



**NY Green Bank**  
A Division of NYSERDA

# **NY Green Bank**

---

**Clean Energy Financing Arrangements**

**Request for Proposals**

**(Ongoing Solicitation)**

RFP No. 1

Version 3.1 - May 2017

# 1 Introduction

## 1.1 Opportunity & Overview

NY Green Bank (“**NYGB**”) invites private sector capital providers and clean energy industry participants to propose transactions involving collaboration with NYGB. Such transactions should be aimed at addressing financing market gaps and barriers and so facilitate financing clean energy projects in New York State (“**NYS**”), consistent with NYGB’s objectives and operating principles.

Electronic submission of responses (each, a “**Proposal**”) to this Request for Proposals (“**RFP**”) is required. [Instructions to Submit Proposals](#) can be found on the “**RFP Resources**” page on our website. This RFP will remain open, and Proposals will be evaluated on a rolling basis, as received. The purpose of an ongoing RFP process is to ensure that all potential NYGB clients and counterparties have an opportunity to propose transactions and financing arrangements, as market needs develop and change over time. Each Proposal will be reviewed in accordance with the objective evaluation criteria described in [Section 4 \(Proposal Evaluation\)](#). This competitive selection process will be applied consistently to all complete RFP submissions.<sup>1</sup>

As an ongoing solicitation, proposers (“**Proposers**”) may resubmit Proposals if circumstances change, or if the initial Proposal does not address this RFP in a complete manner. Any commonly used formats (e.g., Microsoft Word, PowerPoint and Excel, and Adobe PDF) in commercial submissions are welcome. Proposers can expect the initial response following NYGB’s receipt of a Proposal generally within two weeks from the date of such receipt.

Direct communication and engagement between NYGB and potential clients and counterparties is permitted prior to proposal submittal and after evaluation of a Proposal. If you have questions or seek further engagement, please email us at [InvestmentRFPs@greenbank.ny.gov](mailto:InvestmentRFPs@greenbank.ny.gov) (including “RFP No. 1” in the subject line). If you have questions regarding the Securities and Exchange Commission Municipal Advisor Rules, please see [Section 5.3 \(General Conditions – Municipal Advisor Rules\)](#).

**Please note that failure to respond to this RFP in a complete manner by addressing all the topics described in [Section 2 \(Eligibility Requirements\)](#), [Section 3 \(Proposal Contents\)](#) and [Section 4 \(Proposal Evaluation\)](#) renders NYGB unable to take further action on a Proposal.**

## 1.2 Background

NYGB is a division of the New York State Energy Research and Development Authority (“**NYSERDA**”), acting as a \$1.0 billion State-sponsored specialized financial entity focused on mobilizing greater clean energy investment and projects within NYS. NYGB is structured and operated in a manner comparable to private investment funds and financing entities, including with respect to entering into transactions on market terms and being self-sustaining. NYGB is a key component of New York’s Clean Energy Fund (“**CEF**”).<sup>2</sup> The CEF is a \$5.3 billion commitment, and part of Governor Andrew M. Cuomo’s Reforming the Energy Vision (“**REV**”) strategy to advance clean energy growth and innovation and drive economic development across the State, while reducing ratepayer collections. For more information on the CEF and REV strategy, see [www.nyserda.ny.gov/About/Clean-Energy-Fund](http://www.nyserda.ny.gov/About/Clean-Energy-Fund) and [https://rev.ny.gov/](http://rev.ny.gov/).

The key elements of NYGB’s mission are collaborating with private sector participants, implementing structures that overcome market barriers and address 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

---

<sup>1</sup> Subject to the Office of State Comptroller Rule (Part 206 to NYRR Title 2) (the “**Comptroller Rules**”) and consistent with NY Green Bank Operations & Procedures Manual.

<sup>2</sup> Created pursuant to the “Order Authorizing the Clean Energy Fund Framework”, issued and effective January 21, 2016, Cases 14-M-0094 et al. (the “**CEF Order**”).

