

Proposals Due on September 15th, 2014 by 5:00 PM Eastern Time  
Pre-bid conference: July 28th, 2014 at 1:00pm Eastern Time

**Program Summary:**

The New York State Energy Research & Development Authority (NYSERDA) is seeking proposals for its Behavioral Demonstrations Program, a new initiative aiming to replicate and build upon previously conducted pilots that validate the effectiveness of selected behavioral strategies in reducing energy use on a larger scale. This program will not solicit or accept proposals that aim to demonstrate a behavioral strategy(ies) that has not already been validated at an experimental level. NYSEDA intends to award multiple contracts under this category.

Nationally and internationally there have been numerous efforts to test the effectiveness of behavioral strategies in promoting pro-social and pro-environmental behaviors, and there are a few examples of behavioral strategies applied to energy-related behaviors including reducing energy usage and promoting the adoption of energy efficient and clean energy technologies. For example, NYSEDA's Research Behavior Program has conducted several behavior research pilots that have shown the potential of prompts, public commitments, ongoing feedback, and prizes, amongst other strategies, to influence energy use. These, and other examples of behavioral strategies applied to energy-related decisions and behaviors, are still at the experimental pilot level and this PON seeks to demonstrate their effectiveness at a larger scale and determine their cost-effectiveness for broader deployment. Proposals are requested for the following two categories:

(A) Behavioral Demonstration Contractor – Winning proposals will seek to replicate previously successful pilot efforts on a larger scale in New York State, in order to assess their effectiveness, energy savings, persistence, and cost-effectiveness. The successful proposals will demonstrate the experimental pilot's design at a larger scale and will include impact and persistence of savings evaluations.

(B) Independent Third-Party Evaluation and Oversight Contractor (the 'Oversight Contractor') – The Oversight Contractor will provide independent third-party review of the demonstration projects funded under Category A of this solicitation. The successful proposer will be expected to ensure that projects implemented under Category A, and their evaluation plans, follow experimental design protocols, assign participants to control and treatment groups, consult with NYSEDA on demonstration project progress and findings and review Behavioral Demonstration project results and evaluations. Proposers should demonstrate prior experience with program implementation and conducting process and program evaluations. NYSEDA intends to award one contract under this category.

**Proposal Submission:** Proposers must submit one (1) paper copy and one (1) CD of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to the following location:

**Roseanne Viscusi, PON 2646**  
**NYSEDA**  
**17 Columbia Circle**  
**Albany, NY 12203-6399**

If you have technical questions concerning this solicitation, contact James Mannarino at (212) 971-5342, ext. 3020 or [james.mannarino@nyserda.ny.gov](mailto:james.mannarino@nyserda.ny.gov). If you have contractual questions concerning this solicitation, contact Venice Forbes at (518) 862-1090, ext. 3507 or [venice.forbes@nyserda.ny.gov](mailto:venice.forbes@nyserda.ny.gov).

No communication intended to influence this procurement is permitted except by contacting James Mannarino at (212) 971-5342, ext. 3020 or [james.mannarino@nyserda.ny.gov](mailto:james.mannarino@nyserda.ny.gov). Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement may (1) result in a proposer being deemed non-responsible, and (2) may result in the proposer not being awarded a contract.

Late proposals will be returned. Incomplete proposals may be subject to disqualification. It is the bidder's responsibility to ensure that all pages have been included in the proposal. Faxed or e-mailed proposals will not be accepted. Proposals will not be accepted at any other NYSEDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSEDA's web site at [www.nyserda.ny.gov](http://www.nyserda.ny.gov).



## I. INTRODUCTION

Clean energy program administrators are being encouraged to incorporate behavioral strategies in their programs, but there are very few examples of robust demonstrations of these strategies in the field. The majority of behavioral studies have been conducted in academic settings and university laboratories using students as participants. NYSERDA's Behavior Demonstrations Program is seeking to build upon these previously conducted pilots by demonstrating that the behavioral strategies can be applied to a broader number of participants in real world applications, and evaluated using experimental design (i.e. using random assignment to control and treatment groups). The goal of the Behavioral Demonstration Program is to provide examples of successful behavioral projects (projects that have been validated by reliable evaluation results and proven to be cost-effective using traditional energy efficiency performance tests and metrics) to clean energy program administrators and New York regulators for broader scale implementation in New York State.

This solicitation seeks two categories of proposals:

- A. Behavioral Demonstrations** – Behavioral Demonstration projects that build upon previously successful pilots to help identify potentially more successful and cost-effective approaches to meeting New York State's energy reduction targets. Proposals may be submitted on behalf of one proposer or multiple proposers forming a proposing team. Each proposal will include one or two Behavioral Demonstration projects, with each project being a replication at a larger scale of a previously conducted and successful behavioral pilot. Proposers are strongly encouraged to include utility partners to facilitate data acquisition.
- B. Oversight Contractor** – Independent third-party evaluation and oversight of Behavioral Demonstration projects selected in Category A. This entity shall review the selected behavioral demonstrations' design, implementation, and evaluation plans and perform an independent review of raw data reported by each of the behavioral demonstration projects funded under this solicitation. The Oversight Contractor shall review the results and evaluations of the projects implemented under Category A and assess the energy savings attributions and persistence. The Oversight Contractor will also model the potential cost-effectiveness and large-scale implementation of the projects implemented under Category A.

Proposers may submit proposals to both Categories A and B. However, contracts will not be awarded under both categories to avoid conflicts of interest. In the event that a proposer submits proposals to both categories, it must be specified in both categories which proposal is preferred if both were to be selected.

A pre-bid conference webinar will be held on Monday, July 28th, 2014. This presentation will review the solicitation and allow potential respondents to ask any clarifying questions. If you would like to attend the webinar, please submit an Intent to Propose Form (Attachment D) by Friday, July 25th.

## II. GOALS AND OBJECTIVES

### Category A – Behavioral Demonstrations:

The goal of this category is to award two to four contracts over the course of two solicitation rounds, with each contract consisting of one to two Behavioral Demonstration projects. Each demonstration must replicate a previously completed, successful pilot and propose to increase its scale and magnitude in New York State. Proposals based on pilots that have demonstrated statistically significant successful results through experimental design will be looked upon more favorably. NYSERDA considers replication to be, at a minimum, the same Behavioral Demonstration strategy that is applied in a similar, if not identical, manner as the pilot, and in the same sector. These demonstration projects may incorporate any of the Behavioral Demonstration strategies shown below, as well as any other strategies that showed the potential for success in previously conducted research. Proposed demonstration projects must either: demonstrate and capture energy savings directly through a behavioral intervention; or, indirectly by increasing participation in an existing Energy Efficiency Portfolio Standard (EEPS) program. Demonstration projects may, but are not required to, make use of technology, hardware and/or software. While financial and technical assistance are two effective strategies used to influence energy use, financial and/or technical assistance interventions are not considered eligible behavioral strategies under this PON.

Proposers are not required to have been associated with previously completed pilots and are encouraged to examine behavior pilots that have been conducted by energy-efficiency program administrators and other entities that have been evaluated as successful in achieving their desired outcomes. A successful pilot is one that either 1) demonstrated statistically significant results through experimental design, or 2) demonstrated positive directionality using non-experimental design (preferably pre- and post-evaluation design) to determine preliminary evidence for intervention effectiveness.

Potential resources to explore include: behavior pilots funded by NYSERDA's Behavioral Research Program, the Consortium for Energy Efficiency's Behavioral Program Summary, and Bonneville Power Authority's Behavior Based Energy Efficiency Profiles. Additionally, proposers can review previous presentations and consult with participants at conferences such as the Behavior Energy and Climate Change conference and The Garrison Institute's Climate, Mind and Behavior Symposium.

Behavioral Demonstration projects may be conducted in the residential, multifamily, or commercial sectors. The increase in scale from pilot to the proposed demonstration projects should be commensurate with the sector and the pilot being replicated. For example: a pilot demonstrating a behavioral intervention among 100 homeowners in Central New York could be increased to 1500 homeowners over a number of similar towns; a pilot conducted in a single multifamily complex could be increased to include multiple multifamily buildings within a single city; or, a pilot directed at one building's commercial tenants could be expanded to a building owner's entire portfolio. These examples are intended to provide general guidance in the development of a proposal. The scale of a proposal will be taken into account in scoring the demonstration projects, with larger demonstration projects being looked upon more favorably, unless the sample sizes are not large enough to address variations in energy use patterns, demographics, cultural, and economic backgrounds of the targeted participants in the demonstration projects. Proposals must include a justification for the experimental design proposed, the target audience, and expected size effect of the design to justify the numbers of participants targeted by each condition

#### Category B – Oversight Contractor:

The goal of this category is to award one contract to an independent third-party oversight and evaluation contractor to review project design and evaluate the effectiveness of Behavioral Demonstration projects selected under Category A. The Oversight Contractor shall assess and validate the energy savings attributions, persistence and potential cost-effectiveness on a larger scale of proposals selected under Category A, as well as review their implementation plans to ensure that projects follow the guidelines outlined in "Evaluation, Measurement, and Verification (EM&V) of Residential Behavior-Based Energy Efficiency Programs: Issues and Recommendations," written by the State and Local Energy Efficiency (SEE) Action Network in 2012.

