



NY Green Bank
A Division of NYSERDA

NY Green Bank

Fund Administration, Loan/Investment Servicing Request for Proposals

RFP No. 20

Version 1.0 – March 2022

**Fund Administration, Loan/Investment Servicing for
NY Green Bank, a Division of the New York State Energy Research and Development Authority**

Request for Proposal (“RFP”) 20

Proposals Due: April 13, 2022 by 3:00 PM Eastern Time*

NY Green Bank (“**NYGB**”), a division of the New York State Energy Research and Development Authority (“**NYSERDA**”), invites proposals from firms interested in providing fund administration, loan/investment services to NYGB in connection with its portfolio of structured investments in clean energy projects and businesses and in sustainable infrastructure. As further described in Section 2.1, services may include, but will not be necessarily limited to: tracking, administering, monitoring, accounting for and reporting on all key aspects of NYGB investments (including debt and equity instruments) and investor services. NYGB seeks to engage a firm with a robust, secure platform with industry leading technology, efficient and effective processes and a highly competent team that is dedicated to the NYGB account.

Proposal Submission:

Firms wishing to submit a proposal for review must do so by 3:00 p.m. Eastern Time on the date noted above. Late proposals will not be accepted, nor will proposals that are substantially incomplete. It is the proposer’s responsibility to ensure that all pages have been included in the submission. Proposal documents should not exceed 15 pages, plus attachments. Unnecessary attachments beyond those sufficient to present a complete, comprehensive and effective response will not positively influence evaluation of the proposal. Each page of the proposal should state the name of the proposer, the RFP number and the page number.

Proposals must be submitted electronically via the online proposal submission system portal. (Faxed, mailed or e-mailed proposals will not be accepted). Proposers may submit Word, Excel, or PDF files (file formats include: csv, doc, docx, gif, jpeg, jpg, pdf, png, ppt, pptx, pps, ppsx, tif, txt, xls, xlsx, and zip). Individual files should be 100MB or less in file size. Proposal PDFs should be searchable and should be created by direct conversion from MS Word, or other conversion utility. Files should not be scanned. For ease of identification, all electronic files must be named using the proposer’s entity name in the title of the document. For detailed instructions on how to submit a proposal online, follow the instructions on NYGB’s website (www.greenbank.ny.gov) under “Work with Us;” “RFP Resources;” “Instructions to Submit Service Provider Proposals.”

Please note that, as part of the online submission process, proposers will be required to answer questions in addition to uploading attachments. NYGB suggests allotting at least 60 minutes to enter/submit proposals. The online proposal system will close promptly at 3:00 p.m. Eastern Time, and files in process or attempted edits or submissions after this time will not be accepted. If changes are made to this solicitation, an e-mail will be sent to the proposer’s contact as listed in the Proposer Contact Information section of the NY Green Bank portal as part of the online submission process, and any modified documents will be posted on NYGB’s website (www.greenbank.ny.gov) under “Work with Us;” “Open Solicitations;” “RFP 20: Fund Administration, Loan/Investment Servicing for Services.” NYGB anticipates executing a Final Agreement (as defined below) by the end of May 2022 with one of the proposers who have been selected to enter into contract negotiation.

If you have technical questions concerning this solicitation, contact (i) info@greenbank.ny.gov (Designated Contact 1); (ii) Mike Fagan (Designated Contact 2) at (212) 379-4107; or (iii) Ethan Forauer (Designated Contact 3) at (212) 379-6267. (Designated Contact 1, Designated Contact 2 and Designated Contact 3 are collectively referred to as the “**Designated Contacts**”). If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507, or VeniceSolicitations@nyserda.ny.gov. Please include RFP 20 in the subject line of all e-mail communications.

No communication intended to influence this procurement is permitted except by contacting the Designated Contacts. Contacting anyone other than these Designated Contacts (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement may result in a proposer: (1) being deemed a non-responsible offerer, and (2) not being awarded a contract.

Late or incomplete proposals will be returned and not accepted. Faxed or e-mailed proposals will not be accepted. If changes are made to this solicitation, notification will be posted on NYGB's website at <https://greenbank.ny.gov/>.

