



NEW YORK STATE
**OLYMPIC REGIONAL
DEVELOPMENT AUTHORITY**

Request for Qualifications (RFQ)
for
ELECTRICITY SUPPLIERS

RFQ Release Date: October 3, 2022

RFQ Submissions Due: October 25, 2022, 2:00 PM

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Section 1. Definitions

In addition to the terms capitalized and defined in the body of this RFQ, the following terms are defined as set forth below.

- 1.1 **Request for Qualifications or RFQ** – this Request for Qualifications.
- 1.2 **ORDA** – the New York State Olympic Regional Development Authority.
- 1.3 **Offeror or offerer or bidder** – any person, partnership, firm, corporation or other authorized entity making a submission to ORDA pursuant to this RFQ.

Section 2. ORDA Mission and Venues

The mission of the New York State Olympic Regional Development Authority (ORDA) is to promote the history and heritage of the Olympic Venues, be responsible stewards of our valuable Adirondack and Catskill Parks natural resources, and contribute positively to the success of our region and local communities by providing world class recreational, competition, and training facilities for athletes and guests from the local area, New York State, the rest of the United States and around the world.

ORDA has multiple venues located in Essex, Ulster and Warren Counties consisting of Belleayre Mountain, Gore Mountain, Lake Placid Olympic Center, Olympic Jumping Complex, Olympic Sports Complex at Mt. Van Hoevenberg, and Whiteface Mountain.

Section 3. Overview

ORDA is issuing this RFQ to pre-qualify suppliers of electricity supply and/or renewable energy credits for a subsequent bid solicitation. Through this pre-qualification process, ORDA seeks to understand the current industry best practices and supplier capabilities in the procurement of electricity supply and renewable energy credits/certificates (RECs) and the ability of suppliers to provide services that meet ORDA's needs. The information received from suppliers in response to this RFQ will serve as a platform for reaction and discussion with the supplier community and be used to issue a Request for Proposals (RFP) for the procurement of electric supply and/or RECs to qualified suppliers. This issuance does not constitute a commitment to issue a bid, or award a contract, or to pay any costs incurred in preparation of a response to this RFQ.

ORDA operates three ski areas in the State of New York (Belleayre Mountain, Gore Mountain, and Whiteface Mountain) with a total approximate annual load of 27,000,000 kWh. Belleayre Mountain is located in Highmount, New York, and is within the service territory of New York State Electric and Gas Company (NYSEG). Gore Mountain is located in North Creek, New York, and is within the service territory of National Grid. Whiteface Mountain is located in Wilmington, New York, and is within the service territory of NYSEG. Attached hereto as Schedule A is the three fiscal year history of usage at each ski area.

As a New York State Public Authority, ORDA is committed to achieving New York State's renewable energy and greenhouse gas emissions reductions goals codified in the Climate Leadership and Community Protection Act, which requires that 70% of the State's electricity come from renewable energy by 2030 and 100% of the State's electricity supply be emissions free by

2040. In addition to these statewide targets, ORDA has a goal to source at least 50% of its electricity supply from clean resources, which may include procurement of RECs or Zero Emissions Credits (ZECs). ORDA seeks information in furtherance of that goal, including the availability of RECs and ZECs. ORDA also seeks information regarding a supplier's ability to offer demand response, energy efficiency, and eligible clean energy programs authorized by the New York State Public Service Commission.

Section 4. Registered Bidders, RFQ Timetable, & Submission of Response to RFQ

4.1 Registered Bidders

To become a registered bidder the following information shall be submitted to the designated contact: Organizational Name and Mailing Address, Primary and Secondary Contact Names, Phone Numbers and Email Addresses. (Secondary Contact is MANDATORY). **Only registered bidders shall be allowed to make a submission in response to this RFQ.**

4.2 RFQ Timetable

The following timetable is established for this RFQ and is subject to change. ORDA may extend the due date for submissions by issuance of published addenda to this RFQ. Prior to making a submission, bidders should check the NY State Contract Reporter website (<https://www.nyscr.ny.gov>) or ORDA's website (<https://orda.org/do-business/>) to confirm the issuance of any addenda relating to this RFQ schedule.

Issuance of Request for Qualifications:	October 3, 2022
Deadline for Submission of Bidder Questions:	October 12, 2022 @ 4:00 PM ET
Issuance of Responses to Bidder Questions:	October 18, 2022
Submission Due Date:	October 25, 2022 @ 2:00 PM ET

4.3 Submission of Responses to RFQ

Only submissions from bidders who furnish all required information and meet the mandatory requirements as set forth in Articles 6 and 7 below will be considered. Submissions must be received at the below e-mail addresses on or before 2:00 PM ET on the date indicated in Section 4.2. The received time of submissions will be determined by ORDA. Submit all required documents to ORDA **via e-mail** to all of the following:

Edward Kowalewski, Jr. at ekowalewski@orda.org

Tanya Lee-Anderson Dube at anderson@usourceenergy.com

Tom Dyer at dvert@usourceenergy.com

ORDA cannot be held responsible for e-mails that are not received. Bidders should take appropriate actions to confirm that their submission has been received.

LATE SUBMISSIONS MAY BE REJECTED

Any submission received after the established time will be considered a Late Submission. A Late Submission may be rejected and disqualified from consideration. Notwithstanding the foregoing, a Late Submission may be accepted in ORDA's sole discretion where (i) no timely submission meeting the requirements of this RFQ are received, or (ii) the bidder has demonstrated to the satisfaction of ORDA that the Late Submission was caused solely by factors outside the control of the bidder. However, in no event will ORDA be under any obligation to accept a Late Submission. The basis for any determination to accept a Late Submission shall be documented in the procurement record.

OWNERSHIP OF RFQ AND BIDS

This RFQ remains the property of ORDA at all times, and all submission in response to this RFQ, once delivered, become the property of ORDA.

Section 5. Designated Contact, RFQ Questions and Clarifications, & Submission Exceptions**5.1 Designated Contact**

Important guidelines regarding communications during this procurement are included as part of ORDA Procurement Requirements/Certifications (Attachment C). Interested parties are advised to be familiar with these guidelines before contacting ORDA, as prohibited contact or communication may result in disqualification from participation in this RFQ. The following individual is the **ONLY** Designated Contact for this RFQ process.