The selected Oversight Contractor will assign participants to treatment and control groups and ensure that experimental protocols are followed. Proposers for Category B should possess successful track-records of program oversight and evaluation, along with demonstrable expertise in behavioral strategies, statistical analysis, experimental design and benefit/cost analysis. The contractor will also review and validate the energy savings and/or other benefits reported by the Behavioral Demonstration contractors. Proposers that have experience in implementing and evaluating clean energy programs will be looked upon more favorably.

If deemed appropriate by NYSERDA, the selected contractor will also model the external validity of strategies implemented under Category A. Using data collected from each project, the Oversight Contractor will validate the impact of the Behavioral Demonstration projects, the persistence of savings from those projects (over a two year period), and conduct a benefit/cost analysis of scaling up those interventions in New York State.

### **III. BEHAVIORAL DEMONSTRATION STRATEGIES**

Behavioral demonstration strategies should make use of research demonstrating that individual and group energy choices are biased by not only economic factors, but also by individual and group perceptions of common, socially accepted behaviors. Subsequently, energy savings are achieved when alterations are made in the behavior and decision-making process of groups or individuals. The list of behavioral strategies provided below is not intended to be comprehensive, but simply to serve as a guide for the selection of behavioral strategies for the Behavioral Demonstrations Proposals.

**A. COMMITMENT** - Consists of strategies that encourage individuals or groups to commit to executing an action by a specified date.

- Require participants to make a public commitment to one additional individual to perform an energy-efficient action.
- Require participants to make small pledges before approaching them to make larger commitments.
- Assist customers in energy-savings goal setting.

**B. FEEDBACK** - Consists of strategies where energy use information & related costs are provided to customers at frequent intervals (more than once a month). These strategies may include deliverables such as:

- Paper Reports
- In-Home Displays
- On-Line Displays

**C. FOLLOW-THROUGH** - Consists of strategies that serve as reminders of the individual's commitments or behavior intentions.

- Provide participants with prompts in order to remind them to make behavior changes.
- Recommend that participants develop an energy use reduction plan.

**D. FRAMING** - Consists of strategies that present energy information in a manner that can place bias on customers' choices in methodical and predictable ways.

- Reduce the amount of choices.
- Emphasize the benefits of energy efficiency.
- Present reasonable costs or return on investments.
- Present adopting energy efficient behavior as a sensible and/or practical choice.
- Present the positive impact on reputation & image by adopting energy efficient behavior.
- Present energy information as avoiding a loss as opposed to acquiring a gain
- Present efficiency programs as opt-out instead of opt-in opportunities

**E. IN-PERSON INTERACTION** - Consists of strategies that emphasize personal exchanges by a noteworthy individual who is trusted or respected in the community.

- Utilize interpersonal communication and a legitimate messenger to encourage model behavior.
- Target behavior change by having an authority figure in the community exemplify the desired behavior.

**F. MULTI-PRONGED STRATEGY** - Consists of complex strategies that use a multitude of strategies to affect participant behavior.

- Enhance the self-worth of participants by providing interpersonal collaboration opportunities.
- Emphasize the monetary incentives & rewards about the value of future benefits related to energy efficiency investments.
- Incentive energy use at frequent intervals using feedback mechanisms.
- Present social comparisons at frequent intervals using feedback mechanisms.

**G. REWARDS & RECOGNITION** - Consists of strategies that reward energy efficient behavior adoption.

- Promote efficiency investments by providing financial incentives.
- Provide free gifts encouraging the targeted behavior.
- Present opportunities to receive larger rewards through random selection (i.e. lottery).
- Encourage competition in order to offer performance-based rewards.

**H. SOCIAL NORMS** - Consists of strategies that merge archetypal group behavior with energy efficiency. Individual behavior tends to shift toward the behavior of a group when information on the societal norm is presented. Subsequently, individuals are more inclined to behave in a certain way when they perceive individuals in a group to be performing that behavior. Social norms may be descriptive (dealing with the typical behaviors associated with a certain situation) or injunctive (dealing with behaviors that are characteristically approved & disapproved of).

- Present customized comparisons that a group of individuals can identify with through various marketing techniques.

**I. SUNK COST** - Consists of strategies that reduce the effect of sunk costs. The sunk costs strategy takes the approach that people are psychologically invested in money that the individual has already spent. More specifically, individuals tend to be opposed to disposing of non-efficient goods, such as old air-conditioning units, for which money has already been allocated.

- Promote efficiency upgrades at the time of replacing non-efficient goods.

## **IV. PROGRAM REQUIREMENTS**

### **A. SERVICES REQUESTED FOR CATEGORY A: BEHAVIORAL DEMONSTRATIONS**

The selected contractor(s) shall perform a number of activities while administering their Behavioral Demonstration project(s). Proposers shall develop a detailed statement of work that must include experimental design, detailed data collection methods, sampling, and implementation and evaluation plans. Proposals should provide a detailed schedule of the implementation and post-implementation periods and designation of a primary contact/project lead who will provide regular feedback to NYSERDA. If the proposed work requires working within an existing clean energy program or will require the cooperation of a third party (including a utility), letters of support should be provided.

All proposers must be capable of executing their proposed plan within the schedule included in the application. This includes, and is not limited to, enrolling participants, conducting the demonstration, collecting all required data and evaluating results.

Proposers are expected to track changes in energy consumption, demand reductions and/or other non-energy benefits, such as increased comfort, and clearly state how they will document energy savings (for example through the use of energy billing data). Changes in energy consumption should be determined, to the extent possible, using the design and evaluation guidance presented in "Evaluation, Measurement, and Verification (EM&V) of Residential Behavior-Based Energy Efficiency Programs: Issues and Recommendations" prepared by SEE (State & Local Energy Efficiency) Action Network. A plan for acquiring all necessary data on the control and treatment groups must be included in the proposal. Additionally, if possible and/or relevant to the proposed design, proposals will be expected to collect baseline historical data that is representative of the control and treatment groups. Proposers will be required to continue gathering data for a minimum of two years after the demonstration project's completion in order to measure persistence. The contractor must also submit evaluations of their interventions to NYSERDA.

Examples of deliverables (actual deliverables and dates will be specified by NYSERDA for each of the selected demonstration projects):

- Regular progress reports, which may include raw data
- Project design, implementation and evaluation plans
- Case studies
- Post-intervention evaluations and analysis
- Draft final report

Finally, proposers are expected to have knowledge of energy efficiency program evaluations and the type of data points needed to conduct them. Proposers will be responsible for acquiring all data associated with their demonstration(s) and providing the Oversight Contractor with that data upon request.

### **B. SERVICES REQUESTED FOR CATEGORY B: OVERSIGHT CONTRACTOR**

The selected contractor shall assist in the review and approval of all demonstration projects' experimental designs, implementation and evaluation plans to help ensure that the demonstration projects comply with best practices established for evaluation, measurement and verification of claimed savings. Specific attention shall be made to ensure that selected projects' evaluation plans are robust enough to assess energy impacts, persistence of savings and cost of delivery. With data provided by the organization(s) selected under Category A, the Oversight Contractor shall make participant assignments to control and treatment groups, if possible and appropriate. The Oversight Contractor shall also assess the baseline data, ensuring that it is properly representative of the control and treatment groups. To the fullest extent possible, the selected contractor shall follow the guidelines presented by SEE Action Network in "Evaluation, Measurement, and Verification (EM&V) of Residential Behavior-Based Energy Efficiency Programs: Issues and Recommendations." These guidelines provide a comprehensive framework for assessing the efficacy of behavioral strategies implemented under Category A and the validity of reported savings from these projects.

The Oversight Contractor shall evaluate the results of the demonstrations, with data provided by contractors selected under Category A. The Oversight Contractor will be required to review the evaluations of interventions executed under Category A of this PON and compile final evaluations based on the evaluations submitted by Behavioral Demonstration contractors. The contractors selected under Category A will be required to provide NYSERDA with raw data and progress reports regularly throughout the intervention and post-intervention analysis periods, and the Oversight Contractor will be available to consult with NYSERDA on the evaluation of progress reports if deemed necessary and appropriate by

NYSERDA.

Projects selected under Category A are expected to evaluate the persistence of savings (if appropriate) for a period of at least two years after the interventions have ceased. There may also be two rounds of solicitations for projects under Category A. Therefore, the selected Oversight Contractor will be expected to provide its services over the course of these projects and the projects' post-implementation analysis periods, which could span a period of up to three to four years.

The selected contractor shall also conduct full benefit/cost analyses of the implemented projects, and model the cost-effectiveness of implementing these strategies at larger scales. The Oversight Contractor will be expected to construct logic models that projects costs and savings associated with the Behavioral Demonstration if expanded statewide. The model should factor in barriers to implementation, identify caveats and determine overall feasibility of large-scale implementation, including the impact of scaling up on costs and energy savings impacts. This is intended to allow NYSERDA to begin assessing the feasibility and cost-effectiveness of conducting region-wide and/or statewide behavioral interventions. The projected expansion does not have to be included in the proposal, however proposers should demonstrate knowledge regarding the potential total audience in New York State and how to eventually project necessary changes in costs and application at a statewide scale.

