



**New York State Energy Research  
and Development Authority**

**Project Implementation Funding for State Energy Program  
American Recovery and Reinvestment Act (ARRA)  
Request for Proposals (RFP) 1613  
Revised February 16, 2010**

Summary of Revisions:

The following revisions have been made to RFP 1613, “Project Implementation Funding for State Energy Program American Recovery and Reinvestment Act”

- Extend the due date for Round 3 to April 7, 2010. The due date for Round 4 has yet to be determined.
- Funding available for each eligible sector within each region has been revised. Funding table in Section II of the solicitation identifies remaining funds.



New York State Energy Research  
and Development Authority

**Project Implementation Funding for State Energy Program  
American Recovery and Reinvestment Act (ARRA)  
Request for Proposals (RFP) 1613  
\$8,313,851M Available**

Proposals Due:  
Round 3 –April 7, 2010 by 5:00 PM Eastern Time\*

**Program Summary**

This Request for Proposals (RFP) provides funding for the installation of energy conservation measures including: energy efficiency, renewable energy, and clean fleet projects. This program is made available as part of NYSERDA’s administration of the State Energy Program (SEP) funded by the American Recovery and Reinvestment Act (ARRA). Eligible Proposers include: municipal governments, public K-12 schools, public universities or colleges (including SUNY, SUNY community colleges, CUNY, and CUNY community colleges), public and private hospitals, and not-for-profits (defined as a Internal Revenue Code Section 501(c)(3) qualifying organization formed prior to February 17, 2009).

Funding for this program is provided under the American Recovery and Reinvestment Act (ARRA) and the State Energy Program. If your organization receives funding under this Program, it may be subject to special terms and conditions, including but not limited to: detailed reporting requirements; audit of your organization’s use of ARRA funds; Buy American provisions; and Davis-Bacon prevailing wage requirements. Your organization will be required to provide certain information in a timely manner to meet ARRA requirements. See attachments for a list of special terms and conditions. Failure to comply may result in the loss of Federal funding.

**Proposal Submission:** Proposers must submit one (1) paper copy of your proposal and one (1) electronic copy on a CD. The paper copy must have a signed Proposal Checklist (Appendix A) attached to the front and must include an original signature. Proposals must be clearly labeled and submitted to:

**Roseanne Viscusi, RFP 1613  
NYS Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399**

All program questions should be directed to Ben Fox, 866-NYSERDA (866-697-3732), ext. 3444, [bf2@nyserda.org](mailto:bf2@nyserda.org). All contractual questions should be directed to Venice Forbes, 866-NYSERDA (866-697-3732), ext. 3507, [vwf@nyserda.org](mailto:vwf@nyserda.org).

No communication intended to influence this procurement is permitted except by contacting Ben Fox, 866-NYSERDA (866-697-3732), ext. 3444, [bf2@nyserda.org](mailto:bf2@nyserda.org). 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: (1) may result in a Proposer being deemed a non-responsible offerer, and (2) may result in the Proposer not being awarded a contract.

\*Late, incomplete, or unsigned Proposals will be returned. Faxed or e-mailed Proposals will not be accepted. Proposals will not be accepted at any other NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA’s website at [www.nyserda.org](http://www.nyserda.org).

## **I. Introduction**

The American Recovery and Reinvestment Act (ARRA) included funding for the State Energy Program (SEP). SEP funds are distributed to states based on a formula allocation. NYSERDA administers the SEP funds in New York State pursuant to a program plan that has been approved by the U.S. Department of Energy. NYSERDA has developed this Request for Proposals (RFP) through which \$8.3 Million of New York's allocation of ARRA SEP funds will be awarded for eligible energy conservation projects on a competitive basis. Funds are to be used to implement the following types of energy conservation projects: energy efficiency, renewable energy, and clean fleet. Eligible Proposers include: municipal governments, public K-12 schools, Boards of Cooperative Educational Services (BOCES); public universities or colleges (including SUNY, SUNY community colleges, CUNY, and CUNY community colleges), public and private hospitals, and not-for-profits (defined as a Internal Revenue Code Section 501(c)(3) qualifying organization formed prior to February 17, 2009). Eligible Proposers agree to comply with all required Federal and State requirements for use of the funds.

An Energy Efficiency Project is defined as a project that achieves a cost per annual energy saved threshold of less than \$900 of total project cost per 10 million BTUs source energy savings.

A Renewable Energy Project is defined as a project that: achieves a cost per annual energy generated of less than \$8,000 of total project cost per 10 million BTUs generated or saved; is sited at the electric customer's location; is used primarily to serve the electric customer's load (i.e., not primarily exported to the utility grid); and the system as designed cannot generate more electricity than is consumed on-site annually (the combination of these qualifying conditions is commonly described as "behind the meter" generation).

A Clean Fleet Project is defined as a project that achieves a cost per annual energy saved threshold of less than \$5,000 of requested funding per 10 million BTUs source energy savings.

## **II. Program Rules and Requirements**

### **Available Incentives**

Due to the time requirements all ARRA funds are required to be completed by, preference will be given to Proposals that have an implementation schedule of 12 months or less.