- (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 in the clean energy sector, including lack of transaction standardization, deficient scale and volume, less understood project sponsors and counterparty credits, insufficient data on underlying loan and technology performance, and underdeveloped or nonexistent capital markets for clean energy projects. These barriers are a few of many 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 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 (that is, 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, earning 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.

More information about NYGB can be found at [www.greenbank.ny.gov](http://www.greenbank.ny.gov).

## 2 Eligibility Requirements

This Section 2 describes the minimum eligibility requirements that proposed transactions must meet to be considered for investment by NYGB.<sup>3</sup>

### 2.1 Eligible Technologies

NYGB participates in financing arrangements that support clean energy projects using proven technologies.<sup>4</sup> NYGB generally targets projects using the same technologies that drive carbon reduction and other public benefits contemplated under existing NYS clean energy policies.

[Illustrative Guidelines for Eligible Technologies](#) can be found on the RFP Resources page on NYGB’s website, which includes a non-exhaustive list of technologies eligible for NYGB investment as examples. NYGB may support and/or participate in financing arrangements that include projects using technologies beyond the scope

---

<sup>3</sup> Subject to laws, regulations and administrative actions (e.g., Public Service Commission Orders) describing and/or related to the parameters for deployment of NYGB funds.

<sup>4</sup> Commercially proven clean energy technologies are preferred, although NYGB may consider demonstrably commercial-ready or scalable technologies yet to be deployed in the market on a case-by-case basis.

of the illustrative list so long as Proposers demonstrate a potential for GHG reductions in NYS.<sup>5</sup>

## **2.2 Eligible Financing Arrangements & Acceptable Terms**

NYGB seeks Proposals for transactions that are consistent with its goals and operating principles. NYGB can be flexible in terms of transaction roles. Such roles can include acting as lender (e.g., senior, subordinated or mezzanine for term or revolving facilities), project equity, warehousing/aggregation facilities with an expectation of being taken out by private sector third parties within prescribed time periods and upon certain events (e.g., the aggregation of an agreed upon amount of assets fitting certain credit and other parameters), construction and post-construction finance and a variety of credit enhancement products (e.g., guarantees of third party capital, letters of credit, etc.).

NYGB generally does not provide debt or equity capital directly to companies to fund their general business operations (e.g., working capital) or project (pre-construction phase) development capital unless in doing so, the arrangement directly supports the increased deployment of a clean energy technology in New York State.

NYGB investments are generally made with the developer or sponsor and include financial participation and investment by one or more private sector financial parties. Participation and investment by a private sector financial entity could be structured in various ways, including as debt and/or equity financing at transaction close or as the “expected” takeout of a NYGB-sponsored warehouse facility at an agreed upon aggregation level. Proposals should provide clarity as to proposed capital structure and be specific as to the respective roles for, and relationship between, NYGB and the other proposed capital providers.

NYGB considers various transaction sizes and participation levels. Proposers are advised to review, closely follow and specifically address the Proposal content and evaluation criteria described in Section 3 (Proposal Contents) and Section 4 (Proposal Evaluation) in their submissions, including details of:

- (a) Credit, financial and risk/return considerations for the proposed transaction – overall, as well as for NYGB and other participants individually;
- (b) The contribution to financial market transformation — e.g., multiples of capital mobilized to fund total project costs and potential to drive the type of volume (including scalability and replicability) that can materially and sustainably expand markets; and
- (c) The expected NYS clean energy outcomes, including GHG reduction benefits.

NYGB can develop specific products that are targeted to industry participants involved in a particular class or type of clean energy projects, or it can work on a proprietary basis with a single party. While NYGB does pursue individual negotiated transactions as a result of this solicitation, Proposers should again note that the ability to scale or replicate all structures and transactions is critical to achieving NYGB’s mandate to broaden the scope and extent of clean energy financing markets in NYS. This element will be evaluated as part of the criteria detailed in Section 3.0 (Proposal Contents) and Section 4.0 (Proposal Evaluation) and Proposers should describe the ways in which suggested structures and/or projects are likely to occur again over the near term.