Designated Contact: Tanya Lee-Anderson Dube

E-mail: andersont@usourceenergy.com

5.2 RFQ Questions & Clarifications

All questions regarding this RFQ, including questions regarding the minimum qualifications and specifications, should be emailed to Tanya Lee-Anderson Dube at andersont@usourceenergy.com by the date and time indicated in Section 4.2. Questions submitted after the deadline indicated may not be answered. A bidder is strongly encouraged to submit questions as soon as possible. ORDA will provide written responses to all questions of a substantive nature in the form of one or more addendum to this RFQ, which shall be published on the NY State Contract Reporter website (<https://www.nyscr.ny.gov/>) and on ORDA's website (<https://orda.org/do-business/>), and which shall be emailed to all Registered Bidders.

If a bidder intends to make a submission that deviates from the requirements of the RFQ in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to making a submission. See Section 5.3 Submission Exceptions for additional information.

5.3 Submission Exceptions

ORDA will consider all requests to waive any submission requirement. However, bidders should be aware that failure to obtain a waiver of any submission requirement in advance of making a submission could result in rejection of bidder's submission and disqualification from the subsequent bidding process. Bidders wishing to obtain an exemption or waiver for any part of this solicitation must request such in writing as described in Section 5.2. The request must cite the specific section and requirement in the question, and clearly identify any proposed alternative. Requests will be considered and responded to and posted in the form of a question and answer document released through an addendum. Please note that ORDA will not consider waivers or exemptions to any provision of ORDA Standard Contract Terms (Attachment D).

All other inquiries and requests for information regarding this RFQ must be made in writing and e-mailed to ORDA at the addresses listed in Section 5.1 above. Individual responses will not be provided. ORDA will provide written responses to questions in the form of one or more addendum to this RFQ, which shall be published on the NY State Contract Reporter website (<https://www.nyscr.ny.gov/>) and on ORDA's website (<https://orda.org/do-business/>), and which shall be emailed to all Registered Bidders. Such official addenda are the only authorized method used to communicate substantive information, including the clarification or modification of the timeline, any terms, or other requirements of this RFQ. Only questions answered by formal written addendum will be binding. Oral and other interpretations or clarification will be without legal effect.

Section 6. Qualifications of Suppliers

6.1 Minimum Qualifications

Prospective suppliers must be equipped to provide the services indicated above and meet the minimum qualifications listed below. A prospective supplier shall submit the information listed below to provide satisfactory evidence that it has the adequate resources, experience, and organizational capacity to perform the type, magnitude, and quality of specified services. A prospective supplier is advised that ORDA's intent in having these requirements is to ensure that only qualified and reliable bidders are invited to submit a price bid in response to the subsequent Request For Proposals (RFP). Prospective suppliers must meet the following minimum qualifications:

- a. Supplier must be an Energy Service Company (ESCO) registered and in good standing with the New York State Public Service Commission; and
- b. Supplier must be in compliance with all Uniform Business Practices (UBP) applicable to ESCOs.

6.2 Supplier Selection Criteria

Suppliers who meet the minimum qualifications and all requirements of this RFQ will be invited to provide price bids in response to a subsequently issued RFP for energy supply and/or RECs for

the individual ski areas. Price bids will be requested on a specified date and time, within the time period identified in the RFP. Qualified suppliers will be expected to provide itemized price bids that include, as separate line-items:

- a. Fully-fixed and/or variable price supply contracts with terms of six (6) months, one (1) year, eighteen (18) months, and two (2) years;
- b. The REC price, if applicable;
- c. Any pass-through charges, costs, brokerage fees, or credits for Transmission Owner Transmission Solutions (TOTS), RECs, ZECs, capacity costs, and any other charges authorized by the New York State Public Service Commission under Cases 03-E-0188, 14-M-0101, 15-E-0302, 18-E-0071, and any successor proceedings;
- d. Early termination fees, if applicable; and
- e. Renewal pricing, if applicable.

Suppliers will be evaluated based on their creditworthiness, experience, ability, and price terms. Any contract awarded under a subsequent RFP will be made on the basis of best value to ORDA and the State of New York, which may include non-cost based factors, including scope of services and contract terms. The selected supplier will be expected to execute a contract on the same day that notice is sent that their price bid has been selected under the RFP. The contract shall conform to the Supply Agreement provided in response to this RFQ, as amended by ORDA Standard Contract Terms (Attachment D).

Section 7. Contents of Submissions

7.1 Supplier Information Form

Suppliers must answer the questions and respond to each item set forth in the Supplier Information Form (Attachment B) and provide all documents requested therein.

7.2 ORDA Procurement Requirements/Certifications

Suppliers must complete and sign ORDA Procurement Requirements/Certifications (Attachment C) and provide all documents requested therein.

7.3 Content of Submissions

A complete submission must include the following:

- a. Supplier Information Form (Attachment B);
- b. ORDA Procurement Requirements/Certifications (Attachment C); and
- c. All documents and items required by a. and b. above.

7.4 Additional Information to Furnish with Submission

Bidder may also submit circulars, brochures, marketing materials and other materials.

Section 8. Modification/Withdrawal/Rejection of Submissions

A submission may be modified or withdrawn any time prior to the time specified for receipt of submissions. The modification or withdrawal of a submission must be in writing on the bidder's letterhead, dated, and signed by the signatory to the original submission. The modification or withdrawal must be submitted in a sealed envelope clearly marked "Modification [or Withdrawal] of ORDA Electricity Suppliers RPQ Submitted by [bidder]."

Section 9. Contract Clauses and Requirements

9.1 ORDA Standard Contract Terms and Order of Preference

ORDA Standard Contract Terms, attached hereto as Attachment D, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein. Attachment D is a separate document to this RFQ and shall be retained for reference by the bidder.

A supply agreement resulting from a successful award will include the following documents. Conflicts between these documents will be resolved in the following descending order of precedence:

1. ORDA Standard Contract Terms
2. Supply Agreement

All bidders are responsible for reviewing and understanding ORDA Procurement Requirements/Certifications (Attachment C).

9.2 General Requirements

- a. The bidder agrees to adhere to all State and Federal laws and regulations in connection with this RFQ and any contract resulting from a subsequent RFP; and
- b. The bidder agrees that any contract resulting from a subsequent RFP may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of ORDA.

9.3. Procurement Rights

ORDA reserves the right to the following if, in its judgment, the best interests of New York State will be served by doing so.