For Energy Efficiency Projects and Renewable Energy Projects, a Proposer may request up to 100% of the cost of the project. For Clean Fleet Projects that request funding to purchase eligible vehicles, a Proposer may request up to 75% of the incremental purchase cost (defined as the increase in cost over a standard piece of equipment) for vehicles. For Clean Fleet Projects that request funding to purchase anti-idling or fueling and refueling/recharging equipment, a Proposer may request up to 75% of the purchase cost for the equipment.

Proposers may submit multiple proposals. A separate Proposal must be submitted for each Project type in accordance with Appendices G, H and I.

There is a category cap of \$500,000 for Clean Fleet Projects. There is a Proposer cap of \$1,000,000. A Proposer is defined as the highest corporate entity with the same federal ID number; provided, however, each SUNY and CUNY campus shall be considered a separate Proposer. Schools districts with a student population greater than 1,000,000 may propose for the total funding amount available in that region. Cities with population greater than 5,000,000 may propose for the total funding amount available in that region.

To ensure regional distribution of funds, regions were established and funding allocated to each region based on the number of unemployed people in that region. NYSERDA reserved the right to reallocate funds between sectors within a region or between regions, based on need. In the first two selection rounds, funding was allocated within each region to each of the four eligible sectors to ensure that each eligible sector would have the opportunity to receive funding. This is the third selection round of the program and with funding remaining for Region 1 and Region 7, all eligible sectors within those regions are now able to compete for these remaining funds.

### **Funding Available for Round 3**

<b>Region</b>	<b>Combined Sector of: Municipal Governments; Public K-12 Schools; Public Universities and Colleges; and Public and Private Hospitals and Not-for-Profits defined as (501(c)(3))</b>
Region 1 (New York City)	\$6,761,968
Region 2 (Long Island)	\$0
Region 3 (Hudson Valley/Capital Region)	\$0
Region 4 (North Country)	\$0
Region 5 (Central New York)	\$0
Region 6 (Rochester/Finger Lakes)	\$0
Region 7 (Western New York)	\$1,551,883

See Appendix P for map of regions.

#### **Program Steps**

1. The Proposer submits a separate Proposal for each Energy Efficiency, Renewable Energy, and Clean Fleet Project being proposed. See Section III for full Proposal instructions.
2. NYSERDA’s Technical Evaluation Panel (TEP) reviews and ranks all complete Proposals received by the due date. NYSERDA notifies each Proposer of whether or not their organization’s Proposal has been accepted and will contact the successful Proposers to discuss the Measurement and Verification (M&V) Plan and the Schedule of Payments (based on what the Proposer identified in Appendix K of their Proposal) and possibly negotiate other terms, as necessary.
3. NYSERDA enters into an Agreement, incorporating the agreed upon terms, with the successful Proposer, including applicable requirements of Buy American, Davis-Bacon

- prevailing wages requirements, and all other applicable Federal and State requirements.
4. The Proposer performs the approved energy conservation project. Upon receipt of the required documentation, NYSERDA issues progress payments according to the Schedule of Payments incorporated into the Agreement.
  5. The Proposer cooperates with NYSERDA, and its consultant(s), in performing the M&V Plan and in all other required reporting requirements.

## Competitive Selection Process

All complete Proposals submitted by the due date will be evaluated by a Technical Evaluation Panel (TEP). The TEP will evaluate each Proposal based on the selection criteria included in Appendix G, Appendix H, or Appendix I, as appropriate. Proposals will then be ranked and funded from the highest ranked project to the lowest ranked project as recommended by the TEP and as approved by NYSERDA. NYSERDA may award a contract based on proposals without discussion, or following limited discussion. NYSERDA may request additional data, materials, or forms from selected Proposers as part of this process.

## Eligibility

### Eligible Proposers

Eligible Proposers are all New York municipal governments, public K-12 schools, Boards of Cooperative Educational Services (BOCES), public universities or colleges (including SUNY, SUNY community colleges, CUNY, and CUNY community colleges), public and private hospitals, not-for-profits (defined as a Internal Revenue Code Section 501(c)(3) qualifying organization formed prior to February 17, 2009). Municipal governments must be included in the latest available Census of Governments as a currently incorporated government. The municipality must also have a governance structure with an elected official and governing body and must have the legal authority to implement the eligible activities. Sewer districts and other sub-components of eligible villages, towns, cities and counties are not eligible Proposers. Each campus of SUNY, SUNY community colleges, CUNY, and CUNY community colleges are considered separate Proposers.