As noted earlier, NYGB is structured and operates like other commercial financing entities, and this is reflected throughout its investment process, including due diligence, structuring, negotiating and pricing of transactions in such a manner to preserve NYGB’s capital base and generate market returns. As such, NYGB seeks to serve as both a prudent custodian of ratepayer funds and an agent for greater private investment in the clean energy sector in NYS. Pricing for NYGB investments in any Proposal should reflect market pricing for transactions comparable to that being submitted by the Proposer, including reflecting comparative credit quality, risk and position in the capital structure, and liquidity. NYGB investment terms will be determined by credit risk and exposure assumed by NYGB and other investment participants. For all NYGB products, upfront and ongoing fees generally apply. Although NYGB must be appropriately compensated for the underlying credit risk in all transactions, NYGB will in certain circumstances consider receiving a lower than market liquidity premium if its involvement is expected to provide material benefits to the expansion and future liquidity of the clean energy market.

---

<sup>5</sup> Subject to laws, regulations and administrative actions (e.g., Public Service Commission Orders) describing and/or related to the parameters for deployment of NYGB funds.

NYGB considers various transaction sizes and participation levels, but largely expects its participation in any investment opportunity (whether related to a single asset or project portfolio) to fall within the range of \$5.0 - \$50.0 million.

## 2.3 Eligible Proposers

NYGB seeks Proposals from:

- (a) Private sector financial institutions or other third-party capital providers that finance, or intend to finance, clean energy technologies in NYS; and/or
- (b) Industry participants including developers, energy service companies (“**ESCOs**”), building and facility owner/operators, equipment manufacturers, or others that provide equipment, materials and/or services related to eligible technologies (see [Section 2.1](#)).

Proposers can apply on a standalone basis or as part of a team (a “**Proposal Team**”). A Proposal Team, for example, could consist of a developer/sponsor, lead equipment provider, lead equity and/or debt provider. Proposers should note that irrespective of how a Proposal is submitted (i.e., standalone basis or part of a team), the identification of required Proposal Team constituents, such as non-NYGB capital providers, is necessary for consideration of all Proposals.

Proposers must have directly relevant experience in the transaction/project type being submitted, and the relevant technologies consistent with [Section 2.1 \(Eligible Technologies\)](#).

## 3 Proposal Contents

Each Proposal should address **all** aspects of the categories described in the sub-sections below in a clear and concise manner, even if certain items may appear self-evident. NYGB employs a rigorous evaluation process to determine completeness of all Proposals against the requirements of this RFP, including eligibility and a Proposer’s ability to articulate the fit of the proposed transaction, such that it falls within NYGB’s mandate.

### 3.1 Summary

Proposers should include a summary of the proposed financing arrangement including the parties involved, the role of each party – as well as the desired role for NYGB, the clean energy market segment of focus, the type(s) of project(s) to be financed, and the impact on the development of the private sector clean energy markets. Where a Proposal is submitted by a Proposal Team, please clearly designate the lead organization.

### 3.2 Transaction Credit, Financial, Technical & Risk/Return Considerations

#### 3.2.1 Financing Structure & Proposed Terms

Provide a description of the overall financing structure and describe NYGB’s role and proposed terms and if appropriate, a transaction diagram along with a description of key risks and mitigants relating to the financial exposure proposed to be assumed by NYGB. For all transactions, return expectations, including specific yield expectations (i.e., coupon, expected IRR, etc.), should be provided for NYGB and other market participants, in addition to base case return on investment (“**ROI**”) and internal rate of return (“**IRR**”) at the project level. Where a Proposal seeks NYGB warehouse/aggregation financing, provide the key underwriting criteria and methods that will be used to identify and evaluate the projects expected to form part of the pipeline of investments for the warehouse/aggregation facility. Also, describe the existing pipeline of projects under the Proposer’s control (including current development or acquisition status) together with the origination, marketing plans and timetable to achieve aggregation thresholds and market scale.

