

REQUEST FOR PROPOSALS

Leasing Municipal Land for Solar Development

Town of Saratoga
12 Spring Street, Suite 201
Schuylerville, NY 12871
Issued: 11/6/2019

Proposals Due By:
January 10, 2020

Contents

1. Executive Summary.....	3
2. Background	3
3. Project Scope	4
Project Description.....	4
Site Description.....	4
Site Work and Maintenance Requirements.....	4
Community Engagement	5
Local Business Utilization.....	5
Award.....	6
4. Timeline.....	6
5. Submission of Questions.....	6
6. Pre-Bid Meeting	7
7. Submittal.....	7
8. Proposal Requirements.....	7
Table of Contents.....	7
Section 1 – General Respondent Information	7
Section 2 – Experience & Qualification.....	8
Section 3 – Proposal Narrative.....	9
Section 4 –Technical Proposal	10
Section 5 – Price Proposal.....	11
9. Evaluation Criteria.....	11
Overview of Evaluation Process.....	11
Appendix 1: Site Description.....	13
Appendix 2: Land Lease Price Proposal Template	14
Appendix 3: Certificate of Non-Collusion.....	15
Appendix 4: Sample Land Lease Agreement.....	Error! Bookmark not defined.

1. Executive Summary

The Town of Saratoga (“Municipality”) seeks proposals from solar energy developers (“Respondents”) to lease land at 219 Hayes Road (“the Site”), pursuant to a Lease Agreement, a form of which is included in this RFP, and install, own, operate, and maintain thereon a solar photovoltaic energy system (“Solar Energy System” or “System”).

It is the desire of the Municipality to site a solar energy system for the benefit of the Municipality and the environment. This Request for Proposals is being issued to allow the Municipality to evaluate options and determine the project and financial arrangements that best meet the Municipality’s interest. The Municipality notes that it is not seeking proposals to be an off-taker of a solar energy system. The goal of this RFP is to lease the Site for purposes of siting a Solar Energy System in order to provide a revenue stream to the Municipality in the form of lease payments.

The Municipality will evaluate all proposals and reserves the right to select the proposal that provides the best economic solution. The Municipality has the right to accept any bid even if it does not provide the highest revenue to the Municipality. Proposals will be evaluated against other proposals received. In addition to other rights reserved herein, the Municipality reserves the right to cancel this RFP in its discretion and to the fullest extent permitted by law.

All Proposals prepared in response to this RFP are at the sole expense of the Respondent, and with the express understanding that there will be no claim, whatsoever, for reimbursement from Municipality for the expenses of preparation. Municipality shall not be liable for any expenses incurred by the Respondent in development of this proposal.

2. Background

The Town of Saratoga is located on the eastern edge of Saratoga County and is bordered by the City of Saratoga, Saratoga Lake and the Hudson River. The Town consists of 42.9 square miles and is mostly rural with two village centers within its boundaries: the Village of Schuylerville and the Village of Victory. The Town has a population of 5,674 persons and a total of 2,632 housing units, with 89.4% being owner-occupied.

The Municipality wishes to bring this project to our community with the goal of expanding Municipality’s and its residents’ participation in the energy of the future, and benefit from the lower electric prices and local job creation associated with it.

The Municipality is interested in leasing municipal land for solar development. Municipality has the following prioritized goals for the project:

1. Increase revenue for the Municipality through a land lease.
2. Reduce energy bill costs for residents through a community solar project.
3. Purposefully utilize otherwise unusable municipal property such as landfills or brownfields.
4. Advance the community’s environmental sustainability and leadership goals.

3. Project Scope

Project Description

The Municipality is interested in leasing all or a portion of the site described in Appendix 1. The lease will be structured initially for a 2-year option to assess the feasibility of the site, following with a 25-year lease when it is determined the site is viable, with up to four additional 5-year optional renewal periods, exercisable at Municipality's sole discretion. The Municipality is willing to consider alternative lease durations and conditions as part of the proposal evaluation process set forth herein. The Municipality will not be an off-taker of the electricity generated at the Site.