- a. Reject any or all submissions received in response to the RFQ;
- b. Postpone or withdraw the RFQ at any time;
- c. Disqualify any bidder whose conduct and/or submission fails to conform to the requirements of the RFQ;
- d. Seek clarifications of and/or revisions to a submission;
- e. Amend the RFQ prior to the submission due date to correct errors or oversights, or to supply additional information as it becomes available;
- f. Direct bidders, prior to the submission due date, to submit submission modifications addressing subsequent RFQ amendments;

- g. Change any of the schedule dates with notification through the NYS Contract Reporter;
- h. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective bidders;
- i. Waive any requirements that are not material;
- j. Utilize any and all ideas submitted in the submissions received;
- k. Adopt all or any part of a bidder's submissions in selecting the optimum configuration;
- l. Negotiate with a bidder within the RFQ requirements to serve the best interests of ORDA, including requesting clarifications of any or all submissions;
- m. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a bidder's submission and/or to determine a bidder's compliance with the requirements of the RFQ; and/or
- n. Accept and consider for contract award submissions with non-material bid deviations or non-material bid defects such as errors, technicalities, irregularities, or omissions.

Please Note: ORDA is not liable for any cost incurred by a bidder in the preparation and production of a submission.

9.4 Debriefings

Any unsuccessful bidder may request a debriefing regarding the reasons that the submission submitted by the bidder did not qualify the bidder for inclusion in a subsequent RFP. Requests for a debriefing must be made within fifteen (15) calendar days of notification by ORDA that the submission submitted by the bidder did not qualify the bidder for inclusion in a subsequent RFP. Requests should be submitted in writing to the Designated Contact identified in this RFQ.

Section 10. Attachments

Bidder's attention is directed to the appendices, exhibits and attachments hereto and hereby incorporated by reference and made part hereto as fully as if it were set forth at length herein. They are part of this solicitation and will be part of the subsequent contract. The bidder is responsible for adhering to all requirements of all appendices, exhibits and attachments. The following Attachments are attached to and made a part of this RFQ.

- A. Three Fiscal Year Historical Electricity Usage by Ski Area
- B. Supplier Information Form
- C. ORDA Procurement Requirements/Certifications
- D. ORDA Standard Contract Terms

Attachment A

**Three Fiscal Year Historical Electricity Usage by Ski Area
Fiscal Year is April 1 through March 31**

Ski Area	2021-2022 Usage (kWh)	2020-2021 Usage (kWh)	2019-2020 Usage (kWh)
Belleayre Mountain	7,548,689	6,298,782	6,996,686
Gore Mountain	14,000,293	13,518,829	13,582,876
Whiteface Mountain	12,490,285	12,861,545	13,160,673

#	Supplier Questions
Answer 5	
Question 6	Do you have experience serving New York based clients? If so, please provide detail.
Answer 6	
Question 7	Do you have experience serving ski resorts? If so, please provide detail.
Answer 7	
Question 8	Are you able to offer fully-fixed and/or variable price electric supply to ski areas? If variable price, how is the price determined?
Answer 8	
Question 9	Are there any bandwidth or capacity restrictions to fully-fixed or variable price electric supply to ski areas?
Answer 9	
Question 10	Are you able to offer utility consolidated billing behind National Grid and NYSEG?
Answer 10	
Question 11	Are you able to offer at least 50% renewable energy that is Certified Green E?
Answer 11	
Question 12	Are you able to supply all three ski areas? In not, which areas are you able to supply?
Answer 12	
Question 13	Have you completed and attached Attachment C?
Answer 13	
Question 14	Is there anything else you would like ORDA to consider?
Answer 14	

Printed Name

Signature

Title

Company

Date

Attachment C

OLYMPIC REGIONAL DEVELOPMENT AUTHORITY

Procurement Requirements/Certifications

- ORDA Discrimination and Sexual Harassment Policy**
- Certificate of Non-Collusion**
- Code of Business Ethics Certification**
- Freedom of Information Law Certification**
- Offerer's Affirmation of Understanding of, and Agreement Pursuant to, State Finance Law §139-j(3) & §139-j(6)(b) (Procurement Lobbying)**
- Bidder Responsibility Certification**
- Offerer's Disclosure of Prior Non-Responsibility Determinations**
- State Finance Law § 139-l and Executive Order No. 177 Certifications**
- Encouraging Use of New York State Businesses in Contract Performance**
- Certification Under Executive Order No. 16 (Prohibiting Contracting with Businesses Conducting Business in Russia)**

ORDA Discrimination and Sexual Harassment Policy

It is the policy of the Olympic Regional Development Authority to provide and maintain a working environment free of sexual and/or any other illegal harassment, discrimination, and/or intimidation of any employee, job applicant, or non-employee. We do not accept or condone illegal discriminatory actions nor actions of sexual harassment by management or any employee of ORDA, or by non-employees.

Discrimination and sexual harassment are illegal under Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), and the New York State Human Rights Law, as amended (“Human Rights Law”).

The Human Rights Law applies to all State agencies and employees, and provides very broad anti-discrimination coverage. The Law provides, in section 296.1(a), that it is an unlawful discriminatory practice “[f]or an employer or licensing agency, because of the age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status or domestic violence victim status of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.” The Law further provides, in sections 296.15 and 296.16, protections from employment discrimination for persons with prior conviction records, or prior arrests, youthful offender adjudications or sealed records.

ORDA will not tolerate any discriminatory and/or harassment of its employees which is in violation of either Title VII and/or the Human Rights Law, and will take affirmative steps to stop it. All personnel actions and conditions of employment are administered without regard to race, color, religion, national origin, age, sex, disability, veteran status or sexual preference, and any other protected class under Title VII and/or the Human Rights Law as they may be amended from time to time. Furthermore, Sexual harassment in any form is prohibited and will not be tolerated. Anyone who engages in illegal discrimination/ harassment, or sexual harassment will be subject to discipline up to and including discharge. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other conduct, either verbal or physical, of a sexual nature that is offensive to another individual.

You have the right to make a complaint if you feel you have been discriminated against, harassed, or sexually harassed. A complaint form may be obtained from the Human Resource Department. Directions on how to file a complaint and who to submit it to are contained on the form itself. An immediate investigation of the allegations will be conducted, and corrective action taken where warranted. To the extent possible, this investigation will be conducted in a confidential manner that protects the identity of both the person filing the complaint and the person accused.

If it is determined that an employee is guilty of harassing another employee, or non- employee, appropriate disciplinary action will be taken against the offending person.

ORDA prohibits any form of retaliation against any contractors or employee who files a bona fide complaint or witnesses assisting in an investigation.