### Eligible Measures

**All Projects will be required to comply with Davis-Bacon prevailing wage requirements. All Projects for public facilities or Public Works Projects will be required to comply with Buy American, and purchase iron, steel, and manufactured goods produced in the United States unless a waiver is obtained from the Department of Energy to be eligible. These Federal requirements may exclude some equipment and may have cost impacts that must be taken into account prior to a proposal being submitted to NYSERDA. Proposers may be audited for compliance with these requirements.**

Eligible Proposers may request implementation funds for the following Project types:

- Energy Efficiency Project (A project that achieves a cost per annual energy saved threshold of less than \$900 per 10 million BTUs of source energy saved (see Appendix N for energy conversion factors).
  - Facility and non-facility integrated measures are eligible and may include, but are not limited to: lighting, cooling, heating, motors, building envelope, building or facility optimization, combined heat and power, geothermal systems, and other energy-efficiency technologies.
  - Retro-commissioning services are eligible, but they must be specifically focused on energy efficiency. For example: retro-commissioning of lighting, HVAC, and control systems may be eligible.

- Renewable Energy Project (A project that achieves a cost per annual energy generated of less than \$8,000 per 10 million BTUs of energy generated or saved), is sited at the electric customer's location, and is used primarily to serve the electric customer's load (i.e., not primarily exported to the utility grid), and that cannot generate more electricity than is consumed on-site annually (the combination of these qualifying criteria is commonly described as "behind the meter" generation).
  - A solar electric Project must have an installed DC capacity of 50 kW or less. In addition, a solar electric Project must use an installer who is: NABCEP certified; either a NYSERDA- approved installer (listed at [www.powernaturally.org](http://www.powernaturally.org)) or a LIPA approved installer (listed at [www.lipower.org](http://www.lipower.org)); and who has completed at least three (3) solar electric installations in LIPA or NYSERDA Programs
  - A wind Project must use a NYSERDA or LIPA approved installer, NYSERDA approved equipment, and use 20kW or smaller wind turbines to be eligible (see [www.powernaturally.org](http://www.powernaturally.org) for a current list of eligible installers and equipment). Note that, notwithstanding inclusion on the NYSERDA website, Proposers are also still required to ensure that any turbine being proposed is also in compliance with Buy American requirements.
  - A solar thermal Project that provides heating for domestic hot water, space heating, or other heating purposes is eligible.
  - A high-efficiency indoor boiler Project that uses wood pellets, wood chips, or firewood are eligible. A minimum thermal efficiency of 83% is required. Wood-fired boilers must measure thermal efficiency using either the EN 303-5 or ASHRAE 155P methods and use the lower heating value of wood.
  - A fuel cell Project is eligible.
  
- Clean Fleet Project (A Clean Fleet Project is a project that achieves a cost per annual energy saved threshold of less than \$5,000 of requested funding per 10 million BTUs of source energy saved.) Vehicle purchases requested under this RFP can be for vehicle replacement or fleet expansion.
  - Light-, medium-, or heavy-duty alternative fuel vehicles that are fueled by natural gas, propane, hydrogen, or use electricity either stored or generated on-board, as the primary motive force are eligible.
  - Medium and heavy-duty hybrid electric vehicles that use an electric motor directly connected to the drive train to provide traction force to the wheels are eligible.
  - Light-duty, plug-in (charge-depleting), hybrid-electric vehicles are eligible. However, the incremental cost for these vehicles is the cost compared to a charge-sustaining hybrid vehicle.
  - Fueling, and refueling and recharging equipment for alternative-fuel vehicles is eligible.
  - Anti-idling equipment is eligible.

### **Eligible Facilities and Locations**

Eligible facilities and eligible locations for Energy Efficiency Projects and Renewable Energy Projects include facilities and property owned or leased by the Proposer. If the facility or property is leased, the Proposer must be authorized to implement the Project, and the Project must pay for itself within the remaining term of the lease. New facilities, and those that have undergone substantial renovations, must be fully operational and have been occupied by the Proposer for more than one year prior to requesting funding under this RFP.

### **Eligible Vehicles**

Eligible vehicles include vehicles that are owned and operated by the Proposer. Vehicles must be licensed in New York and primarily driven in New York. Vehicle purchases requested under this RFP can be for replacement or fleet expansion purposes.

## **Ineligibility**

### **Ineligible Projects and Costs**

**Projects to be completed for casino or other gambling establishments, aquariums, zoos, golf courses, or swimming pools are not eligible for funding under this RFP.**

Projects that already have a fully executed contract to be funded or partially funded by other NYSERDA programs, LIPA programs, or any utility funded program, are not eligible for funding under this RFP.

Process related loads from wastewater treatment plants are not an eligible facility type for funding under this RFP. Implementation funds for these entities are available from NYSERDA through other programs.

Outdoor and low-efficiency wood boilers are not eligible for funding under this RFP. Low-efficiency wood boilers shall be defined as any boiler that does not meet or exceed a minimum thermal efficiency of 83 as measured by testing thermal efficiency using either the EN 303-5 or ASHRAE 155P methods, and using the lower heating value of wood. Wood boilers that would use a fuel source other than wood pellets, wood chips, or firewood are not eligible under this RFP.

Hydropower Projects are not eligible for funding under this RFP.

New construction and new construction commissioning is not eligible for funding under this RFP.

Power quality, power factor, and power conditioning improvements are not eligible for funding under this RFP.

Retro-commissioning services without the potential for significant energy savings are not eligible for funding. For example, retro-commissioning of fire suppression, security, or irrigation systems are not eligible for funding under this RFP.