1. Introduction

1.1 Opportunity & Overview

NY Green Bank invites proposals from firms interested in providing fund administration, loan/investment services to NYGB in connection with its portfolio of structured investments in clean energy projects and businesses and in sustainable infrastructure. As further described in Section 2.1, services may include, but will not be necessarily limited to: tracking, administering, monitoring, accounting for and reporting on all key aspects of NYGB investments (including debt and equity instruments), and investor services. NYGB seeks to engage a firm with a robust, secure platform with industry leading technology, efficient and effective processes and a highly competent team that is dedicated to the NYGB account.

1.2 NYGB Background

NY Green Bank (“**NYGB**”), a division of the New York State Energy Research and Development Authority (“**NYSERDA**”), was initially capitalized with \$1 billion to accelerate clean energy and sustainable infrastructure deployment in NYS. NYGB steps in to fill gaps in the market where financing might not be available from conventional lenders potentially due to barriers such as limited precedent, small deal sizes, challenges in evaluating technology risk, asset structures and/or business models unfamiliar to banks and institutional investors, and/or deal structuring and underwriting complexities. NYGB collaborates with the private sector to develop transaction structures and methodologies that other capital providers can readily replicate and scale. As capital providers “crowd in” to an area within the sustainable infrastructure landscape, NYGB moves on to other areas where private sector interest and activity have yet to be spurred.

The Climate Leadership and Community Protection Act (“**CLCPA**”) requires state agencies, authorities, and entities, to the extent practicable, to invest or direct resources in a manner designed to deliver no less than 40% of overall benefits from spending on clean energy and energy efficiency programs to disadvantaged communities (“**DACs**”). In addition, DACs are required to receive no less than 35% of the overall benefits of such spending on clean energy and energy efficiency programs. As a division of NYSERDA and a key component of the State’s Clean Energy Fund (“**CEF**”), NYGB will contribute to the achievement of these targets by committing at least 35% of its capital on a go-forward basis from January 1, 2020 to projects that create benefits for DACs. NYGB’s DAC investment activity aims to deliver the best emission reduction and sustainable energy outcomes for historically marginalized communities in the State of New York (“**NYS**” or the “**State**”).

The State’s leadership in clean energy and sustainable infrastructure and ambitious goals position NYS for substantial growth and transformation – all requiring material financing. Given that meeting these State goals involves the creation of new asset classes and the building of liquidity in those asset classes at scale and across technologies, geographies and end-users, NYGB is well positioned to successfully continue its investment activities and materially contribute to the achievement of State goals, for the benefit of all New Yorkers.

The key elements of NYGB’s mission are collaborating with private sector participants, implementing structures that overcome market barriers and addressing financing gaps in current clean energy financing markets, and transforming those markets by enabling greater scale, new and expanded asset classes and increased liquidity.

Consistent with this mission and its investment criteria, NYGB’s key goals are to:

- (a) Attract private sector capital into clean energy markets in NYS;
- (b) Be self-sustaining; and
- (c) Reduce greenhouse gas (“**GHG**”) emissions.

NYGB's activities in pursuit of its goals are specifically aimed at motivating faster and more extensive implementation of clean energy investments within NYS, fostering greater energy choices, reducing environmental impacts and delivering more clean energy benefits per public dollar spent for all New Yorkers.

Market barriers vary across different technologies and market participants, although a number of particular financing issues generally constrain growth across the clean energy sector, including:

- (a) Lack of transaction standardization;
- (b) Deficient scale and volume;
- (c) Less-understood project sponsors and counterparty credits;
- (d) Insufficient data on underlying loan and technology performance; and
- (e) Underdeveloped or nonexistent capital markets for clean energy projects.

These financing issues are a few of many market barriers that limit private sector capital investment, for both equity and debt, into otherwise attractive renewable energy and energy efficiency projects, resulting in gaps in the clean energy finance market.