You may request further information about the policy and procedure for investigating claims of sexual harassment and/or discrimination from the Human Resource Department.

I have read the foregoing and agree to comply with the ORDA's Discrimination and Sexual Harassment Policy. I further acknowledge that failure to comply shall justify contract termination by ORDA and may result in the rejection of bids or proposals for future work with ORDA.

Printed Name

Signature

Title

Company

Date

Certificate of Non-Collusion

The undersigned recognizes that all information and material provided with this proposal and all other information and material submitted by the undersigned in connection with its proposal are submitted for the express purpose of inducing the New York State Olympic Regional Development Authority (ORDA) to award a contract to the undersigned; acknowledges that ORDA, the State of New York (State), and the State's agencies and instrumentalities may, each in its sole and absolute discretion, by any means which it may choose, determine the truth and accuracy of all statements made therein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law §210.40 or a misdemeanor under Penal Law §210.35 or §210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 U.S.C. §1001; and states that the information submitted is true, accurate and complete.

By submission of this statement of interest, bidder and each person signing on behalf of bidder certifies, and in the case of a joint proposal each party thereto certifies as to his or her own organization under penalty of perjury, that to the best of his or her knowledge and belief:

- (1) The prices, amounts and material in this proposal have been arrived at independently, without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices, amounts and materials with any other Respondent or with any competitor;
- (2) Unless otherwise required by law, the prices, amounts and material that have been quoted in this statement of interest or subsequent proposal have not been/will not be knowingly disclosed by bidder and will not knowingly be disclosed by bidder prior to award, directly or indirectly, to any other Respondent or to any competitor, and
- (3) No attempt has been made or will be made by bidder to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

Bidder hereby authorizes ORDA and the State and their agents and instrumentalities to contact bidder's bank(s) and credit references and any other persons identified in its submission, including without limiting the foregoing, all persons and entities identified in its Information Regarding Qualifications and Financial Capability form and any financial information, in connection with the proposal, and any and all other persons identified in any investigation conducted by or on behalf of the State, and obtain release of pertinent financial and other information, as well as to obtain verification of information provided by or on behalf of bidder.

By signing, you certify under penalty of perjury your express authority to sign on behalf of yourself, your company or other entity with full knowledge and acceptance of the above certifications and that all information provided is complete, true and accurate.

Printed Name

Signature

Title

Company

Date

Code of Business Ethics Certification

A. Ethics Programs

1. The Olympic Regional Development Authority (the “Authority”), a public-benefit corporation, expects the highest degree of ethical business conduct by its employees and the many contractors, consultants and vendors with whom it interacts on behalf of its clients, bondholders and the people of the State of New York. The Authority, by mandate of its Board of Directors, administers a comprehensive corporate integrity program to ensure that, as public officers, Authority employees at all levels perform their official duties consistent with the requirements of the New York State Public Officers Law; other applicable laws, rules, and regulations; and policies of the Authority.
2. The Authority encourages and supports a fair, open and honest business relationship with its contractors, consultants and vendors based on quality, service and cost. Moreover, the Authority believes that a “level playing field” in the marketplace can only be achieved through adherence to ethical business practices by all participants involved in the process.
3. To promote a working relationship with the Authority based on ethical business practices, contractors, consultants and vendors are expected to:
 - a. furnish all goods, materials and services to the Authority as contractually required and specified;
 - b. submit complete and accurate reports to the Authority and its representatives as required;
 - c. not seek, solicit, demand or accept any information, verbal or written, from the Authority or its representatives that provides an unfair advantage over a competitor;
 - d. not engage in any activity or course of conduct that restricts open and fair competition on Authority-related projects and transactions;
 - e. not engage in any course of conduct with Authority employees or representatives that constitutes a conflict of interest or creates the appearance of a conflict of interest;
 - f. not offer any unlawful gifts or gratuities to Authority employees or representatives, or engage in bribery or other criminal activity; and
 - g. report to the Authority any activity by an Authority employee or contractor, consultant or vendor of the Authority that is inconsistent with the Authority’s Code of Business Ethics.
4. The Authority encourages its contractors, consultants and vendors to advance and support ethical business conduct and practices among their respective directors, officers and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct. In addition to considering technical competence and financial stability, the Authority will consider the corporate integrity of all contractors, consultants and vendors prior to the awarding of contracts or issuing of purchase orders.

B. Conduct of Authority Employees

Authority employees are expected to conduct business with contractors, consultants and vendors in a fair, consistent and professional manner. The Authority's Code of Business Ethics and Employee Conduct entitled Serving Responsibly, and other Authority policies and procedures, guide the manner in which Authority employees are required to interact with contractors, consultants and vendors. Additionally, the New York State Public Officers Law sets forth legal parameters within which Authority employees must perform their official duties with respect to, among other things, conflicts of interest and the acceptance of gifts.

C. Limits on Gifts to Authority Employees

1. Pursuant to Section 73(5) of the Public Officers Law, no person shall offer any gift having more than a nominal value to an Authority employee under circumstances in which it:

- a. could be reasonably inferred the gift was intended to influence the employee in the performance of his or her official duties; or
- b. could reasonably be expected to influence the employee in the performance of his or her official duties; or
- c. was intended as a reward for any official action on the part of the employee.

2. A gift is anything more than nominal in value, in any form, given to an Authority employee. Gifts include, but are not limited to, money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise. Any firm or its agents, either doing business or seeking to do business with the Authority (contractors, consultants, vendors, etc.), is prohibited from directly or indirectly offering or giving any gifts, even gifts of nominal value, to Authority employees as such gifts are deemed to be per se improper.

3. As is stated in the Prohibited Interests section of the Construction and Consultant Contract documents, violations of these gift provisions may be grounds for immediate contract termination and/or referral for civil action or criminal prosecution.

D. Employing Relatives of Authority Employees

Although contractors, consultants and vendors may employ relatives of Authority employees, the Authority must be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. The Authority reserves the right to request that contractors, consultants and vendors modify the work assignment of an Authority employee's relative where a conflict of interest, or the appearance thereof, is deemed to exist. Please be advised that Authority employees are required to disclose information regarding the hiring of relatives by contractors, consultants and vendors and recuse themselves from matters that may present a conflict of interest. For purposes of this document, the term "relatives" refers to spouses, domestic partners, parents, children, sisters, brothers, sisters-in-law, brothers-in-law, parents-in-law, sons/daughters-in-law, stepparents, stepchildren, aunts, uncles, nieces, nephews, first cousins, grandparents by blood relationship or by marriage, or persons residing in the same household.