The selected Respondent will own the System and will be responsible for the design, engineering, permitting, installation, testing, operation, maintenance, repair, vegetation management, and decommissioning of the System, including, without limitation, procurement of the solar photovoltaic equipment and related services. The successful Respondent will be solely responsible for owning, insuring, commissioning, interconnection, metering, and for providing security for the system at all times. The successful Respondent shall be responsible for all project costs including, but not limited to: the furnishing of all materials, services, labor, performance and payment bonds, insurance, and other costs incurred in the preparation of this response and the performance of the contract, signed by an individual authorized to bind the Respondents contractually.

On termination of the lease, the successful Respondent will be responsible for performing, and paying for the removal of all panels, racks, concrete blocks, and conduits, and returning the portion of the property on which the System was installed to its original conditions as mutually agreed upon.

Site Description

The potential host site is described in Appendix 1 attached to this RFP.

Before submitting a proposal, each Respondent shall familiarize themselves with the potential host sites as necessary to develop a proposal to undertake the Project in accordance with the terms and conditions of this RFP. The selected Respondent will be responsible for conducting any additional studies it may require, at its own cost and risk, prior to entering the lease agreement and/or in conjunction with the development of the Project. The Municipality intends to lease the municipal land on an "as is" basis.

Site Work and Maintenance Requirements

The successful Respondent shall be responsible for the design, permitting, construction, and maintenance of all site work, drainage, erosion controls, and landscaping associated with the system and lease area.

The successful Respondent shall be responsible for performing vegetation management within the

lease area. Respondents shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes.

Landfills are overseen by DEC's Division of Materials Management. As the proposed solar project will alter and impact the landfill cap, the Respondent is required to submit modifications to the Post-Closure Care Manual that is part of the Closure Plan. The requirements are intended to address concerns regarding the protection and maintenance of the Final Cover ("cap") and the protection of the landfill gas systems. The modification submission shall cover aspects including soil, slope, sediment, erosion, vegetation, drainage, etc. The submitted work plan shall contain descriptions of the planned uses and project plans to demonstrate the disturbance will not increase the potential threat to human health or the environment via construction method, equipment placement, and monitoring systems and plans¹.

The successful Respondent shall be responsible for the installation and maintenance of site specific safety and security requirements or other measures as are required to comply with all necessary permits and approvals.

Community Engagement

The successful Respondents will play an integral role in public outreach and educational events coordinated for community members. An outreach plan will raise community awareness and provide a platform for education. Creative approaches are encouraged.

If the project is intended to serve as a community solar project, through which local electric customers can purchase electricity from the developer, the Municipality will respect the strategic business decisions of Respondents on how to recruit subscribers of a community solar project. The Municipality requires that a priority process of enrollment be used whereby Municipality residents would have first call on participating as customers in a community solar program. The Municipality also requires that residents of County have a second stage enrollment priority.

Potential support offered by the Municipality as examples of ways the Municipality and other associated organizations would be interested in participating may include:

- Notification of the opportunity on the Municipality and various organizations' websites;
- Use of Municipality and other organizations' staff in conducting community oriented "Solar PV 101" Q&A sessions;
- Support in engaging local media;
- Banners or signage promoting the initiative at town-owned facilities

These are meant as examples of the sorts of informational and recruitment activities in which the Municipality, and perhaps associated organizations, would be interested in participating.

Local Business Utilization

It is in the best interest of the Respondent to give a preference to subcontracting with local businesses, recruiting from the local labor force, and providing education or other benefits to

¹ <https://www.dec.ny.gov/regulations/81768.html>

local students particularly inside Municipality limits. The Municipality also encourages all Respondents to include minority and small business participation, including those owned by women, veterans, and disadvantaged individuals. Respondents should include goals for local employment, including for both the construction and operation periods of the project, providing a brief description of the number and types of jobs expected to be created in the Municipality.

Award

Based upon the results of the evaluation of the proposals and interview process (if applicable), a recommendation will be developed and submitted for approval by the respective stakeholders within the Municipality.

If the Municipality and the most qualified Respondent are unable, within 60 days following the Municipality’s notice of commencement of negotiations with a Respondent (or such longer period of time as the Municipality may deem appropriate), to negotiate satisfactory Agreements with that Respondent at a price the Municipality determines to be fair, competitive, and reasonable, the Municipality shall negotiate with the next highest-rated Respondent. The Municipality reserves the right to waive any and all informalities and to award the proposal on the basis of the above procedures to the Respondent it deems most qualified or terminate the process at any time without making an award.