The selected contractor will be asked to deliver, at minimum, a final report, evaluation and case studies of the Behavioral Demonstration projects.

### C. PROGRAM ELIGIBILITY

All behavioral demonstrations must be conducted in the System Benefits Charge territory. Proposers do not have to be located in New York State, but New York firms or firms with New York partners will be looked upon favorably.

Proposers may submit proposals to both Category A and Category B of this solicitation. However awards will only be made to one proposal. Proposers should indicate which proposal is preferred of the two in the event that both are selected by the Technical Evaluation Panel assembled by NYSERDA.

### D. AVAILABLE FUNDS

While there is a total of \$1,767,878 available for the Behavioral Demonstration projects, it is anticipated that 60% (or, \$1,060,727) of that funding shall be awarded in the first round of proposals. The remainder will be awarded in a second round later in 2015 or 2016. This second round may be modified to reflect lessons learned in the first round of Behavioral Demonstrations. NYSERDA does not anticipate contributing more than 50% of the total project cost for any demonstration; however, proposals with less than 50% cost-share will be entertained.

There is a total of \$449,923.80 available for the Oversight Contractor.

## **V. PROPOSAL REQUIREMENTS**

### **Category A: Behavioral Demonstration Projects**

A checklist is attached to this PON; it must be included in all copies of the application. At least one copy must contain an original signature. The page limits indicated under the following sections will be enforced and any additional pages will be redacted. Proposals must be printed in a minimum font size of 11.

#### **Section 1: Introduction and General Information (2 pages)**

Applicants shall summarize their understanding of the objectives and requirements of this PON. Applicants shall briefly identify key information about their organization and any other organizations that are part of the proposer's team.

#### **Section 2: Statement of Work/Schedule (3-6 pages)**

Each demonstration project's Statement of Work shall be consistent with the services requested in this PON. In your background section, provide a summary of the successful experimental pilot this Behavioral Demonstration proposal

seeks to replicate on a larger scale in New York State. Provide evidence that the original pilot used experimental design in its design and evaluation and was successful in achieving its objectives. If the demonstration project is not based on a pilot that used experimental design, please explain what design methods were used and how the positive results were obtained. Justify its selection for scalability including its market potential statewide. Information must be provided detailing energy savings anticipated from the demonstration. Additionally, identify other key indicators of success and how they will be measured. Provide a plan of how you will implement one to two behavioral interventions **using experimental design**. Identify the region of New York State in which the proposed Behavioral Demonstration will occur, and which sector it will target (residential, multifamily or commercial).

The Statement of Work should include a detailed description of how the proposal meets the experimental design requirement (including a treatment and control group, along with properly representative baseline data, if possible and/or relevant to the proposed intervention), tracks energy savings during the demonstration projects, is sufficient to determine the statistical significance of results, and measures persistence of savings at least two years post demonstration completion. Describe the step-by-step project tasks and the actions required to complete each task, provide a schedule for these activities and designate a primary contact/project lead that will provide regular feedback to NYSERDA throughout the intervention and post-intervention analysis periods. The Statement of Work should also include a detailed evaluation plan for estimating the energy savings associated with the demonstration, and the follow up evaluation to estimate persistence of savings two years after the demonstration project has concluded.

Behavioral Demonstration project proposals should also clearly outline how energy consumption or other data will be collected, including data sources, partnerships with utilities and/or other relevant information. Self-reported data from participants in control or treatment groups is not sufficient to assess the efficacy of Behavioral Demonstrations implemented under this PON. Proposals are expected to include methods for collecting raw, objective data, such as utility data or program participation data, to report results and evaluations to the Oversight Contractor.

### **Section 3: Qualifications, Experience, and References to Similar Projects (2-4 pages)**

Describe the proposing team's specific qualifications and experience designing, implementing and evaluating behavior-based strategies, preferably in the clean energy/energy efficiency sector. List and briefly describe relevant pilot/demonstration projects that have been completed by the proposing team. Include specific examples of prior work involving: behavioral initiatives, data analysis/reporting, New York State-based energy efficiency projects, and reporting of findings, as well as interpretations and recommendations related to this work. Resumes of all team members must be provided in an appendix. Indicate the name and telephone number of at least three references for whom your organization, or applying team, has recently completed similar or relevant project. Summaries of related work products and other supporting materials that demonstrate the proposer's ability to fulfill the goals and objectives of this PON may be submitted as attachments to your proposal (the 4-page limit will be enforced).

### **Section 4: Management Structure (1-2 pages)**

Proposals must identify all team members, including the Principal or Lead contact (and a back up lead person should the need arise), who will be responsible for providing regular feedback to NYSERDA, ensuring that the demonstration project(s) will be completed in a timely and satisfactory manner and adhere closely to the experimental design the demonstration is proposing to replicate. Provide a clear description of the roles and responsibilities of each key person in completing the work plan. Provide an organization chart and discuss how you would structure the team to efficiently and effectively meet the needs of NYSERDA and other project collaborators.

### **Section 5: Potential Conflict of Interest (1 page)**

Identify the nature of any potential conflicts of interest among team members in providing services to NYSERDA under this PON. Fully discuss possible conflicts of interest, actual and perceived, which could arise in connection with performance by team members of the proposed contract. Describe how your firm would resolve conflicts of interest.

In the event that NYSERDA determines that a team member may have a conflict of interest or the appearance of a conflict of interest, NYSERDA may: (1) take this into consideration in evaluating the application; (2) exclude the applicant from consideration for an award; (3) adjust the scope of work to avoid the conflict or appearance of conflict; or (4) negotiate other appropriate actions with the team member to avoid the conflict or appearance of conflict.

### **Section 6: Cost Proposal**

Using Attachment C -- Contract Pricing Proposal Form (CPPF) -- as a template, submit the name, title, and hourly rate for the project for each individual proposed to perform the work outlined in Section II Project Requirements, Subsection A,

Services Requested (including all subcontractor personnel). Use the CPPF to provide overhead multipliers for the duration of the project.

## **Category B: Oversight Contractor**

### **Section 1: Introduction and General Information (2 pages)**

Applicants shall summarize their understanding of the objectives and requirements of this PON. Applicants shall briefly identify key information about their organization and any other organizations that are part of the proposer's team.

### **Section 2: Statement of Work/Schedule (3-6 pages)**

A detailed statement of work must be included describing the plan for accomplishing the requirements of this PON and an implementation schedule for conducting the work. The statement of work should be made up of four tasks.

#### **Task 1: Review Project Plan Description:**

The contractor shall familiarize themselves with the projects selected by NYSERDA for funding and be responsible for developing a final statement of work for each demonstration. This shall include, but not be limited to:

- Reviewing each proposal that NYSERDA has selected to award funding for a satisfactory design that complies, to the fullest extent possible, with the guidance in the SEE Action Network *Evaluation, Measurement, and Verification (EM&V) of Residential Behavior-Based Energy Efficiency Programs: Issues and Recommendations. May 2012*
- Reviewing each implementation plan and final evaluation plan and ensure appropriate methodologies for estimating savings impacts are included
- Reviewing each proposal to ensure that the use of a baseline energy consumption is included
- Reviewing each proposal to ensure that the demonstration will yield data that is sufficient to measure persistence of savings and cost-effectiveness to inform future large-scale deployment programs.
- Suggesting modifications to the demonstration proposals to ensure they adhere to the experimental pilot conditions that have already demonstrated to be successful in achieving their goals, conditions that the demonstrations will seek to replicate and evaluate on a larger scale.

#### **Task 2: Assign Demonstration Participants**

The contractor shall randomly assign participants to control and treatment groups for each demonstration project. Information about participants and any other pertinent information will be provided to the Oversight Contractor by either NYSERDA or the contractor implementing the demonstration.

The contractor shall also review the composition of the baseline data, if used, to ensure that it is representative of the control and treatment groups.

#### **Task 3: Oversight and Evaluation of Demonstration Projects**

The contractor will be directed by NYSERDA to evaluate the results of the draft evaluations provided by the selected Behavioral Demonstration projects and verify project results.

Oversight Contractors will be required to:

- Review project materials, including surveys or summary documents developed by the demonstration pilot projects to ensure the interventions duplicate the research pilot being modeled and are in compliance with the requirements of this PON.
- Compile all data being collected by the demonstration projects into a single database
- As necessary, provide updates to external stakeholders on the demonstration project's progress
- Conduct in-depth review of draft evaluations and results provided by selected Behavioral Demonstration projects
- Validate the impacts realized by the selected Behavioral Demonstration projects. These impacts shall include either increased enrollment in energy efficiency programs or savings directly attributable to the demonstration, along with persistence following the initial application of the treatment for at least two years.
- If necessary, the contractor may be required to consult with NYSERDA on progress reports/feedback from the

contractors selected under Category A to ensure the demonstration projects are being implemented correctly.  
Model the cost-effectiveness of implementing Behavioral Demonstration projects at scale

- Compile final reports based on draft final reports submitted by Behavioral Demonstration projects

### **Section 3: Qualifications, Experience, and References to Similar Projects (2-4 pages)**

Describe specific qualifications and experience designing, implementing and evaluating behavior-based strategies, preferably in the energy efficiency sector. Include specific examples of prior work involving: behavioral initiatives, data analysis, New York State-based energy efficiency projects, and reporting of findings as well as interpretations and recommendations related to this work. Resumes of all team members shall be provided in an appendix. Indicate the name and telephone number of at least three references for whom your organization, or applying team, has recently completed similar, relevant projects. Summaries of related work products and other supporting materials that demonstrate your ability to fulfill the goals and objectives of this PON may be submitted as attachments to your application.

