

**Code of Conduct for NYSERDA
Contractors, Consultants, and Vendors
November 2019**

Introduction

The purpose of this Code of Conduct for NYSERDA Contractors, Consultants, and Vendors (“Contractor Code of Conduct”) is to advise the New York State Energy Research and Development Authority’s (“NYSERDA”) many contractors, consultants, and vendors (“Vendors”) on what is expected of them to ensure a business relationship with NYSERDA that is consistent with ethical business practices.

NYSERDA requires its Board Members (in their capacity as NYSERDA Board Members) and employees (including its Officers) to adhere to high ethical standards, and it also requires its many Vendors with whom it does business to adhere to the highest ethical standards.

Towards this end, NYSERDA has established a corporate system of internal controls to ensure that its Board Members and employees perform their official duties consistent with the requirements of the New York State Public Officers Law Code of Ethics and other applicable laws, Executive Orders, rules, regulations, and internal policies of NYSERDA. This internal control system is also intended to encourage and support a fair, open, and honest business relationship among NYSERDA Members, its employees, and its Vendors.

Contractor Conduct

To promote ethical business relationships with NYSERDA, our Vendors are to:

- ❖ furnish all required goods, materials, and services in a manner that is consistent with the underlying terms and conditions of the contract and any applicable program solicitation,
- ❖ submit complete and accurate reports and invoices to NYSERDA and to other related program participants as required,
- ❖ not seek, solicit, demand, or accept any information, verbal or written, from NYSERDA or others involved in NYSERDA efforts that provides an unfair advantage over a competitor,
- ❖ not engage in any activity or course of conduct that restricts open and fair competition on NYSERDA-related programs, projects, or transactions, or that is inconsistent with any law, rule, or regulation,
- ❖ not engage in any course of conduct with NYSERDA Members and employees or others involved in NYSERDA efforts that constitutes a conflict of interest, in fact or in appearance,
- ❖ not offer any gifts or gratuities in excess of nominal value to NYSERDA Members or employees (including special event tickets or other items of value), and
- ❖ not engage in other conduct that violates this Contractor Code of Conduct.

Lobbying

All Vendors are to comply with the Omnibus Lobbying Reform Act of 2005, with respect to NYSERDA solicitations, by contacting only the NYSERDA employees named in the solicitation, during the Restricted Period, as defined and required by such Act. The Vendor is required to ensure compliance with the Act's requirements and must direct every individual or entity retained, employed, designated by, or acting for, or on behalf of, the Vendor to attempt to influence the NYSERDA procurement process, to limit their contacts with NYSERDA concerning specific procurement actions to the NYSERDA designated contact(s) for that procurement.

Advocacy

To ensure appropriate use of public funds, Vendors are to refrain from policy advocacy on behalf of NYSERDA unless explicitly authorized, and in the manner described, under the terms of their Agreement. In performing policy implementation or any other work for or on behalf of NYSERDA, Vendors are to refrain from providing advocacy positions or opinions of their own that could be construed as those of NYSERDA. Any lobbying or influencing activities undertaken by Vendors other than those explicitly contracted for by NYSERDA must be supported by non-NYSERDA funding sources and must not give the appearance of being supported by NYSERDA.

Non-Collusion and Independence of Bid

Vendors are to calculate price(s) contained in their bid or proposal, independently, without collusion, consultation, communication, or agreement with any other competing Vendor for the purpose of restricting competition.

Unless otherwise required by law, the price(s) which a Vendor quotes in its bid or proposal shall not knowingly be disclosed by the Vendor, directly or indirectly, to any other competing Vendor prior to the closing date for bids or proposals. In addition, a Vendor shall not make any attempt to induce any other individual or entity to submit or not to submit a bid or proposal.

Vendor Ethics Program

NYSERDA encourages its Vendors to advance and support ethical business conduct and practices among their respective directors, officers and employees, through the adoption of corporate ethics awareness training programs and written codes of conduct. In addition to considering technical competence and financial ability, NYSERDA may also consider its past experience with a Vendor in this regard, prior to awarding any new contracts or issuing any new purchase orders.

Limits on Gifts to NYSERDA Members and Employees

NYSERDA strongly discourages Vendors from offering or giving anything of value to NYSERDA Members and employees under circumstances which may constitute, or even suggest, impropriety. Section 73(5) of the Public Officers Law expressly prohibits any firm or its agents, either doing or seeking to do business with NYSERDA, from directly or indirectly offering or giving, any gift having more than a nominal value to NYSERDA Members and employees under circumstances in which it:

could be reasonably inferred the gift was intended to influence NYSERDA Members or employees in the performance of their official duties, or

- ❖ could reasonably be expected to influence NYSERDA Members or employees in the performance of their official duties, or
- ❖ was intended as a reward for the NYSERDA that restricts open and fair competition on NYSERDA-related programs, projects, or transactions, or that is
- ❖ inconsistent with any law, rule, or regulation,
- ❖ not engage in any course of conduct with NYSERDA Members and employees or others involved in NYSERDA efforts that constitutes a conflict of interest, in fact or in appearance,
- ❖ not offer any gifts or gratuities in excess of nominal value to NYSERDA Members or employees (including special event tickets or other items of value), and
- ❖ not engage in other conduct that violates this Contractor Code of Conduct.

For purposes of determining compliance with this requirement, all gifts to NYSERDA Members and employees during any 12-month period are aggregated. Also, even if a particular gift would not be more than nominal value, the offering or giving of a gift of any value to NYSERDA Members and employees may be considered inappropriate because the nature of pending matters may give rise to the appearance of impropriety (e.g., gifts given during the contract procurement process). Violations of these limits on gifts may be grounds for immediate contract termination and/or referral for civil action or criminal prosecution.

Employing Relatives of NYSERDA Employees

Vendors may employ relatives of NYSERDA Members and employees, but must notify NYSERDA of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. NYSERDA reserves the right to request that work assignments of a NYSERDA Member's or employee's relative by modified if a conflict of interest, or the appearance thereof, is deemed to exist.

Hiring Former NYSERDA Members and Employees

Vendors may hire former NYSERDA Members and employees. However, as a general rule, under the Public Officers Law, former Members and employees of NYSERDA may neither appear nor 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. Also, former NYSERDA Members and employees are

subject to a "lifetime bar" which prevents them from working on 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.

Harassment and Discrimination

NYSERDA prohibits harassment in the workplace. Harassment based on race, ethnicity, color, creed, sex (including pregnancy), sexual orientation, gender identity, transgender status, familial status, marital status, age, national origin, disability, military status, genetic information or predisposition, domestic violence victim status, known relationship or association with any member of a protected class, or any other basis may violate the law and will not be tolerated. In addition, retaliation against an individual who opposes a discriminatory practice, reports a violation in good faith, or participates in an investigation of such a complaint is also a violation and will not be tolerated.

All vendors must submit an affirmation that they have a sexual harassment policy in place and have trained all employees on this policy.

Reporting Violations

Vendors are to remain alert to and report possible violations of this Contractor Code of Ethics, either by its employees directly or by an inappropriate solicitation by a person acting on behalf of NYSERDA. Vendors must promptly report such potential violations directly to NYSERDA or indirectly by contacting the NYSERDA independent and anonymous fraud and abuse hotline at 1-866-219-1122. Vendors are required to fully cooperate in any investigation of a possible violation.

Questions

Any questions on these guidelines should be directed to the responsible Project Manager, Program Manager or Program Director, the Director of Contract Management, the Internal Control Officer, or the Office of the General Counsel at 518-862-1090.

When in doubt, please seek guidance.