E. Hiring Former Authority Employees

Contractors, consultants and vendors may hire former Authority employees. However, as a general rule, former employees of the Authority may neither appear nor practice before the Authority, nor receive compensation for services rendered on a matter before the Authority, for a period of two years following their separation from Authority service. In addition, former Authority employees are subject to a “lifetime bar” from appearing before the 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 the Authority. Violations will be referred to the New York State Commission on Public Integrity for appropriate action.

F. Certification

I have read the foregoing and agree to comply with the Authority’s Code of Business Ethics. I further acknowledge that failure to comply shall justify contract termination by the Authority and may result in the rejection of bids or proposals for future work with the Authority.

Printed Name

Signature

Title

Company

Date

Freedom of Information Law Certification

The New York State Olympic Regional Development Authority (ORDA) is subject to the Freedom of Information Law (FOIL), which governs the process for the public disclosure of certain records maintained by ORDA (NY State Public Officers Law, Article 6 and regulations adopted pursuant thereto). In keeping with all submissions to ORDA, proposals and/or subsequent stages are subject to the FOIL process and accessible as public domain unless bidder secures an exemption.

Regarding exemption, bidders that submit materials to ORDA in response to this RFP may request that ORDA exclude all or part of such material from public disclosure pursuant to Section 87(2) (d) of the Public Officers Law, on the grounds that the material contains trade secrets, proprietary information, or that the information, if disclosed, would cause substantial injury to the competitive position of the individual or firm submitting the information. Such exception may extend to information contained in the request itself if public disclosure would defeat the purpose for which the exception is sought. To ensure consideration of an exemption request, the request should be written, placed on the final page of the submitted proposal, and state in detail the specific reasons for the requested exception. It must also clearly specify the specific material submitted, or portions thereof, for which the exception is requested. If ORDA grants the request for exception from disclosure, ORDA shall keep such material or portion thereof in a secure place.

If any bidder submits information which it believes to be a trade secret or otherwise exempt from disclosure under FOIL, it must specifically identify such information and state in writing the reasons why the information should be exempt from disclosure. Notwithstanding the foregoing, the State of New York and ORDA shall not be liable if either releases information, whether or not pursuant to FOIL, which bidder believes to be a trade secret or detrimental to its business.

The undersigned does hereby affirm on behalf of the bidder that it understands and agrees to the foregoing.

Printed Name

Signature

Title

Company

Date

**Offerer's Affirmation of Understanding of, and Agreement
Pursuant to, State Finance Law §§ 139-j & §139-k
(Procurement Lobbying)**

A complete copy of the Procurement Lobbying Guidelines of the New York State Olympic Regional Development Authority is available for review at www.orda.org/xx/.

The undersigned hereby affirms on behalf of the offerer that it has reviewed and understands the Procurement Lobbying Guidelines of the New York State Olympic Regional Development Authority relating to State Finance Law §§ 139-j and 139-k, and agrees to comply with said Guidelines.

Printed Name

Signature

Title

Company

Date

Bidder Responsibility Certification

- 1.1. Under New York State procurement policies, a “responsible vendor” is one that has the capacity to fully perform its contractual obligations, and the integrity to justify the award of public dollars. New York State Finance Law dictates that state agencies and authorities take reasonable steps to ensure that public contracts are awarded to bidders that are responsive and responsible, including the capability to meet bid requirements and fully perform contractual obligations, and possessing the integrity to justify the award of public dollars. In short, businesses must demonstrate their vendor responsibility prior to the award of the contract. Prior to entering into contracts, New York State agencies and authorities must formally make a “responsibility determination” that is based upon a financial, legal, integrity, and past performance (“FLIP”) review of a prospective vendor. The FLIP review involves assessments of a company’s:
 - Financial and organizational capacity;
 - Legal authority to do business with the State of New York;
 - Integrity of the owners, officers, principals, members and/or contract managers; and
 - Past performance of the bidder on prior government contracts.
- 1.2. The selected company under this procurement must demonstrate its responsibility as a vendor and must maintain responsibility throughout the term of the agreement.
- 1.3. Each apparent successful bidder will be required to submit form AC 3290-S - New York State Vendor Responsibility Questionnaire For-Profit Business prior to contract award. Submission of this form will assist ORDA in determining the responsibility and reliability of the bidder.

ORDA recommends that vendors file the required AC 3290-S form online via the New York State VendRep System. Use of this system requires that the vendor have a New York State Vendor Identification Number (Vendor ID). Please note that the Vendor ID is not the Taxpayer ID number.

If bidders do not already have a Vendor ID, they are encouraged to obtain one *in advance of* the bid opening.

To obtain a Vendor ID, contact the OSC Help Desk at 866-370-4672 or 518-408-4672, or by e-mail at ITServiceDesk@osc.state.ny.us.

To enroll in and use the VendRep System, see the **VendRep System** page at:

http://www.osc.state.ny.us/vendrep/info_vrsystem.htm

If you already have a User ID and password, go directly to the VendRep System online at:

<https://portal.osc.state.ny.us>.

For direct VendRep System user assistance, contact the OSC Help Desk; the help desk phone numbers and e-mail address are shown above.

Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website at http://www.osc.state.ny.us/vendrep/forms_vendor.htm or may telephone the OSC Help Desk.

- 1.4. After the proposals are opened, the apparent successful bidder shall complete and file the AC 3290-S within 5 days. Vendors using the online system may certify (or recertify) and file the AC 3290-S electronically via the VendRep System <https://portal.osc.state.ny.us>).
- 1.5. It is recommended that all bidders become familiar in advance with all of the requirements of the AC 3290-S. As mentioned in 1.2, bidders who do not have a Vendor ID are encouraged to obtain one in advance of the bid opening.
- 1.6. All bidders must submit a completed form ***Offerer Disclosure of Prior Non-Responsibility Determinations*** along with their proposal.
- 1.7. The determination of responsibility will include a review to ensure the bidder has not knowingly and willfully violated the provisions of the Procurement Lobby Law or New York State Finance Law §139-j and §139-k.
- 1.8. New York State Finance Law §139-k (2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, a bidder must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity.
- 1.9. As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether a bidder fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any bidder that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the bidder is necessary to protect public property or public health safety, and that the bidder is the only source capable of supplying the required Article of Procurement within the necessary time frame.