### **Section 4: Management Structure (1-2 pages)**

Provide a clear description of the roles and responsibilities of each key person in completing the work plan. Provide an organization chart and discuss how you would structure the team to efficiently and effectively meet the needs of NYSERDA and other project collaborators.

### **Section 5: Oversight Evaluation (1-2 pages)**

Proposers must describe the work they will conduct to oversee the demonstration projects' evaluation plans. Please be as specific as possible in describing how you propose to review and help finalize the demonstration projects' evaluation plans, examine field data collection and reporting protocols, assess draft and final project evaluations, including persistence of savings at least two years after the Behavioral Demonstration projects conclude.

### **Section 6: Potential Conflict of Interest (1 page)**

Identify the nature of any potential conflicts of interest among team members in providing services to NYSERDA under this PON. Fully discuss possible conflicts of interest, actual and perceived, which could arise in connection with performance by team members of the proposed contract. Describe how your firm would resolve conflicts of interest.

In the event that NYSERDA determines that a team member may have a conflict of interest or the appearance of a conflict of interest, NYSERDA may: (1) take this into consideration in evaluating the application; (2) exclude the applicant from consideration for an award; (3) adjust the scope of work to avoid the conflict or appearance of conflict; or (4) negotiate other appropriate actions with the team member to avoid the conflict or appearance of conflict.

### **Section 7: Cost Proposal**

Using Attachment C -- Contract Pricing Proposal Form (CPPF) -- as a template, submit the name, title, and hourly rate for the project for each individual proposed to perform the work outlined in Section II Project Requirements, Subsection A, Services Requested (including all subcontractor personnel). Use the CPPF to provide overhead multipliers for the duration of the project. For this section, proposers are requested to include a budget not including Task 4 as well as a budget including Task 4 (Management of Demonstration Projects).

Proposers must submit the appropriate number of copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this Program Opportunity Notice. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals will be returned and proposals lacking the appropriate completed and signed Proposal Checklist may be returned. Faxed or e-mailed copies will not be accepted.**

## **Procurement Lobbying Requirements - State Finance Law sections 139-j and 139-k**

Procurement lobbying requirements contained in State Finance Law sections 139-j and 139-k became effective on January 1, 2006. (The text of the laws is available at: <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>). In compliance with §139-j and §139-k of the State Finance Law, for proposals submitted in response to this solicitation that could result in agreements with an annual estimated value in excess of \$15,000, additional forms must be completed and filed with proposals: (1) a signed copy of the Proposal Checklist including required certifications under the State Finance Law and (2) a completed Disclosure of Prior Findings of Non-Responsibility form. Failure to include a signed copy of the Proposal Checklist referenced in this solicitation will disqualify your proposal.

Attach supporting documentation to support indirect cost (overhead) rate(s) included in your proposal as follows:

1. Describe the basis for the rates proposed (i.e., based on prior period actual results; based on projections; based on federal government or other independently-approved rates).
2. If rate(s) is approved by an independent organization, such as the federal government, provide a copy of such approval.
3. If rate(s) is based on estimated costs or prior period actual results, include calculations to support proposed rate(s). Calculation should provide enough information for NYSERDA to evaluate and confirm that the rate(s) are consistent with generally accepted accounting principles for indirect costs.

NYSERDA reserves the right to audit any indirect rate presented in the proposal and to make adjustment for such difference. Requests for financial statements or other needed financial information may be made if deemed necessary.

## **VI. Proposal Evaluation**

Proposals that meet Proposal requirements will be reviewed by a Technical Evaluation Panel (TEP) using the Evaluation Criteria below

For Category A: Behavioral Demonstrations

- **Scope of Work**  
Does the proposed demonstration(s) have value for New York State? Is there a comprehensive plan in place for fulfilling all aspects of the project? Is there justification for replicating the selecting pilot? Is there significant potential for savings and other benefits and are these metrics of success fully defined?
- **Proposer Qualifications**  
Does the proposer have the relevant and necessary background, including the following desired characteristics: expertise in behavioral strategies and energy efficiency, knowledge of the implementation of behavioral strategies, familiarity with energy efficiency program evaluations and the ability to apply the proposed strategies to a specific site or targeted group of participants? Is the firm based or have staff located in New York State?
- **Budget and Costs**  
Does the proposal dedicate staff, time and resources at reasonable prices to accomplish the tasks? Is cost-sharing provided?
- **Schedule, Tracking, Reporting**  
Is the proposed schedule appropriate for achieving NYSERDA's goals in a timely fashion? Are sufficient benchmarks and reporting provided for ensuring the project(s) remains on track? Is there a sufficient plan in place to acquire and track data?
- **Innovation**

Are unique or particularly innovative concepts proposed?

For Category B: Oversight Contractor

- **Proposer Qualifications and Experience**

Does the proposer have the relevant and necessary background, including the following desired characteristics: expertise in behavioral strategies and energy efficiency, knowledge of the implementation of behavioral strategies, familiarity with energy efficiency program evaluations and the ability to apply the proposed strategies to a specific site or targeted group of participants? Is the firm based, or have staff located in, New York State?

- **Scope of Work**

Is there a comprehensive plan in place for fulfilling all aspects of the project? Does the proposer indicate an understanding of the requested tasks?

- **Budget and Costs**

Does the proposal dedicate staff, time and resources at reasonable prices to accomplish the tasks? Is cost-sharing provided?

- **Schedule, Tracking, Reporting**

Is the proposed schedule appropriate for achieving NYSERDA's goals in a timely fashion? Are sufficient benchmarks and reporting provided for ensuring the project(s) remains on track? Is there a sufficient plan in place to develop a comprehensive database of all the demonstration's reporting?

- **Innovation**

Are unique or particularly innovative concepts proposed?

## VII. GENERAL CONDITIONS

**Proprietary Information** - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://nyserdera.ny.gov/~media/Files/About/Contact/NYSERDARegulations.ashx> . However, NYSERDA cannot guarantee the confidentiality of any information submitted.

**Omnibus Procurement Act of 1992** - It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises, as bidders, subcontractors, and suppliers on its procurement Agreements.

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

Empire State Development  
Division for Small Business  
625 Broadway  
Albany, NY 12245

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

Empire State Development  
Minority and Women's Business Development Division  
625 Broadway  
Albany, NY 12245

**State Finance Law sections 139-j and 139-k** - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>

The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

**Tax Law Section 5-a** - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of \$100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. See, ST-220-TD (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)).

Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. See, ST-220-CA (available at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)). The Department has developed guidance for contractors which is available at <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf> .

**Contract Award** - NYSERDA anticipates making multiple awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement (Attachment E) to contract successful proposals. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the submitted proposal (see Proposal Checklist). Proposers should keep in mind that acceptance of all standard terms and conditions will generally result in a more expedited contracting process. NYSERDA expects to notify proposers in approximately eight (8) weeks from the proposal due date whether your proposal has been selected to receive an award. NYSERDA may decline to contract with awardees that are delinquent with respect to any obligation under any previous or active NYSERDA agreement.

**Limitation** - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest. NYSERDA reserves the right to reject proposals based on the nature and number of any exceptions taken to the standard terms and conditions of the Sample Agreement.

**Disclosure Requirement** - The proposer shall disclose any indictment for any alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe circumstances for each. When a proposer is an association, partnership, corporation, or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similarly governing body. If an indictment or conviction should come to the attention of NYSERDA after the award of a contract, NYSERDA may exercise its stop-work right pending further investigation, or terminate the agreement; the contractor may be subject to penalties for violation of any law which may apply in the particular circumstances. Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

\*\*\*\*\*

#### **VIII. Attachments:**

- Attachment A-1 - Proposal Checklist – Category A (p. 14)**
- Attachment A-2 - Proposal Checklist – Category B (p. 15)**
- Attachment B - Disclosure of Prior Findings (pp. 16-17)**
- Attachment C - Contract Pricing Proposal Form and Instructions (pp. 18-21)**
- Attachment D - Intent to Propose Form (p. 22)**
- Attachment E - Sample Agreement (pp. 23-47)**