4. Timeline

EVENT	TARGET DATE
Issuance of Request for Proposal	November 6, 2019
Informational Respondent Meeting and Site Visit	November 20, 2019
Deadline for Submission of Questions	December 2, 2019
Municipality Issues Responses to Respondent Questions	December 9, 2019
RFP Submission Deadline & Opening of Bids	January 10, 2020

5. Submission of Questions

The Designated Contact Person during the RFP period is Supervisor Tom Wood. All communication of any kind regarding this RFP during this period must be made via Supervisor Tom Wood. All questions and inquiries regarding this RFP must be submitted via email to twood@albany.twcbc.com no later than Day 28. Questions submitted in writing must include the firm name and the name, title, address, telephone number, and email address of the individual submitting the question. Any questions regarding proposal requirements or specifications received after this date and time will not be considered for response.

Questions will not be answered directly. The Awarding Authority will issue an addendum to address the written questions submitted by the deadline. Any addenda will be posted by email/online at website.

6. Pre-Bid Meeting

The Municipality will hold a pre-bid meeting for all interested Respondents on November 20, 2019 10 AM at 219 Hayes Road, Schuylerville, NY. It is recommended that all interested Respondents attend in order to familiarize themselves with existing conditions and project requirements. Respondents interested in attending must confirm attendance by contacting Supervisor Tom Wood at 518-695-3644 Ext. 314 or twood@albany.twcbc.com.

7. Submittal

Responses must be submitted in a sealed package to 12 Spring Street, Suite 201, Schuylerville, NY 12871 by January 10, 2020 4pm and labeled as noted below. Within the package, the Respondent shall enclose a cover letter with the signature, name, and title of the person authorized to submit the proposal on behalf of the Respondent. The Respondent shall enclose three (3) hard copies and one (1) electronic version in a searchable text format (in Adobe Acrobat (pdf) format and on a flash drive or CD-ROM) of the proposal. The sealed outer package shall be marked with the Respondent's company name, and clearly marked in the lower left-hand corner:

“Response to Leasing Municipal Land for Solar Development”

It is the Respondent's responsibility to see that its proposal is delivered within the time and at the place prescribed. The right is reserved, as the interest of the Municipality may require, to reject any or all proposals, to waive any technical defect or informality in proposals received, and to accept or reject any proposal or portion thereof. If there are any differences between the original hard copy and the electronic copy of the proposal, the material in the electronic copy will prevail.

8. Proposal Requirements

These instructions outline the format and content of the proposal and the approach to be used in its development and presentation. Only that information which is essential to an understanding and evaluation of the proposal should be submitted.

Table of Contents

Proposals shall include a Table of Contents listing the individual sections of the proposal and their corresponding page numbers.

Section 1 – General Respondent Information

- **Transmittal Letter** - Each Respondent's response should include a transmittal letter signed by a party authorized to make a formal bid on behalf of the Respondent. The letter shall clearly indicate that the Respondent has carefully read all the provisions in the RFP. Transmittal letters should also acknowledge receipt and understanding of any Addenda associated with the project. Include the name, title, address, telephone number, e-mail address and fax number of the individual the Municipality should contact concerning the Respondent's proposal.
- **Executive Summary** - Provide an overview of the proposal (not more than two pages) describing the highlights of the response and summarizing how your firm will meet the needs and goals of

the Municipality.

- Executed **Certificate of Non-Collusion** in Appendix 3.

Section 2 – Experience & Qualification

This section shall discuss the highlights, key features, and distinguishing points of the proposal.