Personal computers are not eligible for funding under this RFP.

Vehicles that are leased by the Proposer are not eligible for funding under this RFP.

The Proposer's staff time for developing, designing, or implementing the project is not eligible for reimbursement under this RFP.

Solar electric projects larger than 50 kW installed DC capacity are not eligible for funding under this RFP.

Wind projects larger than 20 kW installed DC capacity are not eligible for funding under this RFP.

In-kind services are not eligible for funding under this RFP and are not eligible to be considered as cost-sharing under this RFP.

**Costs incurred for work and equipment purchased prior to having a signed contract in place with NYSERDA are not eligible for funding under this RFP.**

**Failure to meet Davis-Bacon prevailing wage and Buy American requirements will disqualify the Project for funding under this RFP.**

For more information on Davis-Bacon, see:

[http://apps1.eere.energy.gov/state\\_energy\\_program/davis\\_bacon\\_faqs.cfm](http://apps1.eere.energy.gov/state_energy_program/davis_bacon_faqs.cfm)

### **Changes in Project Scope**

If a Proposal is selected, at any time the scope of work, schedule or budget changes, the Proposer must contact the NYSERDA project manager immediately. Changes in project scope, schedule or budget may change the amount of funds awarded by NYSERDA.

## **General Requirements**

### **Payment Schedule**

Proposers may request that NYSERDA issue progress payments of up to four (4) installments. To request progress payments, Proposers must submit a Progress Payments Request (Appendix K) as part of their proposal. The Progress Payments Request (Appendix K) must list the requested payment for each installment and propose a specific deliverable that the Proposer will submit to NYSERDA to justify each progress payment.

If a Project is selected for funding, NYSERDA may negotiate the proposed terms of the Progress Payments Request prior to issuing a contract. The approved Schedule of Payments will list the milestones and deliverables needed to trigger payment of each installment, and will list the amount of each installment. If a Proposer fails to meet specified deliverables, the Project may be terminated.

Requesting progress payments is not a factor used by the Technical Evaluation Panel (TEP) to select projects.

### **Project Completion Date**

Due to the Federal source of the ARRA funds, Proposers must complete implementation and submit the required documentation to NYSERDA for payment on or before September 1, 2011. Failure to do so may result in termination of the Agreement.

### **Service Provider Selection**

The Proposer is responsible for selecting its own Service Provider and must comply with all of its internal procurement requirements, including but not limited to State and Municipal Finance Laws, competitive bidding requirements and all applicable procurement requirements of the Proposer's organization. A Service Provider can be an independent third-party company, such as an energy service company (ESCO), energy consultant, engineering firm, utility company, construction company, or contractor. Projects can be self implemented; however, for all self implemented projects, only equipment costs are eligible for funding under this RFP. The Proposer is responsible for ensuring that its Service Provider complies with Davis-Bacon prevailing wage requirements and Buy American requirements.

### **D-U-N-S Number**

A D&B<sup>®</sup> D-U-N-S number is a unique nine digit sequence for indentifying and tracking organizations. It is a Federal requirement to receive ARRA funds to have and provide a D-U-N-S number. NYSERDA will not enter into a contract with any eligible Proposer without a D-U-N-S number. Additional information can be found at:

[http://www.dnb.com/US/duns\\_update/](http://www.dnb.com/US/duns_update/)

### **Central Contract Registration**

The Central Contractor Registration (CCR) is the primary registrant database for the U.S. Federal Government. CCR collects, validates, stores and disseminates data in support of Federal agency acquisition missions. Successful Proposers will be required to register in the CCR (<http://www.ccr.gov>) NYSERDA will not enter into a contract with a Proposer who has not confirmed their CCR registration.

### **National Environmental Policy Act (NEPA) Compliance**

All Projects funded through programs receiving ARRA money must comply with NEPA requirements. DOE, as the federal agency distributing funds for the SEP program, provides guidance on the NEPA process. Successful Proposers will be required to comply with NEPA requirement. Additional information on NEPA can be found on DOE's website.

### **Cost sharing**

Cost sharing is not required for Energy Efficiency Projects or Renewable Energy Projects, but is a selection factor that the TEP will use when evaluating Projects. The use of other Federal funds, including other ARRA grants, will not be considered as eligible cost sharing. A 25% cost sharing is required for all Clean Fleet Projects. Proposals must list all funding sources for the Project in the Funding Sources Form (Appendix J).

### **Other NYSERDA, LIPA and Utility Programs**

Energy conservation projects funded by this RFP are not eligible for additional funding under other NYSERDA programs, LIPA programs, or any utility funded program. Proposers who

previously entered into a contract with any of these funding entities to implement a Project under a different program cannot cancel participation in that program in order to reapply to this RFP. If a project has been submitted to another NYSERDA or utility program, but no contract is in place, Proposers may choose to cancel participation in that program in favor of receiving funds from this Program.