To address existing financing barriers, NYGB follows several important operating principles:

- (a) NYGB enhances private sector market participation by providing financial products designed to scale markets for renewable energy and energy efficiency projects;
- (b) NYGB collaborates, rather than competes, with market participants that are already making progress in, or can demonstrate an ability to engage, the market but where that progress is constrained by the lack of available financing;
- (c) NYGB works with its clients and counterparties to leverage their capital and institutional capabilities – with a focus on “wholesale” markets (i.e., not providing funding directly to consumers/homeowners);
- (d) NYGB generally structures and prices its financial products consistent with commercial approaches to credit quality and risk, seeking to earn a return on investment to preserve and grow its capital base; and
- (e) NYGB recycles its capital into new clean energy projects when income is generated and as investments mature or are realized, maximizing the impact of its capital across multiple deployments.

NYGB's long-term objective is to provide a bridge to a vibrant, sustainable, growing and efficient private sector clean energy financing market, across all types and sizes of projects. NYGB seeks to operate in areas where there is market interest, but limited access to capital.

NYGB investments are expected to span a wide range of clean energy technologies (e.g., in areas like energy efficiency, energy storage, renewable energy, electric vehicle and electric vehicle infrastructure, etc.).

More information about NYGB can be found at greenbank.ny.gov.

1.3 NYGB Investments / Financial Accounting

Within the sustainable infrastructure markets, NYGB focuses on commercially proven technologies that are ready for and seeking scalable deployment. This sector is severely undercapitalized with limited investor involvement due to a lack of precedent transactions, smaller scale assets or portfolios, and complex deal structures that often

require specialized structuring skills and sector knowledge base. NYGB applies project finance and structured finance techniques to ring-fence project assets or businesses, allocate and protect against risk and volatility, and monetize the resulting lower volatility cash flows.

NYGB calculates the value of its investments and the Net Asset Value (“NAV”) of its portfolio monthly. As a division of NYSERDA, NYGB follows GASB statements and requirements, and pursuant to GASB 62, NYGB’s loans are accounted for as Loans & Financing Receivables: recorded at cost basis, amortized as appropriate and written down if deemed impaired. A provision for loss is established for any Loan & Financing Receivable that is delinquent on its debt service payments and is deficient when comparing the present value of expected cash flows or collateral value to the outstanding debt balance plus accrued interest. NYGB, which, like NYSERDA, is audited by KPMG, prepares standalone sets of financial statements, and these are then consolidated into the NYSERDA financials. NYGB’s audited financial statements are published annually.

For further details on NYGB’s investments, strategy and financial accounting policies, please refer to NYGB’s website (<https://greenbank.ny.gov/>) including the Annual Review and Business Plan (<https://greenbank.ny.gov/-/media/greenbanknew/files/2021-22-NYGB-Annual-Business-Plan.pdf>) and its Audited Financial Statements (<https://greenbank.ny.gov/Resources/Public-Filings>).

2. Scope of Services / Proposal Submission Requirements

NYGB seeks to retain one firm experienced in a fund administration, loan/investment services, to provide the services set forth in Section 2.1 to NYGB in connection with its portfolio of structured investments in clean energy projects and businesses and in sustainable infrastructure. As further detailed below, proposers will be evaluated on their expertise as well as their previous experience providing services to financial, investment and asset management institutions regarding the above. One firm will be retained as a result of this solicitation.

2.1 Scope of Fund Administration, Loan/Investment Services

NYGB requests proposals from leading service providers experienced in fund administration, loan/investment services. Proposers are encouraged to apply to provide for all the services listed below, which are subject to the Conditions listed in Section 4 below. The proposer selected by NYGB pursuant to this RFP will be expected to be available to provide services to NYGB for a three-year period with two potential 1-year extensions thereafter. During this period, NYGB will rely on the firm for the performance of specific services, which include:

- (a) Loan/Investment Services: Servicing NYGB investments requires, among other things, regular communication with NYGB and NYGB counterparties and ongoing monitoring of loan/investment positions. Responsibilities include preparing and administering written notices with NYGB’s counterparties involved in bilateral loans;
- (b) Fund Administration Services: Accounting for and maintaining data on NYGB investments, investment expenses and corporate expenses;
- (c) Investor Services: Ability to create investor related statements/reports; Conducting Know Your Customer/Client (“KYC”) Services and searches via the U.S. Treasury’s Office of Foreign Assets Control’s (“OFAC”) Sanctions Program Listing on NYGB’s counterparties;
- (d) Reporting on NYGB investments, investment expenses and corporate expenses through a robust online reporting platform that allows NYGB to customize reporting to fit its needs. Providers should be flexible to meet those needs if reporting features do not exist. Reporting needs include but are not limited to:

