

SERIES 2010

REQUEST FOR PROPOSALS

**For a Developer of Photovoltaic Systems with respect to certain Local Government
Facilities in the County of Somerset, New Jersey dated July 30, 2010
(the “Original RFP”)**

ADDENDUM No. 2

Issued on August 24, 2010

This constitutes Addendum No.2 dated August 24, 2010 (“Addendum No. 2”), to the above referenced Original RFP issued by the Somerset County Improvement Authority on July 30, 2010 (collectively the “RFP”). This Addendum No. 2 shall be posted on the Somerset County Improvement Authority’s website at <http://www.scia.co.somerset.nj.us/>, and notice of same shall be published in the *Courier News* and *the Star Ledger*, and emailed to all Respondent Contact Persons. Capitalized terms not defined in this Addendum No. 2 shall be as defined in the Original RFP.

1. The following changes are made to:

- (a) ***Section 1.1(f)(iv) of the Original RFP is modified by addition of the following language intended to clarify the determination by the Respondent of the County Deficiency Amount.***

“The County Deficiency Amount shall be calculated, by the Respondent, using the following formula: $A - B = \text{County Deficiency Amount}$, where A is the par amount of the Authority Series 2010 Bonds issued (and guaranteed by the County), and B is the sum of all PPA Payments to be received from the Series 2010 Local Units and the projected SREC value from all of the Renewable Energy Projects of the Series 2010 Local Units financed by the Authority’s Series 2010 Bonds. The sum in B is intended to be made available to the County, as guarantor of the Authority Series 2010 Bonds, should the Successful Respondent default under the Program Documents.

Please note that using a more conservative SREC value in determining the County Deficiency Amount is a positive evaluation criteria (the lower the SREC value, the higher the County Deficiency Amount), and need not be the actual SREC economic value the Respondent hopes to attain in the marketplace. Please also note that the County Deficiency Amount does not take into account any federal tax benefits, in that such benefits would not be available to the County in any such Successful Respondent default situation.”

Subsection 7.2 of Section 7 of the Original RFP is modified by addition of the following language:

“The Authority will not require the forfeiture of any Proposal Security in the instance that execution of the PPA is delayed by the governmental action of the Authority, the County or the Local Units.”

- (b) *Subsection 1 of Section 1.1(h) of the Original RFP is revised to include the additional following date for site visits:*

“August 25, 2010 from 8am to 3 pm will be an additional site tour opportunity. Please contact Gregg Lally at (732)503-5947 for site access.”

- (d) *Proposal Form A-2 of Appendix D of the Original RFP is revised to address the duration the Consent of Surety will be required to be effective. A revised consent of surety is attached hereto.*

- (e) *Subsection 1.1(c) of Section 1 of the Original RFP – Introduction and Overview are revised as follows:*

(i) *Section 1.1(c) –*

- *Total estimated system size has been decreased from 7.77 MW to 7.05;*
- *Franklin BOE - Franklin Park School Parking Lot – 194.58 kW has been REMOVED from the Original RFP and;*
- *Franklin BOE - High School Parking Lot – 536.13 kW has been REMOVED from the Original RFP.*

- (f) *With respect to Montgomery High School Information provided during the site visit was not accurate. Roof related leaks are being addressed and were only attributable to HVAC flashing and does not reflect the majority of the roof. Respondents are required to include this site for solar.*

- (g) *The last paragraph of the construction Performance Bond Consent of Surety set forth in Proposal Form A-2 of the Original RFP, has been revised as follows and a revised Proposal Form A-2 is attached hereto:*

*“This Consent of Surety shall become effective on the date set forth below. The Surety hereby understands and **unconditionally agrees** that this Consent of Surety shall remain in effect for the Term of ninety (90) days, or until such Surety issues a Construction Performance Bond.”*

- (h) *Section 3.7(a)(iii) of the License and Access Agreement, and clauses (i) and (ii) before it, require the Local Unit that needs to close the designated Local Unit Facility to find a replacement facility of comparable solar output, and for such*

Local Unit to pay for the costs of the relocation and re-installation. The intent of such provision is that the move would not occur from the old facility to the new one until the new replacement facility is available and the solar system has been re-installed, so that output (energy and SRECs) would not be lost. Clause (ii) has been revised to makes this clearer. A revised License and Access Agreement is posted on the Authority's website.

