

STANDARD CLAUSES AND REQUIREMENTS FOR SOLICITATIONS

EXHIBIT A

NEW YORK STATE HOUSING FINANCE AGENCY
STATE OF NEW YORK MORTGAGE AGENCY
NEW YORK STATE AFFORDABLE HOUSING CORPORATION
STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY
TOBACCO SETTLEMENT FINANCING CORPORATION
HOUSING TRUST FUND CORPORATION



**Homes and
Community Renewal**

www.nyshcr.org

I. AGENCY AND STATE-MANDATED REQUIREMENTS

1.1 Equal Employment Opportunity

It is the goal of the New York State Housing Finance Agency, Housing Trust Fund Corporation, New York State Affordable Housing Corporation, State of New York Mortgage Agency, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation (individually, “Agency” and collectively, “Agencies”) to award contracts to contractors and vendors that evidence compliance with the laws of the State of New York (“State”) prohibiting discrimination in employment.

1.2 Participation of New York State Business Enterprises and New York State Residents in Contracts

- a. It is the goal of the Agencies to promote the participation of New York State business enterprises and New York State residents in Agency contracts.
- b. For potential bidders located in foreign countries, the Agencies may assign or otherwise transfer offset credits created by Agency contracts, directly or indirectly, to third parties located in the State, in accordance with the written directions of the New York State Commissioner of Economic Development. The Agencies cooperate with the Department of Economic Development in efforts to get foreign countries to recognize offset credits created by Agency contracts and assigned or transferred to third parties located in the State.

1.3 Procurement Lobbying Law

- a. All Offerers/Proposers/Respondents/Bidders (“Offerers”)¹ are required to make a written statement affirming that they understand and will abide by the provisions of the New York State Finance Law (“SFL”) relating to the persons who may be contacted during this Agency solicitation process.
- b. Pursuant to SFL §139-j and §139-k², this Agency solicitation includes and imposes certain restrictions on communications between any Agency and any

¹ “Offerer” means any person or entity that responds to this Agency solicitation. It also means, for purposes of applying the Procurement Lobbying Law, an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts an Agency about an Agency solicitation process during the Restricted Period of such Agency’s solicitation process. The Procurement Lobbying Law applies to solicitations involving estimated annualized expenditures in excess of \$15,000.

² Please click on the following link to view the statutes
<http://ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html> .

Offerer during the solicitation process. These restrictions apply during the period which commences from the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerers intending to result in a procurement contract with any Agency and ends with the final contract award and approval by any Agency (the “Restricted Period”). During the Restricted Period, Offerers are not permitted to make Contacts³ with anyone other than the Agencies’ Designated Contact Officer, unless such communication falls within certain statutory exceptions set forth in SFL §139-j(3)(a).

c. Employees of the Agencies are required to obtain certain information when a Contact is received from an Offerer during the Restricted Period and include it in the procurement record for the contract. In addition, the Agencies are required to make a Determination of Responsibility of the Offerer pursuant to SFL §139-j and §139-k prior to the award of any contract. Certain findings of non-responsibility can result in denial of a contract award, and, in the event of two (2) findings within a four (4) year period, an Offerer will be debarred from obtaining governmental contracts for a four-year period. This Agency solicitation requires Offerers to disclose prior findings of non-responsibility to the Agencies.

1.4 **Non-Collusive Bidding Certification**

This solicitation requires Offerers to affirm, under penalty of perjury, that the prices in its proposal or bid were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, or as to any matter relating to such prices with any other Offerer or any competitor.

1.5 **Vendor Responsibility**

1.5.1 **General Responsibility**

Offerers will at all times during the Contract term and during the proposal evaluation process remain responsible. The Offerer agrees, if requested by the Agency(ies), to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior experience, and organizational and financial capacity.

³ “Contact” means, for purposes of applying the Procurement Lobbying Law, any oral, written, or electronic communication from an Offerer, under circumstances where a reasonable person would infer that the communication was intended to influence any Agency solicitation process.

1.5.2 **Suspension (for Non-Responsibility)**

The Agencies reserve the right to suspend any or all activities under an awarded Contract, at any time, when the Agency(ies) discovers information that calls into question the responsibility of any Offerer or Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Agency(ies) issues a written notice authorizing a resumption of performance under the Contract.

1.5.3 **Termination (for Non-Responsibility)**

Upon written notice to the Contractor, and a reasonable opportunity to be heard by the Agencies, the Contract may be terminated by the Agency(ies), at the Contractor's expense where the Contractor is determined by the Agency(ies) to be non-responsible. In such event, the Agency(ies) may complete the contractual requirements in any manner the Agency(ies) deems advisable and pursue available legal or equitable remedies for breach.

1.6 **Freedom of Information Law**

All information and materials provided in response to this Agency solicitation is subject to disclosure pursuant to the Freedom of Information Law.