The undersigned does hereby affirm on behalf of the bidder that it understands and agrees to the foregoing.

Printed Name

Signature

Title

Company

Date

Offerer's Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Submitting Bid:

Address: _____

Name and Title of Person Submitting this Form: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below and attach additional pages as necessary.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below and attach additional pages as necessary.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

Printed Name

Signature

Title

Company

Date

Instructions for Completing Offerer's Disclosure of Prior Non-Responsibility Determinations Form

Background:

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

The above is not intended to replace the need for persons to become familiar with the full requirements of the law. Please refer to the full text of the law to resolve any questions you may have with regard to your conduct under it.

Instructions:

ORDA includes this disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into an agreement with ORDA. Submission of this document is also required for any contract amendments over \$15,000.

State Finance Law § 139-l and Executive Order No. 177 Certifications

N.Y. State Finance Law § 139-l

By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

Executive Order No. 177 Certification (Prohibiting Contracts with Entities that Fail to Address Discrimination)

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

By signing, you certify under penalty of perjury your express authority to sign on behalf of yourself, your company or other entity with full knowledge and acceptance of the above certifications and that all information provided is complete, true and accurate.

Printed Name

Signature

Title

Company

Date

Encouraging Use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor’s optimal performance under the contract, thereby fully benefitting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract? ___ Yes ___ No
If yes, identify New York State businesses that will be used and attach identifying information.

Printed Name

Signature

Title

Company

Date

Certification Under Executive Order No. 16

Prohibiting ORDA from Contracting with Businesses Conducting Business in Russia

Executive Order No. 16, issued on March 17, 2022 (“EO 16”), directs all State agencies, including public authorities, to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia. The complete text of EO 16 can be found at https://www.governor.ny.gov/sites/default/files/2022-03/EO_16.pdf.

EO 16 remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in EO 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following:

- _____ 1. No, vendor does not conduct business operations in Russia within the meaning of EO 16.
- _____ 2.a. Yes, vendor conducts business operations in Russia within the meaning of EO 16, but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)
- _____ 2.a. Yes, vendor conducts business operations in Russia within the meaning of EO 16, but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)
- _____ 3. Yes, vendor conducts business operations in Russia within the meaning of EO 16.

By signing below, you certify under penalty of perjury that you have the express authority to sign on behalf of the vendor, that you are knowledgeable about the vendor's business and operations, and that the answer provided herein is true to the best of your knowledge and belief.

Printed Name

Signature

Title

Company

Date

Attachment D**OLYMPIC REGIONAL DEVELOPMENT AUTHORITY (“ORDA”)****STANDARD CONTRACT TERMS¹**

The Parties to the attached contract, license, lease, amendment, or other agreement of any kind agree to be bound by the following clauses which are hereby made a part of the contract. The word “Contractor” herein refers to any party other than ORDA, whether a Contractor, consultant, licensor, licensee, lessor, lessee, vendor or any other party.

1. **Executory Clause.** In accordance with Section 41 of the State Finance Law, ORDA shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **Doing Business in New York.** Contractor hereby represents and warrants that it is duly organized and validly existing under the laws of its jurisdiction of incorporation or formation and is qualified to do business in the State of New York and all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary, and has all requisite legal power and authority to carry on its business and to execute this Contract and to perform the terms, conditions and provisions hereof.
3. **Prohibiting State Contracts with Entities That Support Discrimination.** Pursuant to Executive Order No. 177, ORDA is prohibited from entering into contracts with entities that have institutional policies or practices that fail to address the harassment of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability or other protected basis. Contractor hereby represents and warrants that it has enacted policies or practices that are designed to prevent such harassment or discrimination.
4. **Ensuring Pay Equity by State Contractors.** Pursuant to Executive Order No. 162, for all procurements issued and executed on or after June 1, 2017, ORDA’s contractors must agree to include detailed workforce utilization reports to include, in addition to the equal employment opportunity information currently required to be included in such reports, the job title and salary of each employee of a contractor performing work on a State contract, or of each employee in the contractors’ entire workforce if the contractor cannot identify the individuals working directly on a State contract. For all subcontracts executed by Contractor in furtherance of this Contract (including all Exhibits hereto), Contractor must include a clause imposing the

¹ In the event of any conflict between these ORDA Standard Contract Terms and the terms of the contract or agreement to which it is appended or attached, or any other attachments, exhibits or addenda, the terms of these ORDA Standard Contract Terms shall control.

same requirement on all subcontractors for their employees. Such information shall be reported to ORDA on a quarterly basis in the form and in such manner as required by ORDA.

5. **Comptroller Approval.** Pursuant to Public Authorities Law § 2879-a and 2 NYCRR Part 206, Comptroller approval may be required for certain contracts entered into by public authorities. The Comptroller, at his or her discretion and upon written notification, may elect to review State authority contracts in excess of \$1 million which are a) contracts that are to be paid from monies appropriate by the State or b) awarded to a single source, sole source, or pursuant to any other method of procurement that is not competitive in nature. The Comptroller may exercise authority to review and pre-approve other types of contracts as well. Where Comptroller review and pre-approval of contracts is required, then such agreement shall not be valid or enforceable until it has first been approved by the Comptroller.
6. **Governing Law and Forum.** This Agreement is to be construed and interpreted according to the laws of the State of New York without regard to principles of conflicts of law. Any and all actions or proceedings relating to the subject matter of this Agreement will be maintained by and subject to a court of competent jurisdiction located in the State of New York. The Contractor hereby irrevocably submits to the exclusive jurisdiction of the Supreme Court, County of Essex, State of New York for the purpose of any action by the parties relating to or arising in whole or in part under or in connection with the Agreement and hereby waives to the extent not prohibited by applicable law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such action, any claim that the Contractor is not subject personally to the jurisdiction of the above-named court, that its property is exempt or immune from attachment or execution, and/or that any such action brought in one of the above-named courts should be dismissed on grounds of forum non conveniens or should be transferred or removed to any court other than one of the above-named courts.
7. **Entire Agreement.** This Agreement (including all Exhibits hereto) constitutes the entire Agreement between Contractor and ORDA and supersedes any prior Agreements or understandings between the parties. It shall not be amended, varied, or modified unless in writing executed by both parties hereto.
8. **Cancellation.** Pursuant to Public Authorities Law § 2875, upon the refusal by a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or

services, for a period of five years after such refusal, and to provide also that any and all contracts made with any public authority or official thereof, since the effective date of this law, by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation or termination shall be paid.