- i. Schedule activity reports;

- ii. NYGB position report;
- iii. Cash reconciliation;
- iv. Financial Statements (i.e., quarterly unaudited, annual audited); and

Services that are currently out of the scope of this RFP include tax services. As a division of NYSERDA, NYGB is a part of a nontaxable public authority. In addition, NYGB's custody needs in relation to accounts, cash management and investments are modified from what might otherwise be considered standard in the industry to reflect the existing and ongoing role of New York State Department of Tax & Finance ("T&F") as NYGB's/NYSERDA's mandatory fiscal and paying agent.

2.1.1 Client Services Team

NYGB seeks a provider that maintains a dedicated team with a proactive approach to servicing NYGB investments. The team should include a Client Services Manager and senior professionals with the bandwidth to be responsible for day-to-day management of its staff, the engagement and resolving any outstanding issues in a timely manner. In addition, the team must include a Certified Public Accountant and/or head of Fund Administration with a strong background in accounting.

Given that a majority of NYGB's positions are bilateral loans, the provider's Loan Services team should be adequately staffed to ensure the high volume of activity is managed. Proposed changes to key team members must be discussed in advance with NYGB.

The team's performance will be reviewed periodically by NYGB using an agreed scorecard/KPI process.

2.2 Proposal Submission Requirements

2.2.1 Proposal Submission

Please refer to "Proposal Submission" on pages 2-3 above in this RFP 20.

2.2.2 Procurement Lobbying Requirements – 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).

Failure to include such certification and disclosures will disqualify your proposal.

2.2.3 Format

Please refer to "Proposal Submission" on pages 2-3 above in this RFP 20. Proposals should contain two parts.

Part I must consist of responses to the qualification items (Section 2.2.4, "Description of Qualifications" below).

Part II must consist of complete contract cost and pricing information (Section 2.2.5, "Cost" below) and the proposed Fund Administration & Loan and Investment Servicing Agreement (see Section 2.2.6 below).

Each part must be complete, so that it can be evaluated independently, but should be submitted together as a single Proposal.

2.2.4 Description of Qualifications

Proposers should:

- (a) Identify the services for which they are proposing as listed above in Section 2.1;
- (b) Describe their experience providing fund administration, loan/investment services to traditional and complex, alternative investment vehicles (e.g., investment companies, private equity funds, business development companies, debt infrastructure investment funds, etc.) regarding (i) investments similar to NYGB's investments, and (ii) investments in the clean energy and sustainable infrastructure sector, and in the electricity, power and commodity markets sector;
- (c) Provide a brief summary of their firm's capabilities that are relevant to their proposed services including the number of similar or analogous assignments that their firm has completed over the past five years, and a discussion of their relevance to the services requested in Section 2.1. Highlight any areas where the assignments were substantially different from the services to be provided;
- (d) Describe how they differentiate their firm from its competitors and its relevance to the services they propose to provide to NYGB;
- (e) Describe their availability to accommodate the fund administration, loan/investment servicing needs of NYGB. Proposers must demonstrate that primary and reasonably qualified backup and support personnel are available on an as-needed basis, and that the proposer has staff capabilities (and sufficient professional/support staff) to perform the work on a timely basis. Specify whether any part-time or contracted resources will be utilized, and if so, in what regard, and how that will enhance potential performance. Indicate whether the team is international or domestic and the locations the team(s) are based out of;
- (f) Provide the names of personnel in the firm who will be assigned to NYGB's account and their experience in performing services similar to the services requested by this RFP, for an organization similar to NYGB and with complex instruments similar to the ones issued by NYGB. Include resumes for all employees proposed to be involved on this account (resumes may be included as an appendix to the proposal). Include a description of each employee's function in the firm, title, office address, and number of years of service with the firm and other relevant experience. Indicate the address of the office through which this account will be primarily serviced. Describe the availability of the lead person(s) for consultation with NYGB, including but not limited to their ability to meet with NYGB staff in New York;
- (g) Discuss fully any conflicts of interest, actual or perceived, that might arise in connection with their firm's involvement with NYGB. If conflicts do or might exist, describe how the firm would resolve them. Please be aware that the firm(s) selected will be expected to represent NYGB (as a division of NYSERDA) and/or NYSERDA in all transactions falling under this RFP; representation of any other party to these NYGB and/or NYSERDA transactions would be prohibited without the express written approval of NYGB, which would be unlikely (for more information on NYGB's expected approach with respect to potential conflicts of interest, please see the "Conflicts of Interest" language attached hereto in Attachment A);
- (h) Identify any litigation or administrative proceedings to which their firm is a party and which would either (a) materially impair its ability to perform the services enumerated herein and for which this RFP was issued or (b) if decided in an adverse manner, materially adversely affect the financial condition of the firm;
- (i) Identify the employees discussed in Section 2.2.4(f) that have been the subject of any investigation or disciplinary action by the NYS Ethics Commission, the Commission on Public Integrity, the Temporary