## Attachment A-1

### Category A: Behavioral Demonstration Projects – PROPOSAL CHECKLIST (MANDATORY)

Proposal Title:		Due Date	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
Address		City	State or Province
			Zip
Secondary Contact		Title	
Company		Phone	Fax
		e-mail	
Address		City	State or Province
			Zip
<p>THE PRIME CONTRACTOR MUST <u>SIGN THIS FORM BELOW</u> and ANSWER THE FOLLOWING QUESTIONS:</p> <p>Do you accept all Terms &amp; Conditions in the Sample Agreement? (If no, explain on separate page) <span style="float: right;">__ Yes __ No</span>  <b>(NYSERDA may or may not accept any of the listed exceptions; NYSERDA reserves the right to limit any negotiations to exceptions specifically identified herein.)</b></p> <p>Do you wish to have any information submitted in your proposal package treated as proprietary or confidential trade secret information? If yes, you must identify and label on each applicable page “confidential” or “proprietary” <span style="float: right;">__ Yes __ No</span>          (For additional information regarding this, please refer to the section entitled “Proprietary Information” in the solicitation document).</p> <p>Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) <span style="float: right;">__ Yes __ No</span></p> <p>Are you a Minority or Women-Owned Business Enterprise? <span style="float: right;">__ Yes __ No</span></p> <p>Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? <span style="float: right;">__ Yes __ No</span></p> <p>Are you submitting the required number of copies? (See proposal instructions.) <span style="float: right;">__ Yes __ No</span></p> <p>Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? <span style="float: right;">__ Yes __ No</span>          (if yes, explain on separate page)</p>			
ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?			
<ol style="list-style-type: none"> <li>1. <b>Introduction and General Information (2 pages)</b></li> <li>2. <b>Statement of Work/Schedule (3-6 pages)</b></li> <li>3. <b>Qualifications, Experience, and References to Similar Projects (2-4 pages)</b></li> <li>4. <b>Management Structure (1-2 pages)</b></li> <li>5. <b>Potential Conflict of Interest (1 page)</b></li> <li>6. <b>Cost Proposal</b></li> </ol>		Indictment/Conviction of Felony (if applicable) NYSERDA Contracts Awarded (if applicable) Prior and/or Competing Proposals (if applicable) <span style="float: right;">__ Exceptions to Terms &amp; Conditions (if applicable)</span> Completed and Signed Contract Pricing Proposal Form(s) Disclosure of Prior Findings of Non-responsibility Form	
AUTHORIZED SIGNATURE & CERTIFICATION			
I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, that I have read and reviewed the Standard Terms and Conditions set forth in the attached Sample Agreement and that I accept all terms unless otherwise noted herein, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA’s procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I, the undersigned, am authorized to commit my organization to this proposal.			
Signature		Name	
Title		Organization	
Phone			

**NOTE:** This completed form **MUST** be signed and attached to the front of all copies of your proposal.

**Attachment A-2**  
**Category B: Oversight Contractor – PROPOSAL CHECKLIST (MANDATORY)**

Proposal Title:		Due Date	
<b>Primary Contact</b> (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
Address		City	State or Province
Zip			
<b>Secondary Contact</b>		Title	
Company		Phone	Fax
		e-mail	
Address		City	State or Province
Zip			
<p>THE PRIME CONTRACTOR MUST <u>SIGN THIS FORM BELOW</u> and ANSWER THE FOLLOWING QUESTIONS:</p> <p>Do you accept all Terms &amp; Conditions in the Sample Agreement? (If no, explain on separate page) <span style="float: right;">__ Yes __ No</span>  <b>(NYSERDA may or may not accept any of the listed exceptions; NYSERDA reserves the right to limit any negotiations to exceptions specifically identified herein.)</b></p> <p>Do you wish to have any information submitted in your proposal package treated as proprietary or confidential trade secret information? If yes, you must identify and label on each applicable page “confidential” or “proprietary” <span style="float: right;">__ Yes __ No</span>          (For additional information regarding this, please refer to the section entitled “Proprietary Information” in the solicitation document).</p> <p>Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) <span style="float: right;">__ Yes __ No</span></p> <p>Are you a Minority or Women-Owned Business Enterprise? <span style="float: right;">__ Yes __ No</span></p> <p>Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? <span style="float: right;">__ Yes __ No</span></p> <p>Are you submitting the required number of copies? (See proposal instructions.) <span style="float: right;">__ Yes __ No</span></p> <p>Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? <span style="float: right;">__ Yes __ No</span>          (if yes, explain on separate page)</p>			
ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?			
7. <b>Introduction and General Information (2 pages)</b> 8. <b>Statement of Work/Schedule (3-6 pages)</b> 9. <b>Qualifications, Experience, and References to Similar Projects (2-4 pages)</b> 10. <b>Management Structure (1-2 pages)</b> 11. <b>Oversight Evaluation (1-2 pages)</b> 12. <b>Potential Conflict of Interest (1 page)</b> 13. <b>Cost Proposal</b>		Indictment/Conviction of Felony (if applicable) NYSERDA Contracts Awarded (if applicable) Prior and/or Competing Proposals (if applicable) <span style="float: right;">__ Exceptions to Terms &amp; Conditions (if applicable)</span> Completed and Signed Contract Pricing Proposal Form(s) Disclosure of Prior Findings of Non-responsibility Form	
AUTHORIZED SIGNATURE & CERTIFICATION			
I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, that I have read and reviewed the Standard Terms and Conditions set forth in the attached Sample Agreement and that I accept all terms unless otherwise noted herein, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA’s procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I, the undersigned, am authorized to commit my organization to this proposal.			
Signature		Name	
Title		Organization	
Phone			

**NOTE:** This completed form **MUST** be signed and attached to the front of all copies of your proposal.

**Attachment B**  
**Disclosure of Prior Findings of Non-responsibility Form (MANDATORY)**

Name of Individual or Entity seeking to enter the procurement contract:	
Address:	
Date:	
Solicitation or Agreement Number:	
Name and Title of Person Submitting this Form:	
Has any Governmental Entity made a finding of non-responsibility regarding the Individual or Entity seeking to enter the Procurement Contract in the last four years? (Please indicate with an "X")	Yes
	No
Was the basis for the finding of non-responsibility due to a violation of §139-j of the State Finance Law? (Please indicate with an "X")	Yes
	No
Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please indicate with an "X")	Yes
	No
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.	
Government Agency or Authority:	
Date of Finding of Non-responsibility:	
Basis of Finding of Non-responsibility: (Add additional pages as necessary)	

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 indicate with an "X")	Yes
	No

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding: (Add additional pages as necessary)

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_ Title: \_\_\_\_\_

**Attachment C**  
**CPPF and Instructions (MANDATORY)**

New York State Energy Research and Development Authority Contract Pricing Proposal Form			Solicitation/Contract No.	Page	
Contractor:			Name of Proposed Project:		
Address:					
Location (where work is to be performed):			NYSERDA funding:		
			Total Project Cost:		
Cost Element			Total Project Cost	Funding & Co-funding via NYSERDA	Cost-sharing & Other Co-funding
1. Direct Materials					
a. Purchased Parts					
b. Other					
Total Direct Materials					
2. Materials Overhead	Rate:				
3. Direct Labor (specify names/titles)	Hours	Rate/hr			
Total Direct Labor					
4. Labor Overhead	Rate %	\$ Base			
Total Labor Overhead					
5. Outside Special Testing					
6. Equipment					
7. Travel					
8. Other Direct Costs					
9. Subcontractors/Consultants					
Total Subcontractors/Consultants					
10. General & Administrative Expense	Rate %	Element(s)			
11. Fee or Profit (If allowable)	Rate:				
12. Total Estimated Project Cost					

*This proposal reflects our best estimates as of this date, in accordance with the instructions to proposers.*

Typed Name and Title:	Signature:	Date:
Has any executive agency of the U.S. government performed any review of your records in connection with any prime contract or subcontract within the past twelve months?      ___ Yes      ___ No		
If yes, identify:		

Supporting Schedule - Contract Pricing Proposal Form		
Element No.	Item Description	Amount

**INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE**

Your cost proposal may be the basis of contract negotiation; it should be specific and complete in every detail. Supporting schedules (as described in Section B) providing the basis for your estimates must be provided.

**A. GENERAL**

The schedule must be submitted on NYSERDA's Contract Pricing Proposal Form.

**B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL**

(Title each supporting schedule and cross-reference it to the item number on the Contract Pricing Proposal Form)

**1a. DIRECT MATERIALS - PURCHASED PARTS**

Provide the following information for each proposed item with an estimated unit cost in excess of \$15,000.

- o Description of item
- o Proposed vendor
- o Quantity needed
- o Unit cost
- o Basis for cost (i.e., catalog, prior purchase, quote, etc.)
- o Total cost
- o Evidence of a competitive selection process in accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement.

**1b. OTHER DIRECT MATERIALS**

In accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement, for all items in excess of \$5,000, provide whatever information would be necessary to understand what is being obtained, how it is being obtained, what it will cost and how the estimated cost was determined with justification for all items.

**2. MATERIALS OVERHEAD (also applicable to other Indirect Rate categories: 4. LABOR OVERHEAD and 10. G&A EXPENSE)**

- o If Government-approved indirect rates are proposed, then supply a copy of an appropriate Government document verifying those rates.
- o If Government-approved rates are not proposed, supply the following, unless previously provided, for the years comprising the proposed period of contract performance.
  - o A description (chart or other) of the organization of the indirect cost center.
  - o The budget of indirect costs, by account, for each proposed indirect expense rate.
  - o The budget for the base, for each proposed rate, (direct labor dollars, hours, costs, etc.) itemized as to contract hours or costs, research and development hours of costs, and any other direct base effort.
  - o Actual incurred rates for the prior three years, including actual base and pool amounts.

