

MINUTES OF THE THIRD MEETING OF THE  
GOVERNANCE COMMITTEE  
HELD ON JUNE 18, 2007

Pursuant to notice dated June 4, 2007, the third (3rd) meeting of the Governance Committee of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY ("Authority") was convened at 12:30 p.m. on Monday, June 18, 2007, in the Authority's board room at 17 Columbia Circle, Albany, New York, and was available by video conference in the Authority's 10<sup>th</sup> floor conference room at 485 Seventh Avenue, New York, New York.

The following members of the Committee were present:

George F. Akel, Jr., Chair  
Vincent A. DeIorio, Esq., *ex officio*  
Jay L. Gottlieb

Also present were Authority Members Robert B. Catell, Parker D. Mathusa, and Dr. Elizabeth W. Thorndike; Robert G. Callender, Vice President for Programs; Jeffrey J. Pitkin, Treasurer; Hal Brodie, Esq., Acting General Counsel; Jacquelyn L. Jerry, Esq., Associate Counsel and Secretary to the Governance Committee; and various other staff of the Authority.

Mr. Akel called the meeting to order and noted the presence of a quorum. He indicated that the first item on the agenda concerned the approval of the minutes of the second (2nd) meeting of the Committee held on April 23, 2007. Mr. Gottlieb noted that he attended the meeting by video conferencing from New York City and staff indicated that the *minutes* to be approved should be deemed to indicate this change.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote, the

minutes, as amended. of the second (2nd) meeting of the Committee, held on April 23, 2007, were approved.

Mr. Akel said that the next item on the agenda concerned a proposed Code of Conduct for Authority Contractors, Consultants, and Vendors (Vendor Code of Conduct). Vincent A. DeIorio, Esq., the Authority's Chair, stated that the Members recently adopted a Code of Conduct for Authority Members and Employees that details the ethical business standards that are to be met, particularly with respect to the procurement process. In order to further that purpose, vendors must also bring to the process a commitment to ethical behavior.

The Vendor Code of Conduct sets forth the standards that Authority vendors are expected to meet when they participate in the Authority's procurement process. For example, these standards require them to comply with all contract requirements, comply with New York State lobbying laws, submit non-collusive and independent bids, limit gifts to Authority Members and employees, and report ethical violations by their employees and by any person acting on behalf of the Authority.

Compliance with the Vendor Code of Conduct will ensure that the Authority maintains a fair procurement process, and that successful proposers are advised of the need to perform their work in an ethical manner.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Committee members present, the following resolution was adopted.

#### Resolution No. 3

RESOLVED, that the Governance Committee recommends that the Members of the Authority adopt a resolution in substantially the same form as the resolution submitted to the Committee (attached as Exhibit A), approving the Code of Conduct for NYSERDA Contractors, Consultants, and Vendors, as presented at this meeting (attached as Exhibit B).

Mr. Akel indicated that the next item on the agenda was a report from Jeffrey J. Pitkin, the Authority's Treasurer, on the Authority's compensation schedule. Mr. Pitkin stated that the Public Authorities Accountability Act of 2005 (Act) added items to the list of materials and information that is to be included in the annual report filed with the Governor, the Comptroller, and the Legislature, pursuant to Section 2800 of the Public Authorities Law. The Annual Report is to include a compensation schedule reporting the name, title, salary, and total compensation for all employees in decision-making or managerial positions with salaries in excess of \$100,000. The schedule was included in the meeting materials.

Dr. Thorndike commented, and Mr. DeIorio concurred, that the Authority should seek opportunities to increase the number of women on the list.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Committee members present, the following resolution was adopted.

#### Resolution No. 4

RESOLVED, that the Audit and Finance Committee recommends that the Members of the Authority adopt a resolution in substantially the same form as the resolution submitted to the Committee (attached as Exhibit C), adopting and approving the Authority's compensation schedule to be submitted pursuant to Section 2800 of the Public Authorities Law (attached as Exhibit D).