If Proposers are presenting a single project investment opportunity to NYGB, a project model, including sources and uses of funds, key assumptions, and financial projections should be provided of a duration at least equal to the requested term of NYGB’s participation. Additionally, Proposers are encouraged to clearly outline the status

and elements of the contracts and arrangements materially affecting the valuation and risk of the project (e.g., power purchase agreement (“PPA”)/lease and/or other revenue agreements, royalty or other similar arrangements, Operation and Maintenance (“O&M”) contracts, technology warranties or other performance guarantees, engineering, procurement and construction (“EPC”) contract(s), shared facilities and/or other key infrastructure, site control, key permits, etc.). If Proposers present a future flow-type transaction structure, include a representative model that details projected cash flows for a typical single asset to be generated under the arrangement, including key assumptions.

Proposers can access NYGB’s latest [RFP No.1 – Indicative Term Sheet](#) containing summary terms and conditions on the RFP Resources page on NYGB’s website, to provide some guidance and information with respect to NYGB’s approach to transactions. While the indicative term sheet provided is for a warehousing/aggregation investment, Proposers of different types of investments may nevertheless find this useful since the bulk of the provisions (e.g., cost and fee structures, representations, warranties, covenants, conditions precedent, events of default, expenses, exclusivity, and confidentiality etc.) are reflective of NYGB’s general approach to these structural elements across its portfolio. The indicative term sheet will be updated from time to time and the most recent version will be available on the RFP Resources page on NYGB’s website.

### **3.2.2 Comparable Transactions**

Include relevant previous market transactions that are directly or indirectly comparable. If there are no specific comparable transactions, provide a description of applicable precedents in other financial sectors where the underlying counterparty credit and/or project risks have been previously underwritten (directly or indirectly) by the private market on a commercial basis.<sup>6</sup> Also, as relevant, provide a summary of loss rates and loss experience on the Proposer’s (or Proposal Team’s) prior comparable projects.

### **3.2.3 Technical Considerations**

Provide a description of the technologies involved in the proposed transaction. Include information about previous applications of the technologies. In addition, describe technical components of the proposed project(s). Identify the parties responsible for the key aspects of project design and installation/construction. Describe the plan or contractual arrangements for O&M, quality control, and warranties. Identify the parties that will bear technology performance risk and briefly describe the key terms of that risk assumption/mitigation.

## **3.3 Contribution to Financial Market Transformation**

Describe the market barrier(s) that would be overcome or managed more effectively through NYGB’s participation. Describe how NYGB’s participation will help facilitate the transaction being done at all, more quickly, or with additional clean energy outcomes that would not otherwise occur without NYGB support. Describe how the financing solutions proposed will contribute to achieving market scale in the applicable clean energy sector.

## **3.4 Expected Clean Energy Outcomes & Ongoing Tracking/Reporting Capability**

The Proposal should address the following areas:

- (a) Mobilization of NYGB capital: ratio of the amount of NYGB’s proposed investment to the amount of total project costs in NYS;
- (b) Magnitude of estimated energy savings and/or clean energy generation resulting from new projects deployed in NYS; and
- (c) Methodology that the Proposer (or designated third party) plans to employ to track, record, and monitor energy-related impacts (e.g., actual savings and/or generation), GHG emissions reductions delivered, customers served, financial products offered (e.g., PPAs, leases, loans, etc.) and clean energy measures supported.

---

<sup>6</sup> NYGB expects to receive Proposals for innovative transaction structures; however, NYGB does not seek to underwrite underlying credit risks for which there is no direct or indirect private market precedent.

Refer to Section 5.2 (Impact Metrics – Estimates, Reporting & Evaluation) for more information about the ongoing reporting and evaluation requirements for all investments closed with NYGB.