- (i) Section 6.1(b)(i) and Section 7.1(b)(i) of the License and Access Agreement have each been supplemented to include all of the payments contemplated by Section 3.7(a)(iv) of the License and Access Agreement, and not just debt service on the Authority's Series 2010 Bonds. A revised License and Access Agreement is posted on the Authority's website.*
- (j) Section 503 of the Lease Purchase Agreement has been revised to delete references to a one-year post completion and acceptance performance bond equal to 10% of Development Contract price. A revised Lease Purchase Agreement is posted on the Authority's website.*
- (k) References to the Forbearance Agreement contained in the Pledge and Security Agreement have been removed. A revised Pledge and Security Agreement is posted on the Authority's website.*
- (l) References to defaults under the License and Access Agreement have been added to Sections 9.2 and 9.3 of the PPA. A revised PPA is posted on the Authorities website.*

FORM A-2

THE SOMERSET COUNTY IMPROVEMENT AUTHORITY

RESPONDENT INFORMATION/COVER LETTER FORM

[TO BE PLACED ON RESPONDENT'S LETTERHEAD]

Date:

Respondent: _____

Address:

Telephone:

Contact Person:

Type of Business Entity (Corporation, Partnership, Joint Venture, Other (Attach Agreement(s) governing or creating/organizing business entity))¹:

A. GENERAL:

In submitting this Proposal, the Respondent warrants and represents that (capitalized words and terms shall have the meanings ascribed to such terms in the Request for Proposals):

1. (a) The Respondent has reviewed and understands the requirements set forth within the Proposal Specifications and, if selected, will carry out all of the provisions set forth within same.

¹If a joint venture, partnership or other form of organization is submitting this Proposal, all such firms shall be listed and each such participant shall execute this Respondent Information/Cover Letter.

(b) The Respondent has prepared its Proposal using a complete set of Proposal Documents, including all addenda to the Request for Proposals issued by the SCIA prior to the date established for submission of all Proposals.

(c) All information submitted in response to the Request for Proposals is accurate and factual and all representations made regarding the Respondent's willingness and ability to provide the required Services are true and correct.

(d) The name and title of the individuals who will be responding to questions on behalf of the Respondent are:

(e) Respondent has reviewed and accepted the provisions of Sections 1.1(f)(ii)(A) and 5.6 of the RFP. Accordingly, Respondent is not relying on the Authority, the County, the Series 2010 Local Units nor any of their advisors regarding any federal or state tax matters set forth in the RFP, and Respondent shall consult, or has consulted, its own tax advisors regarding such matters.

(f) Respondent agrees to include with the submission of its Proposal a Consent of Surety for Construction Performance Security in the form attached to this letter provided by the Authority, and Consent of Surety for Restoration Performance Security, if any is included within Respondent's Proposal. Respondent also acknowledges that Construction Performance Bond must be in a form consistent with the form attached to this letter provided by the Authority.

(g) Respondent acknowledges that if selected for Conditional Award, it must provide the Authority with evidence of County Security

If applicable: If the Proposal is being submitted by a joint venture or similar business entity of more than one firm and/or organization, list the members, firms or organizations and designate a sole contact person for the joint venture or organization below:

2. Except to the extent expressly disclosed in the Proposal, there has been no material adverse changes in the financial status of the Respondent since the date of the most recent financial data (including Forms 10-K and 10-Q) submitted as part of the response to this Proposal.

3. There is no action, suit or proceeding, at law or in equity, before or by any court or similar Governmental Body against the Respondent wherein any unfavorable decision, ruling or finding would adversely affect the ability of the Respondent to carry out the duties and obligations imposed upon it under the Power Purchase Agreement.

4. The Respondent is duly organized and validly existing in good standing and is duly qualified to transact business in each and every jurisdiction where such qualification is required to enable the Respondent to perform its obligations under the Power Purchase Agreement. Execution of the Power Purchase Agreement and the performance of all obligations there under, have been authorized by all required action of the Respondent, including any action required by any charter, by-laws, and/or partnership agreement, as the case may be, and any applicable laws which regulate the conduct of the Respondent's affairs. The execution of the Power Purchase Agreement and the performance of all obligations set forth in the Proposal Specifications and in such Power Purchase Agreement do not conflict with and do not constitute a breach of or an event of default under any charter, by-laws and/or partnership agreement, as the case may be, of the Respondent or any agreement, indenture, mortgage, contract or instrument to which the Respondent is a party or by which it is bound. Upon execution hereof and upon satisfaction of the conditions contained in the Request for Proposals and in such Power Purchase Agreement, the Power Purchase Agreement will constitute a valid, legally binding obligation of the Respondent, enforceable in accordance with its terms, except to the extent that the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of the general principles of equity.