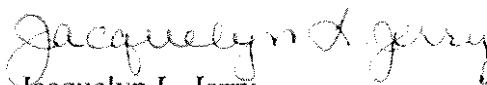
Mr. Akel stated that the next agenda item concerned a discussion by Mr. Pitkin on conducting Board and Committee self-assessments. Mr. Pitkin indicated that one of the functions included in the Governance Committee's Charter was a requirement for conducting periodic Board and Committee self-assessments. In developing a proposed process for effectuating this requirement, staff has been contacting other New York State public authorities to obtain input on how they are intending to implement this function. In addition, staff is reviewing processes used by for-profit corporations and not-for-profit groups. While there is some overlap, the processes in the private sector do not address all of the aspects of self-assessments that would apply in connection with effecting governmental functions. Initial

indications are that these models may be used as a starting point, but that they will need to be revised to address specific subject matters that are part of each public authority's mission. Staff intends to continue developing an Authority-specific process. This item is on the agenda so that staff could present the proposed development process to the Committee members and solicit comments and suggestions on how staff intends to proceed.

The Members then discussed their experiences with self-assessment with respect to other organizations and directed staff to continue with their planned approach.

Mr. Akel indicated that the last agenda item concerned other business. There being no further business, upon motion duly made and seconded, and by unanimous voice vote of the Committee members, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jacquelyn L. Jerry".

Jacquelyn L. Jerry  
Secretary to the Committee

**NOTICE OF MEETING AND AGENDA**

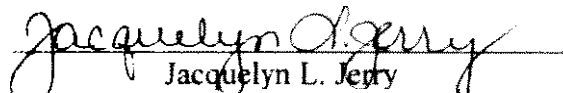
June 4, 2007

TO THE MEMBERS OF THE GOVERNANCE COMMITTEE:

PLEASE TAKE NOTICE that the third (3<sup>rd</sup>) meeting of the GOVERNANCE COMMITTEE of the New York State Energy Research and Development Authority will be held in the Authority's Albany Office at 17 Columbia Circle, Albany, New York, and by video conference in the Authority's New York City Office at 485 Seventh Avenue, 10<sup>th</sup> floor, New York, New York, on Monday, June 18, 2007, commencing at 12:30 p.m. for the following purposes:

1. To consider the Minutes of the 2nd meeting held on April 23, 2007.
2. To consider and act upon a Code of Conduct for NYSERDA Contractors, Consultants, and Vendors.
3. To consider and act upon a compensation schedule.
4. To discuss conducting Board and Committee self-assessments.
5. To transact such other business as may properly come before the meeting.

Members of the public may attend the meeting at either of the above locations.

  
Jacquelyn L. Jerry  
Secretary to the Governance Committee

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17 Columbia Circle  
Albany, NY 12203-6399  
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Management Program**  
10282 Rock Springs Road  
West Valley, NY 14171-9799  
Phone: (716) 942-4387  
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**New York City**  
485 Seventh Ave., Suite 1006  
New York, NY 10018  
Phone: (212) 971-5342  
Fax: (212) 971-5349

**Buffalo**  
617 Main Street, Suite 105  
Buffalo, NY 14203  
Phone: (716) 842-1522  
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EXHIBIT A

Resolution No. \_\_\_\_\_

RESOLVED, that the Code of Conduct for NYSERDA Contractors, Consultants, and Vendors presented to the Members of the Authority at this meeting is adopted and approved, and

BE IT FURTHER RESOLVED, that the President and CEO, in his or her discretion, is hereby authorized to makes such further and additional additions, modifications, clarifications, and other changes, as he or she may deem necessary or appropriate, consistent with changes in law, rules, and regulations, and Authority policies and procedures.

# Code of Conduct for NYSERDA Contractors, Consultants, and Vendors



**NYSERDA**

## Introduction

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

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

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

## Contractor Conduct

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

- furnish all required goods, materials, and services in a manner that is consistent with the underlying terms and conditions of the contract and any applicable program solicitation,
- submit complete and accurate reports and invoices to NYSERDA and to other related program participants as required,
- not seek, solicit, demand, or accept any information, verbal or written, from NYSERDA or others involved in NYSERDA efforts that provides an unfair advantage over a competitor,
- not engage in any activity or course of conduct

that restricts open and fair competition on NYSERDA-related programs, projects, or transactions, or that is inconsistent with any law, rule, or regulation,

- not engage in any course of conduct with NYSERDA Members and employees or others involved in NYSERDA efforts that constitutes a conflict of interest, in fact or in appearance,
- not offer any gifts or gratuities in excess of nominal value to NYSERDA Members or employees (including special event tickets or other items of value), and
- not engage in other conduct that violates this Contractor Code of Conduct.