- Company Overview
 - Provide a document with the following company information.
 - Year founded and number of continuous years in business
 - Ownership status (public or private company, LLC, LLP, S-Corp, Sole Proprietor)
 - Federal Tax Identification Number
 - Corporate & Local Office location
 - Number of employees in corporate & local office at time of submittal
 - Your firm's Experience Modification Rate (EMR) for each of the past three years and your firm's OSHA ratings (Recordable Incidence Rates and Lost Workday Incident Rates) for the past three years
 - A description of any ongoing or previous litigation your firm has been involved in and a statement that the Respondent is not debarred, suspended or otherwise prohibited from practice by any federal, state, or local agency
- Project Team
 - Provide information about the key personnel to be assigned to this project.
 - Project Team organizational chart including all key personnel and their proposed roles
 - Provide resumes, in an appendix, for all key personnel that will be assigned to this project
 - Provide evidence of all relevant licenses held by your firm to do work in New York State, attach list and copies of documents as an appendix
- References
 - Provide references for at least three completed and currently operating non-residential grid-connected PV systems, with preference towards New York municipalities and landfills. Include the following information:
 - Location and Utility Company name
 - System size (kW DC)
 - Metering Type (Remote Net Metering, Community Distributed Solar, Onsite)
 - Date completed
 - Host Customer and/or Owner contract information (name, email, address, phone)
- Project Development Experience

- Provide the total number of megawatts of solar PV your firm has constructed over the last five (5) years.
 - Provide the total number of megawatts of solar PV your firm has constructed over the last five (5) years in New York.
 - Provide total number of megawatts and projects of solar PV your firm has constructed on landfills and brownfields.
 - Detail the types of customers your firm has worked with in the past (for example, residential, commercial nonprofit, or government).
 - Describe your firm's implementation of PV construction standards and other safety measures.
 - Provide the number of operational PV systems under your firm's management.
- **Project Financing Capability**
 - Provide number of PV systems that have been financed by you and/or your financing partner.
 - Provide most recent audited financial statements, annual reports, consolidated financials, and Form 10-K (if any). If available, provide similar materials for parent entities, significant affiliates and collaborators.

Section 3 – Proposal Narrative

Provide a detailed plan of the proposed project. Project plans must include the following:

- **Project Management Plan**
 - Provide a detailed narrative description of the approach for installing the proposed project, including how the Respondent will work with subcontractors, municipal agencies, and other relevant stakeholders. Detail how the Respondent will approach special site considerations such as capped landfills.
 - Provide a detailed description of each task and delivery. Include a project schedule indicating key milestones and durations of various activities.
 - Respondents must demonstrate a firm understanding of permits required to successfully execute the project. The selected Respondent will be responsible for all necessary environmental testing, permitting, and compliance. To the extent possible, Respondents should identify the regulatory and permit conditions relevant to their proposals, potential conflicts between the project and existing permit conditions, and variances that might be required.

- **Financing Plan**
 - Provide a description of how the proposed project will be financed. Identify any potential financial partners that will be involved in the project. Describe in this plan possible sources of funds and revenue streams other than the sale of energy including

all available tax credits, incentives, and subsidies that will be used to finance the project.

- Operations and Maintenance Plan
 - The Respondent will be responsible for Operation & Maintenance (O&M) services for the full term of the Agreement. Describe the proposed O&M procedures for the system, detailing duties performed and if the contract will be maintained with the Respondent or a third-party provider.
- Decommissioning Plan
 - Provide information regarding the proposed approach to system decommissioning and restoration of the property. This decommissioning plan should include a description of Respondent's approach to providing financial assurance that funding will be available to decommission the system at the end of the contract term.
 - The owner of the Facility, as provided for in its lease with the landowner, shall restore the property to its condition as it existed before the Facility was installed, pursuant to measures which may include the following:
 - Removal of all operator-owned equipment, concrete, conduits, structures, fencing, and foundations to a depth of 36 inches below the soil surface.
 - Removal of any solid and hazardous waste caused by the Facility in accordance with local, state and federal waste disposal regulations.
 - Removal of all graveled areas and access roads unless the landowner requests in writing for it to remain.
- Local Business Utilization Plan
 - Respondent shall submit a proposed local business utilization plan and must make a good faith effort to hire local business enterprises on the project. The utilization plan must demonstrate how this requirement will be met to the extent possible at this stage in the program.
- Outreach Plan
 - Respondent will provide a clear plan to best meet the goals and strategies specified in the **Project Scope** section for **Community Engagement**.
 - Provide clear marketing and recruitment strategies from the developer to attract members.

Section 4 –Technical Proposal

All solar energy systems proposed under this RFP must conform to industry best practices. System Design and Components are not binding at the proposal stage, but this information will be used to evaluate Respondent proposals.