**3. DIRECT LABOR**

- a. Commercial Enterprises

- (1) Attach supporting schedules showing:
  - o Each category or type of labor being estimated
  - o Applicable labor rates per hour (straight-time)
- (2) Explain the method used for computing the rates (i.e., actual of an individual, actual average of a category or other grouping, etc.) Also identify any proposed labor escalation and the bases for it.

b. Educational Institutions

Provide the following for each calendar year of the contract:

- (1) For individuals not on an "actual hours worked" basis:
  - o individual's name
  - o annual salary and the period for which the salary is applicable (preferably in weeks)
  - o the proportionate time to be charged to this effort.
- (2) For individuals who maintain time records as the basis for charging costs, supply the detail as requested in Instructions 3(a)(1)

4. LABOR OVERHEAD (Same as Instructions for 2. MATERIALS OVERHEAD)

5. OUTSIDE SPECIAL TESTING

- a. Describe the effort.
- b. Provide the units of time (hours, days, weeks), cost rates, and the vendor.
- c. In accordance with the requirements of the Subcontract Procedures section of the attached Sample Agreement, provide the basis for selection of the vendor. Identify M/WBE vendors contacted for quotes and if none, explain why. Explain and justify the basis for any non-competitive selection.

6. EQUIPMENT

Capability to perform the work with existing facilities and equipment is assumed. It is NYSERDA's policy not to compensate for general purpose facilities or equipment. If some special purpose items are needed solely for this contract and are not available by other means (contractor assets, lease, etc.), then provide the following information for each item of required equipment.

- o vendor
- o model number
- o quantity
- o competitive selection process
- o unit cost and source of cost/price (i.e., quote, catalog, purchase history)
- o description of the use or application (NYSERDA dedicated, contract dedicated, other)

7. TRAVEL

- a. NYSERDA will accept as a direct charge only that travel required to perform the statement of work.
- b. Attach a schedule indicating the need for the proposed travel, the estimated number of person-trips required, destinations, mode and cost of transportation, and number of days subsistence per trip for each destination.
- c. Identify and support any other special transportation costs required in the performance of this project.

8. OTHER DIRECT COSTS

- a. Identify the type of cost (i.e. postage, telephone, publications, graphics, etc.)
- b. Provide cost details for the amounts estimated (hours or units, rates, etc.)
- c. If any internal service center rates are applied, provide details similar to that required in Instruction #B.
- d. For computer costs identify the make, model and type of computer, hours of service and appropriate rates, and whether the machine is company owned or leased.

9. SUBCONTRACTORS/CONSULTANTS

- a. Explain the specific technical area in which such service is to be used and identify the contemplated consultants.
- b. State the number of days and the hours per day of such service estimated to be required and the consultant's quoted rate per day. Document when/where the consultant has received the proposed rate in performing similar services for others.

10. GENERAL & ADMINISTRATIVE (G&A) EXPENSE (Same as instructions for 2. MATERIALS OVERHEAD)

11. FEE OR PROFIT

List the rate proposed for profit. No fee or profit is allowed under product development, demonstration or other certain cost-sharing projects.

**Attachment D  
Intent to Propose Form**

Attachment D  
PON No. 2646  
**INTENT TO PROPOSE**

Please submit the following information to NYSERDA two weeks before the proposal due date to:

Roseanne Viscusi - PON No. 2646  
New York State Energy Research and Development Authority  
17 Columbia Circle, Albany, NY 12203-6399  
fax (518) 862-1091 e-mail rdv@nyserdera.org

Name:		Title:	
Organization:			
Address:			
Address:			
City:	County:	State:	Zip +4:
E-mail Address:		Phone No.: (     )	
Web Site:		Fax No.: (     )	
Authorized signature:			Date:

Please check all that apply:

We **do** intend to submit a proposal.

We **do not** intend to submit a proposal because: \_\_\_\_\_

\_\_\_\_\_

I did not receive a notice in the mail. Please **add** me to NYSERDA's database.

Please **delete** me from NYSERDA's database.

How did you receive information about this solicitation? (Please check all that apply.)

<input type="checkbox"/> announcement notice in mail	<input type="checkbox"/> NYSERDA's website
<input type="checkbox"/> notice in NYS Contract Reporter	<input type="checkbox"/> word-of-mouth
<input type="checkbox"/> notice in other media (please list):	<input type="checkbox"/> NYSERDA staff/booth at meeting (please specify):

If you plan to submit a proposal, please provide the title and a brief abstract:

**Attachment E**  
**Sample Agreement**

**New York State Energy Research and Development Authority**  
**(“NYSERDA”)**

**AGREEMENT**

1. Agreement Number:
2. Contractor:
3. Project Director:
4. Effective Date:
5. Total Amount of Award:
6. Project Period:
7. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement;
- Exhibit E, NYSERDA Report Format and Style Guide.

8. ACCEPTANCE. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNLESS EXECUTED BELOW BY NYSERDA.

**[CONTRACTOR]**

**NEW YORK STATE ENERGY RESEARCH AND  
DEVELOPMENT AUTHORITY**

By \_\_\_\_\_

By \_\_\_\_\_

Jeffrey J. Pitkin  
Treasurer

Name \_\_\_\_\_

Title \_\_\_\_\_

STATE OF            )  
                          ) SS.:  
COUNTY OF        )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the document.

\_\_\_\_\_  
Notary Public

## EXHIBIT B

### GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

#### Article I

##### Definitions

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined below shall have, for all purposes of this Agreement, the respective meanings set forth below, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined.

(a) General Definitions:

Agreement: This Agreement shall consist of Page One and Exhibits A, B, C, D, and E hereto, all of which are made a part hereof as if set forth here in full.

Budget: The Budget set forth at Exhibit A hereto.

Cash-based Expenses: Those obligations of Contractor that shall be settled in cash.

Contract Administrator: NYSERDA's Director of Contract Management, Cheryl L. Earley, or such other person who may be designated, in writing, by NYSERDA.

Contract Information: Recorded information regardless of form or characteristic first produced in the performance of this Agreement, that is specified to be compiled under this Agreement, specified to be delivered under this Agreement, or that is actually delivered in connection with this Agreement, and including the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable.

Proprietary Information: Recorded information regardless of form or characteristic, produced or developed outside the scope of this Agreement and without NYSERDA financial support, provided that such information is not generally known or available from other sources without obligation concerning their confidentiality; has not been made available by the owner to others without obligation concerning its confidentiality; and is not already available to NYSERDA without obligation concerning its confidentiality. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable, be considered Proprietary Information.

Person: An individual, a corporation, an association or partnership, an organization, a business or a government or political subdivision thereof, or any governmental agency or instrumentality.

Responsible: Responsible or Responsibility means the financial ability, legal capacity, integrity and past performance of Contractor and as such terms have been interpreted relative to public procurements. See NYS Finance Law § 163(1)(c).

Statement of Work: The Statement of Work attached hereto as Exhibit A.

Subcontract: An agreement for the performance of Work by a Subcontractor, including any purchase order for the procurement of permanent equipment or expendable supplies in connection with the Work.

Subcontractor: A person who performs Work directly or indirectly for or on behalf of the Contractor

(and whether or not in privity of contract with the Contractor) but not including any employees of the Contractor or the Subcontractors.

Work: The Work described in the Exhibit A (including the procurement of equipment and supplies in connection therewith) and the performance of all other requirements imposed upon the Contractor under this Agreement.

## Article II

### Performance of Work

Section 2.01. Manner of Performance. Subject to the provisions of Article XII hereof, the Contractor shall perform all of the Work described in the Statement of Work, or cause such Work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Contractor shall perform the Work in accordance with the current professional standards and with the diligence and skill expected for the performance of work of the type described in the Statement of Work. The Contractor shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the Work in accordance with this Agreement.

Section 2.02. Project Personnel. It is understood and agreed that the Project Director identified at Item 3, Page One of this Agreement shall be responsible for the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested change in Project Director shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

Section 2.03. Title to Equipment. Title shall vest in the Contractor to all equipment purchased hereunder.

Upon the request of NYSERDA, the Contractor shall execute, acknowledge, deliver and perform, or cause to be executed, acknowledged, delivered or performed, all such bills of sale, assignments, conveyances or other documents or acts as NYSERDA may reasonably request in order to assure the better vesting in and confirming to NYSERDA, its successor and assigns, of title to and possession of such equipment. If, after six (6) months following the later of (a) Contractor's completion of these obligations, (b) completion of the Work, or (3) the termination of this Agreement, NYSERDA has not removed any such equipment, it will be deemed abandoned and become the property of the Contractor. Any such removal of equipment by NYSERDA shall be at NYSERDA's expense.

## Article III

### Deliverables

Section 3.01. Deliverables. All deliverables shall be provided in accordance with the Exhibit A, Statement of Work.

## Article IV

### Payment

Section 4.01. Payment Terms. It is understood and agreed that NYSERDA and the Contractor are sharing the costs for the Work to be performed. In consideration for this Agreement and as NYSERDA's full payment for the costs of the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor amounts not to exceed the maximum amount set forth in Item 5, Page One of this Agreement for the cost elements identified in the Budget to be funded with NYSERDA funds, subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D. NYSERDA's payments shall be on a reimbursement basis, and shall be paid only to the extent that Cash-based Expenses are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, and the following:

(a) Staff Charges: To the extent Cash-based Expenses are incurred by the Contractor, Contractor shall be reimbursed for amounts paid to its employees for the services performed by its employees under the terms of this Agreement at the lesser of the employee's wage rate as shown in the Budget or the actual wages paid to the employee and applicable at the time the Work is performed.