5. There is no action, suit or proceeding, at law or in equity, before or by any court or similar Governmental Body against the Respondent wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Respondent of its obligations under the Request for Proposals and/or under the Power Purchase Agreement or the other transactions contemplated thereby, or which, in any way, would materially adversely affect the validity or enforceability of the Power Purchase Agreement, or any other agreement or instrument entered into by Respondent in connection with the transactions contemplated thereby.

6. The Respondent has in its possession valid approvals, registrations or permits (or the Respondent will have such approvals, registrations or permits prior to or simultaneously with the execution of the Power Purchase Agreement) that, pursuant to Applicable Laws, permit the Respondent to provide the contingent Services as provided in the Request for Proposals and under and in accordance with the terms of the Power Purchase Agreement for the term of the Power Purchase Agreement.

7. The Proposal is submitted pursuant to due authorization by, and is in all respects binding upon, the Respondent. The Proposal is authorized to be prepared and submitted under and in accordance with the provisions of the documents and/or agreements which govern the Respondent's business activities.

8. No corporation, partnership, individual or association, officer, director, employee, manager, parent, subsidiary, affiliate or principal shareholder of the Respondent has been adjudicated to be in violation of any state or federal environmental law, or charged with or convicted of bribery, fraud, collusion, or any violation of any state or federal anti-trust or similar statute within the preceding five (5) years, or previously adjudged in contempt of any court order enforcing such laws.

9. The facility(ies) and equipment to be utilized by the Respondent in the performance of the Services meets or exceeds, in all material respects, the Technical Specifications as set forth in the Request for Proposals.

[NAME OF RESPONDENT]

By:

Name:

Title:

[SEAL]

Forms of Construction Performance Bond and Consent of Surety

CONSTRUCTION PERFORMANCE BOND

In providing the below Construction Performance Bond, such Construction Performance Bond shall not contain any conditions to its issuance or any conditions to the obligations of the surety company issuing same, except as expressly provided in this form of Construction Performance Bond.

Date:

_____, **PRINCIPAL**

_____, **SURETY**

_____, **SURETY**

_____, **SURETY**

THE SOMERSET COUNTY IMPROVEMENT AUTHORITY, OBLIGEE

KNOW ALL MEN BY THESE PRESENTS, that we, the PRINCIPAL and SURETIES above named, are held and firmly bound unto the above named OBLIGEE, in the just and full sum of _____ (\$ _____) for the payment of which sum well and truly to be made, the said PRINCIPAL and SURETIES bind themselves, their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents. Provided, that, we, the Sureties, bind ourselves in such sum “jointly and severally” as well as “severally” only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the

PRINCIPAL, for the payment of such sum only as is set forth opposite the name of such Surety at the end of this Bond.

WHEREAS, the PRINCIPAL has entered into a certain written agreement with the OBLIGEE, dated _____, 2010 entitled, "Power Purchase Agreement," (the "Agreement"), whereby the PRINCIPAL shall provide the Services to The Somerset County Improvement Authority, which Power Purchase Agreement is by reference made a part hereof, as if set forth in full herein.

NOW THEREFORE, the condition of this obligation is such that, if the PRINCIPAL shall faithfully perform its obligations under the Power Purchase Agreement solely as they relate to the construction of the series 2010 Local Unit Facilities, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER:

Whenever the PRINCIPAL shall be, and is, declared to be in default of its construction obligations under the Power Purchase Agreement by the OBLIGEE, the OBLIGEE having performed its construction obligations under the Power Purchase Agreement, the SURETIES may promptly remedy the default or shall promptly as follows:

- (1) Perform the construction obligations under the Power Purchase Agreement in accordance with the terms and conditions of the Power Purchase Agreement, or
- (2) Obtain a Proposal or Proposals for performance of the construction obligations under the Power Purchase Agreement in accordance with the terms and conditions of the Power Purchase Agreement, and upon a determination by SURETIES and the OBLIGEE of the lowest responsible Respondent, arrange for a contract between such Respondent and the OBLIGEE, and make available as services continue (even though there should be a default or a succession of defaults under the contract or contracts arranged under this paragraph) sufficient funds to pay the cost of performance of such said construction obligations; but not exceeding, including other costs and damages for which the SURETIES may be liable hereunder, the amount set forth in the first paragraph hereof.