### **Other ARRA Grants**

Some Proposers may also be eligible to apply for Energy Efficiency and Conservation Block Grants (EECBG) directly from the U.S. Department of Energy to fund their project. Receipt of ARRA funding for the project being proposed to NYSERDA under other programs may result in a reduction in NYSERDA's incentive so that total grants and incentives of a proposed project do not exceed the cost of the Project. Proposers must also provide a complete listing of any other ARRA grants their organization is using for any energy projects.

### **EPA ENERGY STAR® Portfolio Manager**

The EPA ENERGY STAR® Portfolio Manager is a free web-based evaluation tool that compares a building's energy use with similar buildings nationwide, and tracks a building's energy use over time. Energy Efficiency Projects and Renewable Energy Projects are strongly encouraged to benchmark the building(s) being submitted to this RFP for improvements using the EPA ENERGY STAR® Portfolio Manager at [www.energystar.gov](http://www.energystar.gov), as appropriate. Benchmarking is part of the selection criteria used by the TEP and is encouraged, but is not required.

### **Energy Conservation Construction Code of New York and Other Efficiency Requirements**

Energy Efficiency Projects proposing to install high-efficiency indoor wood-fired boilers must measure thermal efficiency using either the EN 303-5 or ASHRAE 155p methods and use the lower heating value of wood.

Governor David A. Paterson has advanced legislation to amend the existing Energy Conservation Construction Code of New York State. This would require all commercial construction projects to meet or exceed the commercial building requirements of ASHRAE 90.1-2007, and all residential construction requirements to meet or exceed the residential requirements of the International Energy Conservation Code (IECC) 2009. Proposers are encouraged to develop a scope of work and propose Energy Efficiency Projects and Renewable Energy Projects that would meet the requirements of these advanced codes, as appropriate. Meeting these codes is part of the selection criteria for obtaining funding under this RFP for project implementation, but is not required. All projects must meet or exceed all applicable local, State and Federal codes and standards.

### **Measurement, Verification, and Commissioning**

By requesting funding from this RFP, the Proposer agrees to provide NYSERDA, or NYSERDA-designated contractors, access to facilities, equipment, data (including metering and energy management system data), and personnel as necessary to facilitate measurement, verification and commissioning. If the Proposal is selected for an award, NYSERDA will notify the Proposer of the Measurement, Verification, and Commissioning Plan for the project. The Measurement, Verification, and Commissioning Plan itself will be conducted by NYSERDA or its contractor(s). The Proposer must cooperate with NYSERDA and its contractor(s) in

conducting the Measurement, Verification, and Commissioning Plan. The Schedule of Payments will explain the Measurement, Verification, and Commissioning requirements that must be met, prior to NYSERDA's making final payment, if applicable.

NYSERDA is in the process of engaging a third party contractor to review and evaluate the savings and claims resulting from Projects funded under this RFP. All awardees must provide all reasonable assistance and documentation to support this effort.

### **III. Proposal Requirements**

A complete Proposal must include all of the following:

- Appendix A – Proposal Checklist
- Appendix B – Disclosure of Prior Findings of Non-responsibility Form
- Appendix C – Proposal Application Form
- A Project Description (see Appendix E for details and requirements)
- Appendix F - Project Summary
  - Including an energy audit of proposed measures
  - Including cost information
- Appendix G, H or I - Selection Criteria Form (Appendix G for Energy Efficiency Projects, Appendix H for Renewable Energy Projects, Appendix I for Clean Fleet Projects)
- Appendix J - Funding Sources Form
- Appendix K (optional) - Progress Payments Request
- Additional documentation as required to address selection criteria

Additional supporting documentation may be required by NYSERDA in accordance with the terms and conditions identified in this RFP.

Proposers must submit one (1) paper copy of a complete Proposal and one (1) complete electronic copy on a CD with all attachments, Appendices and other supporting information.

The paper copy of the complete Proposal must contain all original signatures. Faxed or e-mailed copies, or an electronic copy without an original signed paper copy will not be accepted. Late, incomplete, or unsigned Proposals will be returned. The paper copy must have a signed Proposal Checklist (Appendix A), a signed Disclosure of Prior Findings of Non-responsibility Form (Appendix B), and a signed Proposal Application Form (Appendix C) attached to the front and must include original signatures.

Funds will be awarded in up to four (4) rounds, or until funds are fully committed. Refer to NYSERDA's web site for the amount of funds still available in the sector of the Proposer's region.

To respond to this RFP, send a completed Proposal with all required original signatures, supporting attachments and documentation and the complete electronic copy to the attention of Roseanne Viscusi, at the address listed at the beginning of this RFP.

Proposals must not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not be used in the evaluation of the Proposal. Each page of the Proposal should state the name of the Proposer, the number of this RFP (RFP 1613), and the page number.

#### **IV. Proposal Evaluation**

Funding for this program will be reserved for the successful Proposers on a competitive basis for the period of time designated in the Agreement (See Appendix D-Sample Agreement). Proposals that meet the RFP's requirements in each region will be evaluated by a Technical Evaluation Panel (TEP) based on the criteria in Appendices G, H and I. NYSERDA may award a contract based on Proposals without discussion, or following limited discussion on scope of work modifications or other negotiations. NYSERDA may request additional data, materials, or forms from Proposers as part of this process. Failure to comply with Agreement schedules may result in termination of the Agreement and loss of funding.