State Commission on Lobbying, or NYS. Describe briefly how any matter was resolved or whether it remains unresolved;

- (j) Provide their firm's Proposed Servicing Agreement. Please note that NYGB requires the inclusion of certain provisions ("NYSERDA's Standard Terms and Conditions") as well as the NYSERDA Prompt Pay Policy Statement (Attachments A and B respectively). Also, please note that proposal selection does not preclude negotiation of the terms of the Proposed Servicing Agreement to NYGB's satisfaction, in its sole discretion; and
- (k) Provide two relevant client references, including name, address, and telephone number.

2.2.5 Cost

Proposers should state:

- (a) The cost based on NYGB's capital-at-risk/overall investment portfolio size (not NYGB total capital/assets under management): NYGB's "Current Portfolio" comprised of its committed and deployed capital in respect of transactions and investments which have not yet matured;
- (b) Any reduced rates or fees charged for other State or local governments in NYS for these types of services;
- (c) The basis on which any other firm expenses related to services provided to NYGB would be billed, if other than at cost; and
- (d) Any special considerations with respect to billing or payment of fees and expenses that the firm offers and that it believes would differentiate it from other proposers and make its services more cost effective for NYGB.

2.2.6 Fund Administration & Loan and Investment Servicing Agreement

Proposers should provide the Fund Administration & Loan and Investment Servicing Agreement (the "Proposed Servicing Agreement") they propose to use if selected by NYGB under this RFP. If selected by NYGB, the Proposed Servicing Agreement will serve as the basis for negotiating the Final Agreement with NYGB regarding the retention of the proposer as the fund administrator to NYGB. (For more information, see Section 4.7, "Final Agreement" below).

3. Proposal Evaluation and Selection Process

3.1 Proposal Evaluation

Proposals meeting the RFP requirements will be evaluated by a Scoring Committee using the Evaluation Criteria below listed in order of importance:

- (a) Quality, depth and breadth of the firm's and team's expertise and prior experience in providing services similar to those identified in Section 2. For those firms that have worked with NYGB before, the quality of work and value delivered then will also be considered. Proposers may submit proposals to provide all or only some of the services listed in Section 2.1. Proposers proposing to provide only some of the listed services, will be evaluated against other proposers' capabilities to provide those same listed services;
- (b) General experience providing fund administration, loan/investment services to traditional and alternative investment vehicles regarding (i) clean energy and sustainable infrastructure investments; and (ii)

structured investments similar to those undertaken or contemplated by NYGB (For more information on investments undertaken by NYGB, please reference the transaction profiles on NYGB's website: <https://greenbank.ny.gov/Investments/Portfolio>);

- (c) Commitment of time and resources to this account, and amenability to, and facility for, working with NYGB in various capacities. For those firms that have worked with NYGB before, their commitment of time and resources, amenability and facility to work with NYGB then will also be considered;
- (d) The terms and conditions of the Proposed Servicing Agreement and the likelihood to successfully negotiate the Final Agreement, including the anticipated cost of services and willingness to work with NYGB to minimize costs;
- (e) Overall organization and quality of proposal, including cohesiveness, conciseness, and clarity of response.