### **3.5 Qualifications & Experience; Officers & Staffing**

Briefly summarize the Proposer's (or the Proposal Team's) institutional and individual qualifications and experience to undertake the implementation and financing of the project(s), ideally including summary deal lists. Specify the Proposer's strategy for engaging the target market, when applicable, such as generating demand if a financing structure is designed to fund future yet-to-be-identified projects (e.g., warehousing/aggregation facilities).

### **3.6 Other Financial Support or Incentives & Sponsor Capital**

Identify and briefly describe any federal, NYSEERDA, additional state, utility-based or other incentive(s) that are expected in the proposed financing structure. Also, clearly identify the amount of sponsor capital that is at risk (excluding identified grants and other private capital).

## **4 Proposal Evaluation**

Proposals that meet minimum requirements (see Section 2) and include all applicable Proposal contents (set out in Section 3) will be evaluated by NYGB against the criteria set out below. Proposal contents should address the matters outlined in each of the following sub-sections in reasonable detail.

### **4.1 Evaluation of Transaction Credit, Financial, Technical & Risk/Return Considerations**

Proposals are evaluated with focus on the following key areas:

- (a) Financing structure and NYGB's financing support;
- (b) Creditworthiness (e.g., counterparties, underlying technologies, EPC provider(s), O&M, servicer, etc. as applicable) of the project(s), and the terms of the financing expected to be provided by NYGB:
  - With respect to warehouse/portfolio aggregation Proposals, the proposed credit criteria that would be applied for individual transactions to be accepted into the warehouse;
- (c) Pricing levels on a risk-adjusted basis, including projected ROI and IRR at the project level and specific return expectations for NYGB and other transaction participants;
- (d) Direct or indirect private market comparables (including pricing) as relates to counterparty credit and/or project risks;
- (e) Level of financial commitment of the Proposer(s) and any other parties included in the proposed project;
- (f) Consistency with the principle that NYGB prices its financial products based on usual commercial approaches to credit quality and risk, earning a return of/on investment to both preserve and grow its capital base; and
- (g) Eligibility of technologies involved in the proposed transaction and the technical aspects of the project(s).

### **4.2 Evaluation of Contribution to Financial Market Transformation**

NYGB will evaluate how effectively the financing solutions proposed will contribute to achieving market transformation in the applicable clean energy sector.

### **4.3 Evaluation of Clean Energy Outcomes & Ongoing Tracking/Reporting Capability**

NYGB will consider the number of projects to be financed, expected energy savings (MWh and/or MMBtu),

expected clean energy generation (MWh), expected clean energy installed capacity (MW), expected useful life of proposed technologies, expected total amount of project costs, and economic benefits (such as job creation) in NYS in its evaluation.

In addition, NYGB will evaluate the strength of the plan pursuant to which the Proposer (or designated third-party) will track and record performance data on an ongoing basis, and report that information to NYGB (at a minimum within 30 days after the end of every quarter), in all cases for at least the term of the contract.

#### **4.4 Other Considerations**

Finally, NYGB will also assess the following items:

- (a) Summary and structure of the overall proposal;
- (b) Qualifications and experience of Proposer (or Proposal Team participants);
- (c) Other financial support or incentives and sponsor capital to be included in the financing arrangement;
- (d) Overall fit as it relates to NYGB's portfolio, including, without limitation, contribution to aggregate financial risks and returns, technological diversity and geographic distribution; and
- (e) Attributes of the Proposal including but not limited to cohesiveness, conciseness and clarity of response.

### **5 General Conditions**

#### **5.1 Costs & Expenses**

Once a Proposal has been submitted to NYGB and evaluated as meeting the requirements of this RFP, the proposed transaction will move into NYGB's active pipeline. The borrower/investee and/or sponsor of each transaction in the active pipeline shall pay all reasonable costs and expenses of NYGB associated with the preparation, due diligence, development, and administration of all investment-related documentation (including the fees, disbursements and other charges of outside counsel to NYGB, independent engineers, background investigators, or other consultants, as described in the engagement letter to be executed between sponsor and NYGB), regardless of whether or not the proposed investment is closed. Borrower/investee will also pay third-party fees and expenses incurred by NYGB in connection with the administration, amendment, waiver, modification or enforcement of any of the investment-related documentation.