9. **Workers Compensation Benefits.** Pursuant to State Finance Law § 142, this contract shall be void and of no force and effect unless Contractor shall provide and maintain coverage, during the life of this contract, for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

10. **Non-Discrimination Requirements.** In accordance with Executive Law Article 15 (also known as the Human Rights Law) and Article 15-A (also known as the MWBE Law), and all other State and Federal statutory and constitutional non-discrimination provisions, Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, gender identity or expression, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration, or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin, discriminate in hiring against any New York State citizen who is qualified and available to perform the work, or discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex, or disability, discriminate in hiring against any New York State citizen who is qualified and available to perform the work, or discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person, per day, for any violation of Section 220-e or Section 239, as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

11. **Wage and Hours Provisions.** If this is a public work contract covered by Article 8 of the Labor Law, or a building service contract covered by Article 9 thereof, neither Contractor's/vendor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this

is a public work contract covered by Article 8 of the Labor Law, Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

12. **Non-Collusive Bidding Requirement.** Pursuant to Public Authorities Law § 2878 and State Finance Law §139-d, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time it submitted its bid, an authorized and responsible person executed and delivered to ORDA a non-collusive bidding certification on its behalf.
13. **Set-Off Rights.** ORDA shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, ORDA's option to withhold for the purposes of set-off any moneys due to Contractor under this contract up to any amounts due and owing to ORDA with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to ORDA for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. ORDA shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by ORDA, its representatives, or the State Comptroller.
14. **Force Majeure.** Should either Contractor or ORDA be prevented from or delayed in performing any act required of it hereunder, and such prevention or delay is caused by disruption due to unforeseen or unavoidable circumstances including but not limited to: unforeseen or unavoidable construction activities, strikes, labor disputes, Acts of God including but not limited to adverse or hazardous weather events or conditions, war, terrorism, government restrictions including but not limited to those resulting from a government-declared pandemic or epidemic, judicial orders, fire or other casualty, civil commotion, or other similar causes beyond its reasonable control, or if performance hereunder would foreseeably involve either party in or subject it to the effects of a labor dispute and the party therefore withholds or delays performance, making it illegal or impossible to provide or use the facilities, it shall have no liability. In such instances, the party asserting a force majeure event shall not have any further obligation under the agreement. Contractor (or lessee if applicable) shall have no other recourse against ORDA except to obtain monies for services already rendered under the agreement or to obtain refunds of monies paid for services yet to be performed.
15. **Records.** Contractor shall establish and maintain complete and accurate books, records, documents, accounts, and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General, and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to

the Records during normal business hours at an office of Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing, and copying. As a Public Authority, the Olympic Regional Development Authority is subject to the provisions and requirements of Public Officer's Law Article 6 §§ 84-90, more commonly known as the Freedom of Information Law ("FOIL"). ORDA shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (1) Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; (2) said records shall be sufficiently identified; and (3) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, ORDA's right to discovery in any pending or future litigation.

16. **Identifying Information and Privacy Notification.** FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices, or ORDA standard vouchers, submitted for payment for the sale of goods or services, or the lease of real or personal property, to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's federal employer identification number, federal social security number, or vendor identification number, or all such numbers when the payee has all such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or ORDA standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(a) **PRIVACY NOTIFICATION.**

- i. The authority to request the above personal information from a seller of goods or services, or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to ORDA is mandatory. The principal purpose for which the information is collected is to enable ORDA to identify individuals, businesses, and others who have been delinquent in filing tax returns, or may have understated their tax liabilities, and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.
- ii. The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services, or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

17. **Equal Employment Opportunities for Minorities and Women**

In accordance with Article 15-A of the Executive Law and 5 NYCRR Part 143, if this contract or any subcontract thereto, is: (1) a written agreement or amendment thereto, or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for

labor, services (including but not limited to legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, to be performed for, rendered, or furnished to the contracting agency; (2) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon; or (3) a written agreement in excess of \$100,000.00 whereby the owner of a State-assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

- (a) Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrades, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
- (b) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status; and
- (c) At the request of the contracting agency, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such union or representative will affirmatively cooperate in the implementation of Contractor's obligations herein.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning, or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of Contractor. Executive Law Section 312 does not apply to work, goods or services unrelated to this contract or to employment outside New York State. ORDA shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

18. **Conflicting Terms.** In the event of any conflict between these ORDA Standard Contract Terms and the terms of the contract or agreement to which it is appended or attached, or any other attachments, exhibits or addenda, the terms of these ORDA Standard Contract Terms shall control.
19. **Late Payment.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Public Authorities Law § 2880 to the extent required by law.
20. **No Arbitration.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration or mediation (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.
21. **Service of Process.** In addition to the methods of service allowed by the State Civil Practice Law & Rules (“CPLR”), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor’s actual receipt of process or upon ORDA’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify ORDA, in writing, of each and every change of address to which service of process can be made. Service by ORDA to the last-known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete within which to respond.
22. **Prohibition on Purchase of Tropical Hardwoods.** Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods) which prohibits the purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of Contractor to establish, to meet with the approval of ORDA.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with the specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of ORDA; otherwise, the bid may not be considered as responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of Contractor to meet with the approval of ORDA.

23. **Iranian Energy Sector Divestment.** In accordance with Public Authorities Law § 2879-c, by signing this Contract, Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to State Finance Law § 165-a(3)(b). Such list, known as the “Entities Determined to be Non-Responsive Bidders/Offerers

pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”), is posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by ORDA.

During the term of the Contract, should ORDA receive information that a person (as defined in Public Authorities Law § 2879-c) is in violation of the above-referenced certifications, ORDA will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then ORDA shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring Contractor in default.

ORDA reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

24. Promotion of New York State Business Enterprises & New York State Residents in Procurements

It is the policy of New York State, and ORDA, to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises, and New York State residents, as bidders, subcontractors, and suppliers on its procurement contracts.

Information regarding the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
 Division for Small Business
 Albany, New York 12245
 Telephone: 518-292-5100
 Fax: 518-292-5884
 Email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
 Division of Minority and Women's Business Development
 633 Third Avenue
 New York, New York 10017

Telephone: 212-803-2414

Email: mwbecertification@esd.ny.gov

<http://esd.ny.gov/MWBE/directorySearch.html>

Public Authorities Law § 2879 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State and ORDA.
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the community service division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. Contractor agrees to document these efforts and to provide said documentation to the State and ORDA upon request.