- (3) After investigation, determine the amount for which it may be liable to the OBLIGEE and, as soon as practicable after the amount is determined, tender payment therefor to the OBLIGEE.
- (4) Without waiver of any rights of the OBLIGEE, notify the OBLIGEE of the denial of liability in whole or in part citing reasons therefor.

Notwithstanding any term or condition contained in the Power Purchase Agreement to the contrary, it is understood and agreed that the PRINCIPAL's and SURETIES' obligation under this bond shall not be assigned without the written consent of the PRINCIPAL and the SURETIES, which consent shall not unreasonably be withheld; provided however, that this bond may be assigned to a trustee in connection with the issuance of any debt obligations issued by the OBLIGEE for or with respect to the Services .

No right or action shall accrue on this bond to or for the use of any person or corporation other than the OBLIGEE named herein or their heirs, executors, administrators, or successors of the OBLIGEE.

The PRINCIPAL and the SURETIES shall not be liable to the OBLIGEE in the aggregate in excess of the penal sum above stated. Any payment made by the SURETIES in good faith under this bond shall reduce the bond amount stated by a like amount.

Any suit under this Bond must be instituted before the expiration of two (2) years from the date the PRINCIPAL ceased performing those obligations covered by this bond.

The SURETIES hereby stipulate and agree that no modifications, omissions or additions in or to the terms of the Power Purchase Agreement or in or to the specifications therefor should in any way affect the obligation of the SURETIES on this Bond.

Notice to the SURETIES shall be by certified or registered mail and sent to:

[NAME AND ADDRESS OF SURETY]

The SURETIES shall have no liability under this bond for any obligation of the PRINCIPAL to defease, pay for, assume responsibility with respect to or otherwise incur liability for any debt obligations issued by the OBLIGEE.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their several seals on the date indicated above.

PRINCIPAL

Limit: \$ _____

Title

SURETY

Limit: \$ _____

Attorney-in-fact

SURETY

Limit: \$ _____

Attorney-in-fact

Countersigned:

IN WITNESS WHEREOF, the undersigned has caused these presents to be signed and attested by a duly authorized officer, and its corporate seal to be hereto affixed this ____ day of _____ 2010.

ATTEST:

(Name of Bank)

By: _____

By:

Name: _____

Name:

Title: _____

Title:

Date: _____

Date:

CONSENT OF SURETY

In completing this Consent of Surety, this Surety shall not add any conditions to its obligation to provide the Performance Bond referred to herein.

In consideration of the sum of One Dollar (\$1.00), lawful money of the United States, to it in hand paid, the receipt whereof is hereby acknowledged, [NAME OF SURETY] (hereinafter, the "Surety"), organized and existing under the laws of the State of _____ and duly authorized and qualified to transact business in the State of New Jersey, the undersigned Surety, consents and agrees that if the Power Purchase Agreement, for which the preceding Proposal is made, be awarded to [NAME OF RESPONDENT] (hereinafter, the "Respondent") for the performance of or the supplying of certain services, or both, as more particularly set forth in said Proposal and described for purposes of this instrument as a Proposal for Services to the Somerset County Improvement Authority (hereinafter, the "SCIA"), if Respondent shall enter into the Power Purchase Agreement, and upon the issuance of a Notice to Proceed by the SCIA, the undersigned Surety will become bound as Surety for the Respondent's faithful performance and will provide the Respondent with a Construction Performance Bond in the amount of _____ \$_____, in form and content and at the times provided in the Request for Proposals.

This Consent of Surety shall become effective on the date set forth below. The Surety hereby understands and **unconditionally agrees** that this Consent of Surety shall remain in effect for the Term of ninety (90) days, or until such Surety issues a Construction Performance Bond.

IN WITNESS WHEREOF, said Surety has caused these presents to be signed and attested by a duly authorized officer, and its corporate seal to be hereto affixed this day of _____ 2010.

(A corporate acknowledgment and statement of authority to be attached hereto by the surety company.)

ATTEST:

By: _____

(Signature)

(Name of Surety)

Name: _____

By: _____

Title: _____

Date:

Date:

This Addendum No. 2 is issued by order of Richard E. Williams, Chair of the Somerset County Improvement Authority.