#### **V. 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 Applicant 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 except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 [www.nyserda.org/nyserda.regulations.pdf](http://www.nyserda.org/nyserda.regulations.pdf). 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:

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

*Empire State Development*  
Division For Small Business  
30 South Pearl Street  
Albany, NY 12245

*Empire State Development*  
Minority and Women's Business Development Division  
30 South Pearl Street  
Albany, NY 12245

## **Limitation**

This solicitation does not commit NYSERDA to award a contract, to 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 Applicant 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 an Applicant 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 Service Provider may be subject to penalties for violation of any law which may apply in the particular circumstances. Applicants shall 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.

**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.state.ny.us/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.state.ny.us/pdf/2006/fillin/st/st220td\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td_606_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.state.ny.us/pdf/2006/fillin/st/st220ca\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf)). The Department has developed guidance for contractors which is available at [http://www.tax.state.ny.us/pdf/publications/sales/pub223\\_606.pdf](http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf).

**Contract Award** - NYSERDA anticipates making multiple awards under this solicitation. It may award a contract based on initial proposals without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each Proposal should be submitted using the most accurate cost and technical information available. NYSERDA may request additional data or material to support proposals. NYSERDA reserves the right to limit any negotiations or exceptions to standard terms and conditions to those specifically identified in the submitted Proposal. NYSERDA expects to notify Proposers in approximately 4 to 6 weeks from the Proposal due date whether each Proposal has been selected to receive an award.

## **VI. Attachments**

Appendix A: Proposal Checklist

Appendix B: Disclosure of Prior Findings of Non-responsibility Form

Appendix C: Application Form

Appendix D: Sample Agreement (Not required as part of the Proposal)

Appendix E: Project Description

Appendix F: Project Summary

Appendix G: Energy Efficiency Project Selection Criteria Form

Appendix H: Renewable Energy Project Selection Criteria Form

Appendix I: Clean Fleet Project Selection Criteria Form

Appendix J: Funding Sources

Appendix K: Progress Payments Request

Appendix L: Pre Implementation Energy Use Data

Appendix M: Post Implementation Energy Use Data

Appendix N: Conversion Factors

Appendix O: Definition of Large Municipality

Appendix P: Regions Defined



**Appendix A**

**RFP 1613 -PROPOSAL CHECKLIST (MANDATORY)**  
**American Recovery and Reinvestment Act (ARRA)**

This completed form **MUST** be signed and attached to the front of your Proposal

Proposal Title Proposal Region Project Type		Due Date	
<b>Primary Contact</b> (Proposer)		Title	
Company	Phone	Fax	
	e-mail		
Federal Tax Identification #/Social Security			
Address	City	State or Province	Zip
<b>Secondary Contact</b>		Title	
Company	Phone	Fax	
	e-mail		
Address	City	State or Province	Zip
<p><b>THE PROPOSER MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:</b></p> <p>Do you accept all Terms &amp; Conditions in the Sample Agreement? (If no, explain on a separate page)      __ Yes __ No</p> <p>Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg)      __ Yes __ No</p> <p>Are you a Minority or Women-Owned Business Enterprise?      __ Yes __ No</p> <p>Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors?      __ Yes __ No</p> <p>Are you submitting the required number of copies? (See proposal instructions.)      __ Yes __ No</p> <p>Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? __ Yes __ No (if yes, explain on separate page)</p>			
<b>ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?</b>			
Please attach a list of the items listed on page 14 of this RFP and list the page on your Proposal that each item can be found.		Indictment/Conviction of Felony (if applicable) NYSERDA Contracts Awarded (if applicable) Prior and/or Competing Proposals (if applicable) Signed and notarized agreement, including attachments Disclosure of Prior Findings of Non-responsibility Form	
For any member of the Proposing team, have you received, or do you expect to receive, over \$500,000 of Federal awards for any of the fiscal years during the term of our agreement?  If yes, you are required to obtain an independent audit pursuant to the Federal Office of Management and Budget, OMB circular A-133, and provide a copy to NYSERDA throughout the term of this Agreement.			Yes <input type="checkbox"/> No <input type="checkbox"/>

<p>Does your organization: (1) receive more than 80% of its annual gross revenues in Federal awards; or (2) \$25 million or more in annual gross revenues from Federal awards,</p> <p>If yes, does your organization provide public access to information about the compensation of the senior executives under filing requirements of the Security Exchange Act of 1934 or 780(d) or section 6104 of the Internal Revenue Code?</p> <p>If your organization does receive more than 80 of its annual gross revenues in Federal awards or \$25 million or more in annual gross revenues from federal awards; AND your organization does not provide public access to the information about the compensation of the senior executives under filing requirements of the Security and Exchange Act of 1934 or 780(d) or section 6104 of the Internal Revenue Code, you provide the names and compensation of the five most highly compensated officers.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
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**HAVE YOU ATTACHED ONE COPY (WITH ORIGINAL SIGNATURES) OF THE FOLLOWING?**