## Lobbying

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

## Non-Collusion and Independence of Bid

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

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

In addition, a Vendor shall not make any attempt to induce any other individual or entity to submit or not to submit a bid or proposal.

### **Vendor Ethics Program**

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

### **Limits on Gifts to NYSERDA Members and Employees**

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

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

performance of their official duties, or

- was intended as a reward for the NYSERDA Member's or employee's official action.

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

Violations of these limits on gifts may be grounds for immediate contract termination and/or referral for civil action or criminal prosecution.

### **Employing Relatives of NYSERDA Employees**

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

### **Hiring Former NYSERDA Members and Employees**

Vendors may hire former NYSERDA Members and employees. However, as a general rule, under the Public Officers Law, former Members and employees

of NYSERDA may neither appear nor practice before NYSERDA, nor receive compensation for services rendered on a matter before NYSERDA, for a period of two years following their separation from NYSERDA service. Also, former NYSERDA Members and employees are subject to a "lifetime bar" which prevents them from working on or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with NYSERDA.

### **Reporting Violations**

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

### **Questions**

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

**When in doubt, please seek guidance.**



Resolution \_\_\_\_

RESOLVED, that the Authority's compensation schedule presented at this meeting, is adopted and approved as the compensation schedule to be submitted pursuant to Section 2800 of the Public Authorities Law.

## EXHIBIT D

**NYSERDA**

Compensation Schedule as of March 31, 2007 Pursuant to Public Authorities Law Section 2800

Last Name	First Name	Title	Annual Salary as of March 31, 2007	Total Compensation* received for the Year Ended March 31, 2007
AHEARN	M. JOHN	Program Manager	106,891	103,983
BARONE	THOMAS	Program Manager	107,562	113,962
BEMBLA	PAUL	Program Manager	107,562	110,887
BRODIE	HAL	Deputy Counsel	119,658	125,058
CALLENDER	ROBERT	Vice President for Programs	136,693	145,090
DECOTIS	PAUL	Director	131,978	138,185
DOUGLAS	PETER	Program Manager	107,562	112,094
DRAKE	RICHARD	Program Manager	107,562	111,722
EGGERS	MARK	Program Manager	107,562	110,762
GERARDI	RICHARD	Director	131,978	137,257
GERWITZ	COLLEEN	Program Manager	107,562	112,412
HENDERSON	BRIAN	Director	131,978	137,257
HORTON	RUTH	Program Manager	107,562	111,062
JERRY	JACQUELYN	Associate Counsel	107,562	113,587
JOSEPH	JANET	Program Manager	107,562	111,722
KHOSROVA	MITCHELL	Associate Counsel	107,562	112,312
LAVADA	DONALD	Director of Economic Development/Marketing	101,202	98,433
PAKENAS	LAWRENCE	Program Manager	107,562	111,858
PETERSON	JEFFREY	Program Manager	107,562	111,722
PICIULO	PAUL	Director	131,978	136,978
PITKIN	JEFFREY	Treasurer	136,693	145,090
PLATT	BRIAN	Program Manager	107,562	110,862
REIS	JAMES	Program Manager	107,562	111,762
SMITH	PETER	President	143,888	156,049 **
SONNTAG	TED	Program Manager	107,562	111,212
SPATH	JOHN	Program Manager	107,562	111,858
VILLENEUVE	KAREN	Program Manager	107,562	112,362
VISALLI	JOSEPH	Director	131,978	137,257
WALMET	GUNNAR	Director	131,978	137,257
YOUNG	DAVID	Manager of Information Technology	107,562	112,725

\* Total compensation includes, when applicable, performance-based lump sum payments. Pursuant to NYSERDA's personnel policies, all employees whose salaries are at the maximum of their Management/Confidential salary grade range are eligible to receive an annual performance-based lump sum payment, awarded as a percentage of salary from a fixed pool of funds budgeted and approved for such payments.

\*\* NYSERDA's President is provided unrestricted access of a NYSERDA-owned vehicle, consistent with State policies. Included in the compensation received for the year ended March 31, 2007 is \$3,308 reported as a taxable fringe benefit under IRS guidelines for calendar year 2006 personal use of the vehicle.