- Components: Include an overview of the proposed photovoltaic system, including brief descriptions of the main components (at minimum modules, inverters, racking system, and

monitoring system) including manufacturer and warranty information. Respondents are encouraged to provide specification sheets for any proposed technologies as an appendix.

- Design: Include Preliminary Drawings for the proposed PV system that include (at a minimum):
 - System size (in kW DC and kW AC)
 - Location of modules (including tilt)
 - Location of inverters
 - Any other site-specific information that will aid in overall evaluation
- Expected System Generation
 - Provide estimated annual production of the proposed solar project for years 1-25 inclusive of the degradation rate.

Section 5 – Price Proposal

Price proposals should be provided using the form in Appendix 3 of this RFP. Price proposals shall be valid for a minimum of 180 days.

All price proposals will include a lease payment from the Respondent to the Municipality in the format of a price per acre. The lease will be structured initially for a two-year option to assess the feasibility of the site, followed by a 25-year lease when it is determined the site is viable, with up to four additional 5-year optional renewal periods, exercisable at Municipality's sole discretion, or on the basis of any other alternative lease duration proposal submitted by the respondent.

9. Evaluation Criteria

Overview of Evaluation Process

The Municipality will utilize an evaluation system to rank the qualified Respondents. It is the responsibility of each Respondent to provide information, evidence or exhibits that clearly demonstrate the Respondent's ability to satisfactorily respond to project requirements and the factors listed in this RFP. The evaluation process may include verification of references, confirmation of financial information, and examination of other information as the Municipality deems appropriate. The Municipality will/may as it deems necessary conduct interviews to evaluate the Respondents. The Municipality may require public presentations by Respondents. The Municipality reserves the right to request or obtain additional information about any and all responses. Each response from a qualified Respondent will be evaluated and ranked solely according to the criteria set forth in this RFP.

The Municipality may cancel this RFP at any stage of the process if it determines that cancellation serves the best interests of the public. The Municipality may reject, in whole or in part, any and all planned or proposed project measures, when it determines that rejection serves the best interests of the public.

At a minimum, Respondents shall meet the following requirements:

1. Timely submission of response
2. Submission of all required elements found in Section 8 of this RFP
3. Certification of Non-Collusion (Appendix 3)
4. Evidence of appropriate insurance

The qualified Respondents providing completed responses will be evaluated based on the following factors:

Price Proposal - The Respondent should clearly identify the financial benefit to the Municipality of the proposed arrangement in the form of either annual lease payments, savings in current electric costs of Municipality operations, or some other monetary benefit to the Municipality.

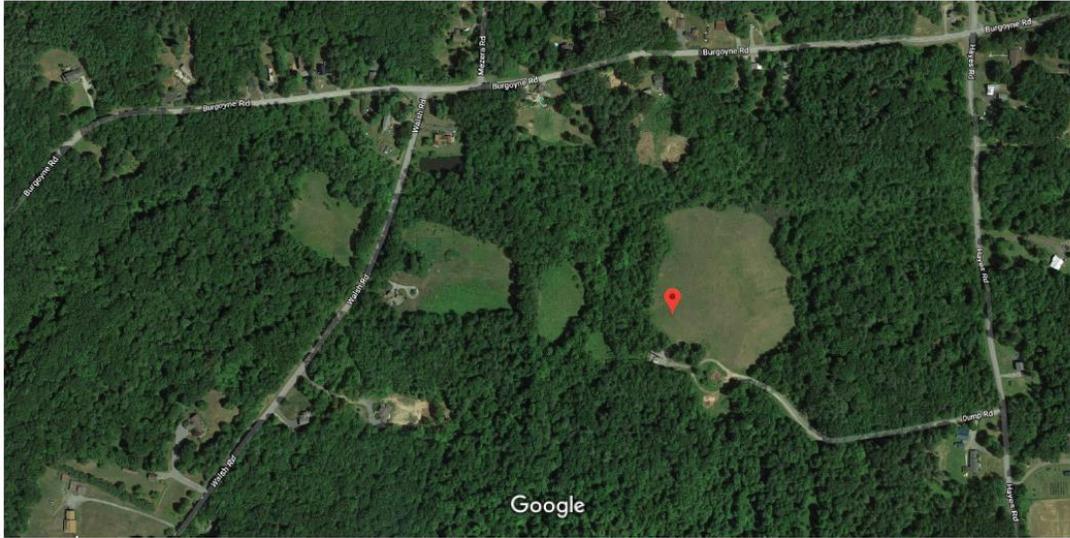
Proposal Narrative - The response shall include an explanation of how the Respondent will approach the various tasks, including scheduling methods, project schedule, construction, financing, measurement and verification, operations and maintenance, and decommissioning plans. The demonstrated ability to obtain financing for the construction of the solar energy system is critical to the Respondent's ability to complete the project. Respondents should provide in their responses a clear discussion of how they intend to finance the system and what financing partners will be involved in the project.