- Appendix A: Proposal Checklist
- Appendix B: Disclosure of Prior Finds of Non-responsibility Form
- Appendix C: Application Form
- All Other Appendices as applicable

**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, 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	

**Appendix B**  
**Disclosure of Prior Findings of Non-responsibility Form**  
**Project Implementation Funding for State Energy Program**  
**American Recovery and Reinvestment Act (ARRA)**

This completed form **MUST** be signed and attached to your proposal

Name of Individual or Entity submitting the Proposal:		
Address:		
Date:		
Solicitation or Agreement Number: RFP1613		
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.  
(MUST BE SIGNED BY THE PROPOSER, NOT A VENDOR OR SERVICE PROVIDER)

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

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

**Appendix C**  
**Proposal Application Form**  
**Project Implementation Funding for State Energy Program**  
**American Recovery and Reinvestment Act (ARRA)**

Proposer INFORMATION	
Proposer Name:	
<input type="checkbox"/> Large municipal government (as defined by Appendix O) <input type="checkbox"/> Small municipal government <input type="checkbox"/> Public K-12 school <input type="checkbox"/> Public university or college including: SUNY, SUNY community colleges, CUNY, and CUNY community colleges <input type="checkbox"/> Public or Private Hospital <input type="checkbox"/> Not-for-Profit (defined as a Internal Revenue Code Section 501(c)(3) qualifying organization) incorporated on _____.	
Federal ID Number:	
D-U-N-S Number and Date Registered in CCR	
Applicant Contact and Title:	
Address:	
City, State and Zip Code:	
Phone and Fax:	
E-Mail Address:	
ENERGY CONSERVATION PROJECT CATEGORY (CHECK ONE)	
<input type="checkbox"/> Energy Efficiency	<input type="checkbox"/> Renewable Energy
<input type="checkbox"/> Clean Fleet	
PROJECT FUNDING CALCULATION	
Proposers may submit multiple proposals. A Proposer may not receive a total of more than \$500,000 for Clean Fleet Project(s). A Proposer may not receive a total of more than \$1,000,000 for Energy Efficiency Project(s) and Renewable Energy Project(s). A Proposer may be awarded funding from more than one eligible measure category under this RFP, but may not receive a total of more than \$1,000,000 under this RFP.	
For Energy Efficiency Projects and Renewable Energy Projects: Please list total Project cost.	\$ _____
For Clean Fleets: Please list the Total Project Cost and 75% of the incremental cost of the Project as defined by this RFP.	Total Project Cost - \$ _____ 75% Incremental Project Cost - \$ _____
Cost sharing: Please list all required or voluntary cost sharing included as part of your Proposal.	\$ _____

	_____ %
The amount requested for this Project:	\$ _____

<b>ADDITIONAL PROPOSER QUESTIONS</b>	
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Have you been indicted for or convicted of a felony within the past five (5) years? If yes, explain on a separate page.	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

Check if the Proposer wished to assign its rights to payments to Proposer's Service Provider.

Service Provider's Company	
Federal ID Number:	
D-U-N-S Number and Date Registered in CCR:	
Service Provider Contact and Title:	
Address:	
City, State and Zip Code:	
Phone and Fax:	
E-Mail Address:	

<b>PROPOSER CERTIFICATION</b>
-------------------------------

I certify that as the Proposer to RFP 1613 and the person signing the Proposal Application Form (Appendix C), the identified organization is interested in and authorized to implement the energy conservation projects included in this Proposal. The Proposer is requesting funding for eligible costs to implement the energy conservation project proposed herein from the Federal State Energy Program under the American Recovery and Reinvestment Act (ARRA). I certify that the information provided as part of this Proposal is true and accurate to the best of my knowledge and that none of the work identified for funding herein has been or will be undertaken before a NYSERDA contract is issued and that no funds from other NYSERDA or utility-funded programs will be used to pay for a portion of the proposed project. I understand that Proposals must meet the eligibility criteria described in this solicitation, and that all Proposals may not be funded. I understand that the project is to be funded under ARRA and that additional reporting and other requirements may apply, including, but not limited to: additional reporting requirements, Buy American, and Federal Davis-Bacon prevailing wage requirements; and other requirements as may be imposed by Federal or State oversight entities. I agree to provide to NYSERDA any and all required materials, documentation, access to facilities and fleets, and other required information, on the schedule required by NYSERDA to meet all requirements. I understand that this project may be audited for compliance with the requirements of this RFP. I understand that failure to comply with ARRA requirements and to complete the Project by September 1, 2011 may result in loss of funding.