1.7 **Reservation of Rights**

- a. The issuance of this Agency solicitation, the submission of a proposal⁴ by any Offerer, and/or the acceptance of such proposal by any Agency, does not obligate the Agencies in any manner whatsoever. Legal obligations will only arise upon execution of a formal contract by any Agency and the selected Offerer.
- b. The Agencies reserve the right to:
 - (i) amend, modify, or withdraw this solicitation;
 - (ii) revise any requirements of this solicitation;
 - (iii) require supplemental statements or information from any Offerer;
 - (iv) accept or reject any or all proposals;
 - (v) extend the deadline for submission of proposals;

⁴ The term "proposal" means any bid, quotation, offer, or response to this solicitation.

- (vi) negotiate or hold discussions with any Offerer and correct deficient proposals that do not completely conform to the instructions contained herein;
- (vii) cancel or reissue this solicitation, in whole or in part, if any Agency deems it in its best interest to do so;
- (viii) hold a pre-bid conference with all Offerers, to answer questions and provide applicable information as necessary;
- (ix) accept a proposal and any subsequent proposal for the contract award from someone other than the lowest cost Offerer consistent with the criteria for the evaluation of proposals;
- (x) make an award in whole or in part;
- (xi) disqualify any Offerer whose conduct and/or proposal fails to conform to the requirements of this solicitation;
- (xii) seek clarification and revisions of proposals;
- (xiii) change any of the solicitation's scheduled dates;
- (xiv) utilize any and all ideas submitted in the proposals received;
- (xv) request best and final offers;
- (xvi) require clarification at any time during the procurement process and correction of arithmetic or other apparent errors to assure a full and complete understanding of a proposal or to determine an Offerer's compliance with the requirements of the solicitation;
- (xvii) re-issue this solicitation, or a similar version, annually or as needed to solicit additional proposals;
- (xviii) interview an Offerer prior to selection; and
- (xix) waive any requirements that are not material.

The Agencies may exercise the foregoing rights at any time without notice and without liability to any Offerer or any other party for expenses incurred in connection with the proposals. All proposals and submissions will be made at the sole cost and expense of the Offerer.

- c. This Agency solicitation and any agreement which may result from it are subject to all applicable laws, rules, and regulations promulgated by any federal, state, or local authority having jurisdiction over the subject matter hereof, as the same may be amended from time to time.
- d. The Agencies shall be the sole judge of whether a proposal complies with the requirements of this solicitation and the merits of such proposal. This solicitation does not commit the Agencies to select a contract awardee, or to procure or contract for the services described herein.
- e. Nothing stated at any time by any representative of the Agencies will effect a change in, or constitute an addition to, this solicitation unless confirmed in writing by the Agencies.

- f. Offerers responding hereto must agree to keep confidential their proposals and any information received from the Agencies.
- g. Any selected Offerer will be required to execute a contract prescribed by the Agencies, and to abide by all relevant laws and policies of the Agencies with regard to, among other things, conflicts of interest, ethics, lobbying law directives, minority and/or women owned business enterprise participation requirements, equal employment opportunity programs, etc.
- h. The Agencies believe the information set forth in this solicitation is accurate. However, the Agencies, their Directors and/or Members, Officers, agents and employees assume no responsibility for errors and omissions contained therein.
- i. Under no circumstances (including withdrawal of this Agency solicitation before or after proposals are received) will any Offerer have any recourse against the State of New York or any Agency, their Directors, Members, Officers, agents or employees for any expenses incurred or damages sustained as a result of this Agency solicitation process.
- j. The Agencies reserve the right to select qualified proposals for further review and negotiation. Further negotiation may include, but shall not be limited to, bid amounts for contract award on the basis of a formal evaluation of the characteristics, quality and cost of such proposals.
- k. The Agencies reserve the right to make one or more awards based on the proposals that the Agencies deem best in their sole discretion.
- l. Offerers shall not make public announcements or issue news releases pertaining to selection or contract execution without prior written consent of the Agencies.
- m. Any contract subject to approval by an Agency's Board will be awarded only after approval by the Board of the Agency issuing this solicitation.

1.8 **Grounds for Disqualification**

A proposal may be rejected at any time during the evaluation process and at any point thereafter if there are any adverse findings that would prevent any Agency from selecting the Offerer or any person or entity associated or partnering with the Offerer. Such adverse findings include, but are not limited to:

- a. Negative findings from the New York State Inspector General, a federal Inspector General, the U.S. Government Accountability Office, or an Inspector General in another state;

- b. Pending or unresolved legal action from the U.S. Attorney General or from an attorney general in New York or another state;
- c. Pending litigation with New York State or any other state, or a municipality located in New York or another state;
- d. Arson conviction or pending case;
- e. Harassment conviction or pending case;
- f. Federal, state, local, or private mortgage arrears, default, or foreclosure proceedings;
- g. In rem foreclosure;
- h. Sale of tax lien or substantial tax arrears;
- i. Fair housing violation or current litigation;
- j. Defaults under any Federal, State or locally sponsored program;
- k. A record of substantial building code violations or litigation against properties owned and/or managed by the Offerer or by any entity or individual that comprises the Offerer;
- l. Past or pending voluntary or involuntary bankruptcy proceeding;
- m. Conviction for fraud, bribery, or grand larceny;
- n. Listing on Federal or State excluded parties lists; and
- o. Allegations or findings of plagiarism in research activity, and/or theft of intellectual property.

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