(b) Direct Charges: To the extent Cash-based Expenses are incurred by the Contractor, the Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (e.g., equipment, supplies, travel and other costs directly associated with the performance of the Agreement) to the extent required in the performance of the Work and to the extent such costs are anticipated in the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs shall not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate in effect at the time the expense was incurred.

(c) Indirect Costs: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs, all at the fixed rate as shown in the Budget. Contractor hereby warrants and guarantees, in accordance with Section 9.01(k) hereto, that its rates for the foregoing indirect costs charged herein have been determined based on the Contractor's reasonably anticipated indirect costs during the term of the Agreement and calculated consistent with generally accepted accounting principles.

(d) Profit: The Contractor shall be paid a profit at a fixed rate as shown in the Budget applied to costs incurred in the performance of the Statement of Work. The percentage for profit shall be applied to all items in the Budget with the exception of travel costs.

### Section 4.02. Progress Payments.

(a) Invoicing: The Contractor may submit invoices for progress payments no more than once each month and no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable," or submitted electronically to [invoices@nyserda.ny.gov](mailto:invoices@nyserda.ny.gov). Such invoices shall make reference to the Agreement number shown at Item 1 on page 1 of this Agreement. Invoices shall be inclusive of the total project costs incurred, delineated into NYSERDA's Funding share and the Cost-Share and Other Co-funding share, if applicable, and they shall be in a format consistent with the cost categories set forth in the Budget. Invoices shall be itemized and provide

reasonable documentation for the above to provide evidence of costs incurred. If a wage rate or billing rate is used, Contractor must certify on its invoice that such rate represents the lesser of: (i) the actual rate at the time the Work was performed, and (ii) the rate listed for each such employee listed in the Budget. NYSERDA may adjust amounts payable to correlate the proportion of NYSERDA's funding share paid to the proportion of the Work completed.

(b) Retainage: In accordance with and subject to the provisions of Exhibit D, NYSERDA shall pay to the Contractor, within the prescribed time after receipt of an invoice for a progress payment, 90% of NYSERDA's share of the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement or the Budget.

Section 4.03. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six (6) months following Acceptance of Work pursuant to Section 6.02 hereof. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments/milestone payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Section 4.06 hereof.

Section 4.04. Release by the Contractor. The acceptance by the Contractor of final payment shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

Section 4.05. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to this Agreement, including without limitation, all data, bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other documentation evidencing, or in any material way related to, Contractor's performance under this Agreement.

Section 4.06. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor shall be the amount appearing at Item 5 of page one of this Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.07. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.05 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.05 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

## Article V

### Assignments, Subcontracts and Purchase Orders

Section 5.01. General Restrictions. Except as specifically provided otherwise in this Article, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Contractor's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA.

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling less than \$50,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit C to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. Each Subcontract shall make express reference to this Agreement, and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Contractor. If this Agreement includes a provision requiring Contractor to make Payments to NYSERDA for the Sale or Licensing of a Product, each Subcontract shall include the provisions of Section 8.02, suitably modified to identify the parties. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any subcontract(s) specified in the Statement of Work as requiring NYSERDA approval, including any replacements thereof.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action that would impair its rights thereunder. The Contractor shall take no action, and shall take all reasonable steps to prevent its Subcontractors from taking any action, that would impair NYSERDA's rights under this Agreement. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of NYSERDA's Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to sixty (60) days.

## Article VI

### Schedule; Acceptance of Work

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in the Statement of Work. The draft and final versions of all deliverables shall be submitted by the dates specified in the Exhibit A Schedule. It is understood and agreed that the delivery of the draft and final versions of such deliverables by the Contractor shall occur in a timely manner and in accordance with the requirements of the Exhibit A Schedule.

Section 6.02. Acceptance of Work. The completion of the Work shall be subject to acceptance by NYSERDA in writing of all deliverables as defined in Exhibit A, Statement of Work.

## Article VII

### Force Majeure

Section 7.01. Force Majeure. Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, strikes, or the delay or failure to perform by any Subcontractor by reason of any cause or circumstance beyond the reasonable control of such Subcontractor.

## Article VIII

### Rights in Information; Confidentiality

#### Section 8.01. Rights in Contract and Proprietary Information.

(a) All Contract Information shall be the property of NYSERDA. The Contractor shall not use Contract Information for any purpose other than to implement its obligations under this Agreement.

(b) All Proprietary Information shall be the property of Contractor.

(c) The use, public performance, reproduction, distribution, or modification of any materials used by Contractor in the performance of this Agreement does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trademarks, service marks, publicity, or privacy. The Contractor shall be responsible for obtaining and paying for any necessary licenses to use any third-party content.

(d) The Contractor agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon or instructions given by NYSERDA, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Contractor acknowledges that in the performance of the Work under this Agreement, Contractor may come into possession of personal information as that term is defined in Section 92 of the New York State Public Officers Law. Contractor agrees not to disclose any such information without the consent of NYSERDA.

#### Section 8.02. Representations.

(a) All materials have been or will be created solely by the Contractor's full-time employees during the course of their employment, or independent contractors who assigned or will assign all right, title, and interest worldwide to the Contractor.

(b) The use, public performance, reproduction, distribution, or modification of the materials does not and will not violate the rights of any third parties, including, but not limited to, copyrights, trademarks, service marks, publicity, or privacy.

Section 8.03. Licenses. The Contractor shall be responsible for obtaining and paying for any necessary licenses to use any third-party content contained in the materials.

Section 8.04. Assignment of Rights. The Contractor hereby irrevocably assigns, conveys and otherwise transfers to NYSERDA, and its respective successors and assigns, all rights, title and interests worldwide in and to the materials and all copyrights, trade secrets, patents, trademarks, service marks and other intellectual property rights and all contract and licensing rights, and all claims and causes of action of any kind with respect to any of the foregoing, whether now known or hereafter to become known. In the event the Contractor has any rights in and to the materials that cannot be assigned to NYSERDA, the Contractor hereby unconditionally and irrevocably waives the enforcement of all such rights, and all claims and causes of action of any kind with respect to any of the foregoing against NYSERDA, its distributors and customers, whether now known or hereafter to become known and agrees, at the request and expense of NYSERDA and its respective successors and assigns, to consent to and join in any action to enforce such rights and to procure a waiver of such rights from the holders of such rights. In the event the Contractor has any rights in and to the materials that cannot be assigned to NYSERDA and cannot be waived, the Contractor hereby grants to NYSERDA, and its respective successors and assigns, an exclusive, worldwide, royalty-free, perpetual license to reproduce, distribute, modify, publicly perform and publicly display, with the right to sublicense through multiple tiers of sublicensees and assign such rights in and to the materials including, without limitation, the right to use in any way whatsoever the materials and the Contractor retains no rights to use the materials and agrees not to challenge the validity of the copyright ownership by NYSERDA in the materials. In the event that any development of any materials under this Agreement is to be performed by a subcontractor, the Contractor agrees to include the provisions contained in this section in any such subcontract.

Section 8.05. Restriction on Use. The Contractor agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon or instructions given by NYSERDA, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Contractor acknowledges that in the performance of the Work under this Agreement, Contractor may come into possession of personal information as that term is defined in Section 92 of the New York State Public Officers Law. Contractor agrees not to disclose any such information without the consent of NYSERDA.

## Article IX

### Warranties and Guarantees

Section 9.01. Warranties and Guarantees. The Contractor warrants and guarantees that:

(a) all information provided and all representations made by Contractor as a part of the Proposal Checklist or application, if any, submitted to NYSERDA in order to obtain this Agreement were, to the best of Contractor's knowledge, complete, true and accurate when provided or made;

(b) as of the Effective Date, it is financially and technically qualified to perform the Work, and is qualified to do business and is in good standing in all jurisdictions necessary for Contractor to perform its obligations under this Agreement;

(c) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

(d) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted scientific standards and engineering practices;

(e) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted scientific standards and engineering practices;

(f) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

(g) to the best of Contractor's knowledge, there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or NYSERDA's rights hereunder;

(h) it has no actual knowledge that any information or document or statement furnished by the Contractor in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading, and that all facts have been disclosed that would materially adversely affect the Work;

(i) all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate;

(j) Contractor is familiar with and will comply with NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors with respect to the performance of this Agreement;<sup>1</sup> and

(k) its rates for the indirect costs charged herein have been determined based on the Contractor's reasonably anticipated indirect costs during the term of the Agreement and calculated consistent with generally accepted accounting principles.

(j) Contractor shall at all times during the Agreement term remain Responsible, and Contractor agrees, if requested by NYSERDA, 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.