Contractor acknowledges notice that the State and ORDA may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State and ORDA in these efforts.

25. **Reciprocity and Sanctions Provisions.** Contractors are hereby notified that if their principal place of business is located in a country, nation, province, state, or political subdivision which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York State business enterprise in the procurement of goods or services by the same or a non-governmental entity influenced by the same, Public Authorities Law § 2879 requires that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia, and Wyoming. Contact the NYS Department of Economic Development for a current list of jurisdictions subject to this provision.
26. **Compliance with New York State Information Security Breach and Notification Act.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Sections 899-aa and 899-bb; State Technology Law Section 208).
27. **Procurement Lobbying.** To the extent this agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing the Agreement, Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true, and accurate. In the event such certification is found to be

intentionally false or intentionally incomplete, ORDA may terminate this Agreement by providing written notification to Contractor in accordance with the terms of this Agreement.

28. **Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates, and Subcontractors.** To the extent this agreement is a contract as defined by Tax Law Section 5-a, if Contractor fails to make the certification required by Tax Law Section 5-a, or if during the term of the contract, the Department of Taxation and Finance or the covered agency (ORDA), as defined by Tax Law Section 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or such false certification shall be a material breach of this contract, and this contract may be terminated by providing written notification to Contractor in accordance with the terms of this Agreement, if ORDA determines that such action is in the best interest of the State.
29. **Non-Assignment Clause.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
30. **International Boycott Prohibition.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).
31. **MacBride Fair Employment Principles.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with

the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

32. **Letting of Certain Contracts Involving Steel Products.** Pursuant to Public Authorities Law § 2603-a, notwithstanding any other provision of law, and absent a determination to the contrary by the ORDA Board of Directors, ORDA must award contracts involving steel products as follows:

- (a) All purchase contracts for supplies, material or equipment involving an estimated expenditure in excess of fifty thousand dollars shall require with respect to materials, supplies and equipment made of, fabricated from, or containing steel components, that such steel components be produced or made in whole or substantial part in the United States, its territories or possessions. The provisions of this paragraph shall not apply to motor vehicles and automobile equipment assembled in Canada in conformity with the United States-Canadian trade agreements known as the “Automotive Products Trade Act of 1965” or any amendments thereto.
- (b) All contracts in excess of one hundred thousand dollars for the construction, reconstruction, alteration, repair, maintenance or improvement of public works shall require that all structural steel, reinforcing steel or other major steel items to be incorporated in the work of the contract shall be produced or made in whole or substantial part in the United States, its territories or possessions.

33. **Vendor Responsibility, Pursuant to Executive Order No. 192.**

- (a) Responsibility for Duration of Contract: The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by ORDA’s President & CEO, or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- (b) Suspension of Work (for Non-Responsibility): The President & CEO of ORDA, or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the 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 President & CEO of ORDA, or his or her designee, issues a written notice authorizing a resumption of performance under the Contract.
- (c) Termination (for Non-Responsibility): Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate ORDA officials or staff, the Contract may be terminated by President & CEO of ORDA, or his or her designee, at the Contractor's expense where the Contractor is determined by the President & CEO of ORDA or his or her designee to be non-responsible. In such event, the President & CEO of ORDA, or his or her designee, may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

34. **Diesel Emissions Reduction Act of 2006.** In 2007, New York State passed legislation establishing the Diesel Emissions Reduction Act 2006 (DERA). This Act amended the Environmental Conservation Law (ECL) by adding Section 19-0323 which requires the use of best available retrofit technology (BART) and ultra-low sulfur diesel fuel (ULSD) for heavy duty vehicles owned or operated by, including on behalf of, state agencies and state or regional public authorities. The Department has promulgated regulations (6 NYCRR Part 248) to provide guidance on provisions of the law. The regulations may be found on the Department's website at <http://www.dec.ny.gov/regs/2492.html>. Contractor must comply with the specifications and provisions of ECL § 19-0323 and 6 NYCRR Part 248, which require the use of BART and ULSD, unless specifically waived by the Department. Qualifications for a waiver under this law are the responsibility of the Contractor.
35. **Photographs/Videos.** Contractor shall not take any photographs or videos during the performance of this Contract unless necessary to fulfill the Contractor's obligations under this Contract. Any and all photographs and videos (individually, a "Photo," and collectively, "Photos") taken by Contractor shall be the property of ORDA and shall be turned over to ORDA at the conclusion of the Project. Contractor shall not use any Photo, nor shall Contractor publish or disseminate any Photo, or any part or aspect thereof, without first obtaining written approval from ORDA for such publication or dissemination and of the format and content thereof. The foregoing shall be applicable to Contractor and its agents, servants, employees, officers, consultants, subcontractors and anyone directly or indirectly employed/retained by any of them and shall survive the termination of this Contract.
36. **Use of Unmanned Aircraft.** If Contractor is seeking to operate an unmanned aircraft system ("UAS") on property managed or maintained by ORDA under the terms of this Contract, Contractor shall complete ORDA's Mission Planning Form and supply all necessary documentation indicated therein before permission may be granted. ORDA, in its sole discretion, will determine if Contractor may operate the UAS pursuant to this Contract and will notify Contractor of said determination prior to the commencement of the Term of this Contract. Consistent with FAA regulations, if operation of a UAS under the terms of this Contract takes place in Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport, Contractor must also provide to ORDA written approval of airspace authorization from the airport's Air Traffic Control.
37. **Admissibility of Reproduction of Contract.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of the Contract, regardless of whether the original of the Contract is in existence.
38. **Prohibition on Contracting with Businesses Conducting Business in Russia.** Executive Order No. 16, issued on March 17, 2022 ("EO 16"), directs all State agencies, including public

authorities, to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia. As defined in EO 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

By signing the Agreement, Contractor certifies and affirms that Contractor does not conduct business operations in Russia within the meaning of EO 16. Should Contractor not be able to certify and affirm that Contractor does not conduct business operations in Russia within the meaning of EO 16, Contractor should not sign the Agreement and must contact ORDA staff.

39. **Counterparts/Electronic Signature.** This Agreement may be executed in counterparts, and if so executed and delivered, all of the counterparts when taken together shall constitute one and the same instrument. An electronic signature or e-mail transmission of a signature shall have the same force and effect as an original signature.