Developer Experience & Project Team - The extent of the Respondent's experience in designing, financing, constructing and operating solar energy facilities. Additional consideration will be given to firms with experience constructing and operating such facilities on municipal and commercial properties most similar to the proposed sites, particularly capped landfills. The relevant experience and quality of project personnel and their commitment to the proposed project in Municipality. The clarity and organization of the proposed scope of work and approach will be included in the assessment of the project team.

Technical Proposal – The response will be evaluated on the preliminary system design that is provided and the selected equipment and corresponding warranties. The demonstrated ability of designing a system that will generate the highest production will provide greater benefit to the Municipality and the community members.

Appendix 1: Site Description

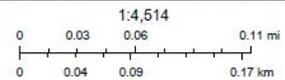
219 Hayes Road
Tax Parcel ID" 169-1-64
Approx. 35.85 +/- acres



Imagery ©2019 Google, Imagery ©2019 Maxar Technologies, New York GIS, USDA Farm Service Agency, Map data ©2019 200 ft



November 5, 2019



Appendix 2: Land Lease Price Proposal Template

PV System Size	_____kW dc	Annual System Degradation Factor	_____%/year
Year 1 Estimated kWh Generation	_____kWh		

The Respondent hereby agrees to pay the Municipality the following amounts to lease up to 35.85 acres for the construction and operation of a solar energy system for 25 years.

The following is a summary of assumptions for developing the costs for a base solar system. Respondents are to assume no sales tax on equipment purchased, and no property tax. Interconnection costs can vary widely depending on system size, interconnection voltage, and other interconnection requirements. For the purposes of establishing a base bid, Respondents should assume interconnection cost of \$0.10 per Watt.

Year 1 Lease Payment	\$ _____/acre	Annual Lease Escalator	_____%/year
Year 1 Total Lease Payment	\$ _____	Total Payments to Town over Contract Length (25 Years)	\$ _____

Respondents shall understand that the submitted price proposals must include the scope of work and all deliverables as defined in the Lease Agreement and as specified in this RFP. Respondents shall complete the below table to account for change orders due to unforeseen additional costs such as interconnection upgrades, taxes, etc. Municipality will use a regression model to predict incremental values if needed.

Change Order (\$/acre)	0-\$4,999	\$5,000-\$9,999	\$10,000-\$14,999	\$15,000-\$19,999	\$20,000-\$24,999	>\$25,000
Adjustment to Proposed Lease Payment (\$/acre)						

A Respondent may attach, in substantially the form above, any alternative lease arrangement(s) that the Respondent wishes to include with its proposal

Appendix 3: Certificate of Non-Collusion

The undersigned certifies, under penalties of perjury, that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.

(Signature)

(Name of person signing proposal)

(Name of business)

APPENDIX 4

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this 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, whether a contractor, licenser, licensee, lessor, lessee or any other party):

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. NON-ASSIGNMENT CLAUSE. 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 the contracting agency 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. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State'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 (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), 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 \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). 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 because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. 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 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 the State 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 (2NYCRR 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 the State agency, 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 the agency or 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. The State 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 State 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, 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 a New York State agency 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 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 the agency 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 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 work force 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, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, 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 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 subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency 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, the contracting agency 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 Appendix A, the terms of this Appendix 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 Section 165 of the State Finance Law, (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 §165 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, New York 12245
Telephone: 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 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 the State;

(b) The Contractor has complied with the Federal Equal 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 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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 the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 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 agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, 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 agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, 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:
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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 the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency 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 the state agency 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.

The state agency 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.