## Article X

### Indemnification

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<sup>1</sup> [http://www.nyserda.ny.gov/~media/Files/About/Board%20Governance/CodeConduct.aspx?sc\\_database=web](http://www.nyserda.ny.gov/~media/Files/About/Board%20Governance/CodeConduct.aspx?sc_database=web)

Section 10.01. Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to Contractor's or its Subcontractors' performance of this Agreement. The obligations of the Contractor under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

Article XI  
Insurance

Section 11.01. Maintenance of Insurance; Policy Provisions. The Contractor, at no additional direct cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

- (a) except policies in evidence of insurance required under Section 11.02(b), name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;
- (b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and
- (c) be reasonably satisfactory to NYSERDA in all other respects.

Section 11.02. Types of Insurance. The types and amounts of insurance required to be maintained under this Article are as follows:

- (a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of \$1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, \$1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and \$1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and
- (b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by Article XI hereof. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

Article XII

## Stop Work Order; Termination; Non-Responsibility

### Section 12.01. Stop Work Order.

(a) NYSERDA may at any time, by written Order to the Contractor, require the Contractor to stop all or any part of the Work called for by this Agreement for a period of up to ninety (90) days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an Order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of work stoppage consistent with public health and safety. Within a period of ninety (90) days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or
- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

(b) If a Stop Work Order issued under this Section is cancelled or the period of the Order or any extension thereof expires, the Contractor shall resume Work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

- (i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Agreement, and
- (ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

(c) If a Stop Work Order is not cancelled and the Work covered by such Order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

(d) Notwithstanding the provisions of this Section 12.01, the maximum amount payable by NYSERDA to the Contractor pursuant to this Section 12.01 shall not be increased or deemed to be increased except by specific written amendment hereto.

### Section 12.02. Termination.

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon ten (10) days prior written notice to the Contractor. In such event, payment shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Payment and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments

(including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor). Articles VIII, IX, and X shall survive any termination of this Agreement, and Article XVI shall survive until the payment obligations pursuant to Article VIII have been met.

(b) NYSERDA specifically reserves the right to terminate this agreement in the event that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k is found to have been intentionally false or intentionally incomplete, or that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a is found to have been intentionally false when made. Terminations under this subsection (b) will be effective upon Notice.

(c) Nothing in this Article shall preclude the Contractor from continuing to carry out the Work called for by the Agreement after receipt of a Stop Work Order or termination notice at its own election, provided that, if the Contractor so elects: (i) any such continuing Work after receipt of the Stop Work Order or termination notice shall be deemed not to be Work pursuant to the Agreement, and (ii) NYSERDA shall have no liability to the Contractor for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

### 12.03 Suspension or Termination for Non-Responsibility.

(a) Suspension. NYSERDA, in its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when it 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 NYSERDA issues a written notice authorizing a resumption of performance under the Contract.

(b) Termination. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate NYSERDA officials or staff, this Agreement may be terminated by NYSERDA at the Contractor's expense where the Contractor is determined by NYSERDA to be non-Responsible. In such event, NYSERDA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

## Article XIII

### Independent Contractor

Section 13.01. Independent Contractor. (a) The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants, including the Project Director, shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, vicarious liability, professional liability coverage or indemnification, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. It is understood and agreed that the personnel furnished by Contractor to perform the Work shall be Contractor's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.

(b) Contractor expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Contractor and/or

Contractor's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Contractor expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon contractor's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

## Article XIV

### Compliance with Certain Laws

Section 14.01. Laws of the State of New York. The Contractor shall comply with all of the requirements set forth in Exhibit C hereto.

Section 14.02. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Contractor, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

Section 14.03. Other Legal Requirements. The references to particular laws of the State of New York in this Article, in Exhibit C and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

## Article XV

### Notices, Entire Agreement, Amendment, Counterparts

Section 15.01. Notices.

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:

- (i) via certified or registered United States mail, return receipt requested;
- (ii) by facsimile transmission;
- (iii) by personal delivery;
- (iv) by expedited delivery service; or
- (v) by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

**NYSERDA**

Name: Cheryl L. Earley

Title: Director of Contract Management

Address: 17 Columbia Circle, Albany, New York 12203

Facsimile Number: (518) 862-1091

E-Mail Address: [cle@nyserda.ny.gov](mailto:cle@nyserda.ny.gov)

Personal Delivery: Reception desk at the above address

**[Contractor Name]**

Name:

Title:

Address:

Facsimile Number:

E-Mail Address:

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Section 15.02. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

Section 15.03. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Article XVI

Publicity

Section 16.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA's Director of Communications to prepare any press release and to plan for any news conference concerning the Work. In addition the Contractor shall notify NYSERDA's Director of Communications regarding any media interview in which the Work is referred to or discussed.

(b) It is recognized that during the course of the Work under this Agreement, the Contractor or its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Contractor shall

credit NYSERDA's funding participation in the Project, and shall state that "NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York." Notwithstanding anything to the contrary contained herein, the Contractor shall have the right to use and freely disseminate project results for educational purposes, if applicable, consistent with the Contractor's policies.

(c) Commercial promotional materials or advertisements produced by the Contractor shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.

## EXHIBIT C

REVISED 5/12

### STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)

The parties to the Agreement agree to be bound by the following clauses which are hereby made a part of the Agreement:

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement 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 Agreement 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: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate

against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement 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: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) 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 Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor'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, the 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 NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement 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 Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Contractor agrees, as a material condition of the Agreement, 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 Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

5. SET-OFF RIGHTS. NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public

Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information “confidential” or “proprietary” at the time of disclosure. By so marking such information, Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA’s policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.state.ny.us/coog/foil2.html>) and NYSERDA’s Regulations, Part 501 (<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>).

7. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** As a condition to NYSERDA’s obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** 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 Contractor to the State is mandatory. The principal purpose for which the information is collected is to enable the State 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.

8. **CONFLICTING TERMS.** In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit C, the terms of this Exhibit C shall control.

9. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

10. **NO ARBITRATION.** Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA’s written consent, but must, instead, be heard in a court of competent jurisdiction of the State of

New York.

11. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and 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 NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

12. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

13. PERMITS. It is the responsibility of the Contractor to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.

15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development  
Division for Small Business  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5884  
<http://www.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  
625 Broadway  
Albany, New York 12207  
Telephone: 518-292-5200  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Contractors certify that whenever the total 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;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The 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 Job 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. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

16. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require 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 South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

17. 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 Section 899-aa; State Technology Law Section 208).

18. 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 this Agreement the 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, NYSERDA may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

19. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Contractors that have entered into agreements in an amount exceeding \$100,000 for the purchase of goods and services:

- a) Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c) Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.

NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of [section 165-a of the State Finance Law](#) (See [www.ogs.ny.gov/about/regs/ida.asp](http://www.ogs.ny.gov/about/regs/ida.asp)).

## EXHIBIT D

### NYSERDA PROMPT PAYMENT POLICY STATEMENT

**504.1. Purpose and Applicability.** (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations.<sup>2</sup>

(b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

**504.2. Definitions.** Capitalized terms not otherwise defined in this Exhibit shall have the same meaning as set forth earlier in this Agreement. In addition to said terms, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Date of Payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a Payment.

(b) "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(c) "Payment" means payment properly due and owing to Contractor pursuant to Article IV, Exhibit B of this Agreement.

(d) "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(e) "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

(g)(1) "Receipt of an Invoice" means:

(i) if the Payment is one for which an invoice is required, the later of:

(a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or

(b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in

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<sup>2</sup> This is only a summary; the full text of Part 504 can be accessed at:  
<http://www.nyserda.ny.gov/en/About/~media/Files/About/Contact/NYSERDARegulations.ashx>

the Designated Payment Office.

(ii) if the Agreement provides that a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

(2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Contractor has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

(h) "Set-off" means the reduction by NYSERDA of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to NYSERDA.

**504.3. Prompt Payment Schedule.** Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Exhibit, the Date of Payment by NYSERDA of an amount properly due and owing under this Agreement shall be no later than thirty (30) calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

**504.4. Payment Procedures.**

(a) Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Contractor to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the Contractor within fifteen (15) calendar days after Receipt of an Invoice of:

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; or
- (3) suspected improprieties of any kind.

(c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.

(d) If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Contractor. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSERDA shall make Payment, consistent with any such correction or

resolution and the provisions of this Exhibit.

**504.5. Exceptions and Extension of Payment Due Date.** NYSERDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

(a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSERDA on a timely basis, then the Payment Due Date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually received such matter.

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

(d) If appropriated funds from which Payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to NYSERDA, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when such funds are made available to NYSERDA.

**504.6. Interest Eligibility and Computation.** If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a Payment shall be computed for the period beginning on the day after the Payment Due Date and ending on the Date of Payment.

**504.7. Sources of Funds to Pay Interest.** Any interest payable by NYSERDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related Payment.

**504.8. Incorporation of Prompt Payment Policy Statement into Contracts.** The provisions of this Exhibit shall apply to all Payments as they become due and owing pursuant to the terms and conditions of this Agreement, notwithstanding that NYSERDA may subsequently amend its Prompt Payment Policy by further

rulemaking.

**504.9. Notice of Objection.** Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

**504.10. Judicial Review.** Any determination made by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

**504.11. Court Action or Other Legal Processes.**

(a) Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Contractor pursuant to this Exhibit shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by NYSERDA after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.