#### **5.2 Impact Metrics – Estimates, Reporting & Evaluation**

NYGB collects and disseminates project and investment performance data (on an aggregated and anonymized basis) to facilitate improving investor confidence in addition to promoting standardization wherever possible to help drive down transaction costs. As NYGB finalizes and executes documentation for each investment, Proposers will be required to assist NYGB in its efforts to estimate the energy, environmental and economic impact the transaction will deliver in NYS throughout the tenor of the term. This will involve the provision of data collection that supports estimated energy savings or installed capacity assumptions and agreed upon provisions to evaluate the impact the transaction has had on the clean energy finance markets. Some examples of evaluation methodologies may include: technologies deployed, technology performance, site visits, scale of projects, financial performance, access to capital, costs of capital and project costs.

After the transaction is executed, Proposers will be required to deliver impact-related data (e.g., energy, environmental and economic development-related data) as determined by NYGB and the Proposer, to be delivered no less frequently than quarterly (and within 30 days following the end of each calendar quarter), for at least the duration of the agreement. An [Illustrative Quarterly Impact Reporting Template](#) of data as relating to environmental impact can be found on the RFP Resources page on NYGB's website. Data submitted (aggregated and anonymized) will be included in requisite NYGB public or other reports and may be used otherwise in accordance with regulatory requirements to which NYGB is subject.



NYGB will also seek periodic information relating to additional impact data, such as job creation, use of contractors or other transaction counterparties based in New York, or impacts on New York's economy resulting through supply chain development.

### **5.3 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 in this context. NYGB has engaged an independent registered municipal advisor ("IRMA") with the intent of relying (i.e., taking into careful consideration, along with any other information deemed relevant or appropriate) on that IRMA for advice related to any potential transactions (but not bound to follow that advice), and consequently allowing Proposers to qualify for the exemption provided by 17 CFR §240.15Ba1-1(d)(3)(vi) (the "IRMA exemption"). The name and contact information of the IRMA is listed on the NYGB website at [www.greenbank.ny.gov/IRMA](http://www.greenbank.ny.gov/IRMA), and the IRMA is available to respond to any questions a Proposer may have with respect to the IRMA's independence.

### **5.4 Proprietary Information**

Among NYGB's goals is the promotion of standardization of material contract terms and structures, and the collection of project performance data across NYGB transactions. NYGB is keenly aware that commercial markets and their incumbents value non-disclosure extremely highly to protect confidential transaction terms and other competitive information and NYGB remains highly sensitized to usual and customary confidentiality practices. Nevertheless, as a division of NYSERDA, certain State laws specifically apply to NYGB and it is recommended that careful consideration be given before confidential information is submitted to NYGB as part of any Proposal. Review should include whether it is critical for evaluating a Proposal, and whether more general, non-confidential information may be adequate for review purposes.

New York's Freedom of Information Law, Public Officers Law, Article 6, provides for public access to information NYSERDA and its divisions possess. 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 out in 21 NYCRR Part 501. The confidentiality of any information submitted cannot be guaranteed.

### **5.5 Limitation**

This RFP does not commit NYGB to agree to participate in any transaction, proceed to negotiate any terms or definitive documentation, 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 parties, or to cancel in part or in its entirety this RFP when it is in NYGB's best interest.

### **5.6 Disclosure Requirement**

The Proposer shall disclose, for any team member, any indictment for 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 the relevant circumstances. 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 comes to the attention of NYGB or NYSERDA after NYGB has indicated its interest to, or has agreed to enter into or participate in, any transaction NYGB may terminate the agreement and the Proposer may be subject to penalties for violation of any law which may apply in the particular circumstances. Proposers must also disclose

if any team members have ever been disbarred or suspended by any agency of the United States Government or the NYS Department of Labor.