3.2 Selection Process

A scoring committee ("**Scoring Committee**"), comprising internal NYGB and NYSERDA staff, will review and evaluate proposals. At NYGB's discretion, proposers may be requested to interview with all or part of the Scoring Committee to address any potential questions or clarifications outlined in the proposals. Proposers will be notified if they are requested to attend an interview.

In addition, top-ranked firms may be invited to make oral presentations / software demonstration to the Scoring Committee or other NYGB staff and may also be required to provide additional client references, as part of the final selection process.

Depending upon the quality and scope of proposals as well as the negotiation of acceptable Final Agreements, NYGB expects to select one qualified firm to provide the range of Fund Administration, Loan/Investment services.

4. General Conditions

4.1 Proprietary Information

Careful consideration should be given before confidential information is submitted to NYGB 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 NYGB possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or 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 NYGB 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 except it from disclosure, including a written statement of the reasons why the information should be excepted. 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.

4.2 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

4.3 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).

4.4 Tax Law Section 5-a

NYGB/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 NYGB/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). Prior to contracting with NYGB/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 contracting and filed with NYSERDA. See, ST-220-CA (available at 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>.

4.5 Contract Award

NYGB anticipates making one award under this solicitation. NYGB anticipates a contract duration of three years with two 1-year options to renew, unless NYGB management determines a different structure is more efficient based upon proposals received.

NYGB may award a contract based on initial applications without discussion, or following limited discussion, negotiations, or interviews. Each Proposal should be submitted using the most favorable cost and technical terms.

NYGB may request additional data or material to support applications. NYGB will review the Proposed Servicing Agreement provided by the proposer. NYGB may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYGB and/or NYSERDA agreement.

NYGB also reserves the right to correct any arithmetic errors, to accept or reject any of the firm's employees assigned to provide services on this project and to require their replacement at any time, and to reject any proposal containing false or misleading statements or that provides references that do not support an attribute or a condition claimed by the proposer.

4.6 Limitation

This solicitation does not commit NYGB to participate in any transaction, proceed to negotiate any terms or definitive documentation, award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYGB 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 NYGB's best interest. NYGB reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions laid forth in Attachment A. NYGB 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.

4.7 Disclosure Requirement

The proposer shall disclose, for any team member, 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 similar governing body. If an indictment or conviction should come to the attention of NYGB after the award of a contract, NYGB 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 particular 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.

4.8 Final Agreement

NYGB will negotiate the final agreement (the "**Final Agreement**") with the proposer selected under this RFP based upon the Proposed Servicing Agreement discussed in Section 2.2.6 above. The Final Agreement will also include the Proposed Servicing Agreement as an exhibit thereto. The Final Agreement will be subject to the laws of the State of New York and will state that any disputes between the parties shall be fully and finally adjudicated in the state courts of the State of New York in accordance with NY Civil Practice Law & Rules §505. NYGB will require that certain New York State provisions be attached to the Final Agreement as exhibits. These provisions are attached to this RFP as Attachments A and B thereto.

4.9 Municipal Advisor Rules

NYGB is aware of the amendments to Section 15B of the Securities Exchange Act of 1934 effectuated by Section 975 of Title IX of the Dodd-Frank Act, as well as SEC Release No. 34-70462 (September 20, 2013). In this regard, please note that NYGB considers discussions with potential proposers, and the review of proposals, to be arm's-length negotiations. NYGB recognizes that proposers have financial and other interests that differ from NYGB. As such, NYGB does not consider a fiduciary relationship to arise at the proposal stage. Accordingly, any responses to this RFP would meet the exemption from the "municipal advisor" definition provided by Rule 15Ba1-1(d)(3)(iv) for responses to requests for proposals or qualifications.

4.10 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 NYGB/NYSERDA, in connection with proposer's rendering services as proposed. If a conflict does or might exist, please describe how your firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify NYGB/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.

4.11 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 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.

4.12 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.

Attachments:

Attachment A – Standard Terms and Conditions for all NYSERDA Agreements

Attachment B – NYSERDA Prompt Payment Policy Statement