who is employed by the contractor or its subcontractors and who is disqualified from providing services under the contract pursuant to any Ethics Requirements may share in any net revenues of the contractor or its subcontractors derived from the contract. NYSERDA may request that contractors provide it with whatever information the State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. NYSERDA shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed would be in conflict with any of the Ethics Requirements. NYSERDA shall have the right to terminate any contract at any time if any work performed is in conflict with any of the Ethics Requirements.

**Due Diligence** – NYSERDA, at its discretion, may conduct broad due diligence to validate any or all elements of an application and to assess applicants’ prospects of success, including gathering information to assess a proposal relative to any of the topics listed in evaluation criteria, whether or not such topic is explicitly addressed in a proposal. NYSERDA may conduct due diligence on some or all proposals based on NYSERDA’s current guidelines at the time of a review. NYSERDA staff may follow up with proposers to request additional information or clarification regarding applicant’s proposal, including questions regarding applicant’s business prospects and resources, whether or not those questions are specifically related to the elements of the proposal. Additionally, customized due diligence may be conducted by internal or external staff or contractors based on questions on any proposal raised by NYSERDA staff and/or the Scoring Committee. Due diligence may include (but is not limited to): interviews of independent references and background checks of team members; assessment of prior business experience of any team member associated with a proposal; research on intellectual property claims; customer and partner reference checks; market research on the applicants’ target market and any other related or possibly competitive technology or market area; research to validate any assumptions on current or future revenues, costs, capital needs, and financing prospects for proposers’ business, including similar (or unrelated) technologies, processes, or competitive solutions; or any other research that could reasonably inform the evaluation of a proposal, or the prospects for commercial success of the proposers’ business (whether directly related to, or unrelated to the specific elements in a proposal). Due diligence may include discussions with proposers’ former and current business partners, employees, investors, customers, and competitors. Due diligence may be conducted by NYSERDA personnel or contractors including members of the scoring committee, before, during, or after a scoring process, and prior to finalization of a contract award, any information gleaned in diligence may be used to score or re-score a proposal or apply a program policy factor.

**EO 16 Protocols** – Pursuant to Executive Order No. 16 issued on March 17, 2022, all vendors responding to bids or contracting with New York State must certify, using the form provided as part of this solicitation, their status with regard to conducting business operations in Russia, and that any such business operations in Russia conducted on behalf of the vendor are determined to be permitted under any of the allowable exemptions. The term vendor is intended to encompass bidders prior to contract award, contractors who have received a contract award, contract assignees, or contractors for whom an extension to an existing contract is being pursued. Exemption decisions are in NYSERDA’s sole discretion and are final decisions. NYSERDA reserves the right to solicit additional materials or information regarding the responses or materials provided by a vendor.

Pursuant to Executive Order No. 16, all vendors will be vetted to ensure that they are not on the federal sanctions list at <https://sanctionsearch.ofac.treas.gov/>. There is no waiver or exemption process for vendors appearing on the federal sanctions list.

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case sanctions are lifted during a solicitation, or after award in the case of some solicitations.

**Attachments:**

Attachment A: Training Plan Form

Attachment B: Sample Agreement