(MUST BE SIGNED BY THE PROPOSER, NOT A VENDOR OR SERVICE PROVIDER)

PROPOSER SIGNATURE: \_\_\_\_\_

NAME AND TITLE: \_\_\_\_\_

ORGANIZATION AND PHONE: \_\_\_\_\_

RFP 1613 Sample Agreement:  
Successful Proposers will be required to enter into this Sample Agreement  
**New York State Energy Research and Development Authority**

**ENERGY EFFICIENCY AND CONSERVATION BLOCK  
GRANT AGREEMENT**

**Funding is provided from the American Recovery and Reinvestment Act of 2009 (Recovery Act), through the Energy Efficiency and Conservation Block Grant Plan. Special terms and conditions apply to the use of these funds and a general description of the special terms and conditions are described below.**

**Contractors are required to comply with the National Environmental Policy Act in addition to the State Environmental Quality Act.**

**On all construction, alteration and repair projects, Contractors must comply with the Davis-Bacon Act concerning the paying of prevailing wages to mechanics and laborers employed directly upon the site, and for all projects by or for governmental agencies, such Contractors must also comply with the New York State Department of Labor's prevailing wage requirements.**

**Projects must be completed and all invoices must be submitted by September 1, 2011. NYSERDA cannot issue any payments after April 30, 2012.**

**Additional guidance from the Federal and State governments on the use of funds is expected and Contractors are required to meet any new Federal or State requirements.**

**Contractors are encouraged to periodically log on to [www.recovery.gov](http://www.recovery.gov) for updated information.**

1. Contractor:
2. Contact:
3. Project Period:
4. Federal ID:
5. DUNS Number:
6. Agreement Number:
7. Award Date:
8. Total Amount of Award:

## 9. Commitment Terms and Conditions

This Agreement consists of this page through the signature page, plus the following attachments:

- Exhibit A Statement of Work, including Budget and Schedule
- Exhibit B General Contract Provisions, Terms, and Conditions
- Exhibit C Standard Terms and Conditions
- Exhibit D Prompt Payment Policy Statement

Addenda to include additional Federal or State requirements.

## SPECIAL TERMS AND PROVISIONS APPLICABLE TO RECEIPT OF RECOVERY ACT FUNDS

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Contractors shall use funds in a manner that maximizes job creation and economic benefit.

The Contractor shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in the Act itself and as discussed below, and shall require its contractors and subcontractors to comply, as appropriate.

The Contractor and the Authority understand that the following provisions may be changed and additional requirements may be added and that each agrees to be bound by such changes, additions, and guidance as may be issued with respect to, and as required under, the Recovery Act.

### I. Reporting Requirements

The Contractor agrees to obtain, retain, prepare, and provide to the Authority or the Federal Office of Management and Budget, as requested by the Authority, without limitation, the information required by the Recovery Act including but not limited to:

1. Monthly reports setting forth the percentage of the Project having been completed.
2. Monthly reports providing a description of the employment impact of Recovery Act funded work. The report should include:
  - (i) a brief description of the types of jobs created and jobs retained;
  - (ii) an estimate of the number of jobs created and jobs retained; and
  - (iii) an estimate of the number of hours worked in the jobs created and retained.
3. Contractor's nine digit Data Universal Numbering System (DUNS) number and Central Contractor Registration plus four extended DUNS number.
4. Amount awarded to Contractor.
5. Amount received by Contractor.
6. Contractor type.
7. Date of award.
8. Projected period of performance.

9. Place of performance and area of benefit.

10. The names and compensation of the five most highly compensated officers of the Contractor if the Contractor in the preceding fiscal year received:

- (i) 80 percent or more of its annual gross revenues in Federal awards; and
- (ii) \$25,000,000 or more in annual gross revenues from Federal awards; and
- (iii) the public does not have access to information about the compensation of the senior executives of the Contractor through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), or 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USCS 6104].

11. List of Vendors awarded contracts and their DUNS number or name and zip code of headquarters.

Contractor shall provide the foregoing reporting information on forms prescribed by the Authority within five (5) business days of the end of each calendar quarter unless otherwise indicated. Contractor further agrees to provide any additional information deemed necessary in the sole discretion of the Authority, to enable the Authority to comply with its reporting requirements under the Recovery Act, or respond to any Federal or State inquiry regarding the Work.

## II. Buy American

With respect to Work performed on public buildings or that constitutes a public work, the Contractor acknowledges to and for the benefit of the Authority that it understands the Work being financed herein is being funded with monies made available by the Recovery Act and that such law contains provisions commonly referred to as “Buy American” requiring all iron, steel and manufactured goods used in the Work to be produced in the United States (“Buy American Requirements”) and used by the Contractor or its contractors and subcontractors. The Contractor hereby represents and warrants to and for the benefit of the Authority that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the Work will be or have been produced in the United States in a manner that complies with the Buy American requirements, unless a waiver of the requirements is approved by an appropriate Federal agency, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American requirements, as may be requested by the Authority, including from each contractor and subcontractor which has a contract financed with Recovery Act funds. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Authority to recover any Recovery Act funds paid and any damages against the Contractor including any loss, expense or cost (including without limitation attorney’s fees) incurred by the Authority resulting from any such failure (including without limitations any impairment or loss of funding, whether in whole or in part, from DOE or the State or any damages owed to DOE or the State by the Authority). The Authority and the Contractor agree that DOE and the State are third party beneficiaries and may enforce the requirements of this Agreement.

A waiver may be provided, if an appropriate Federal agency determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel and manufactured goods

produced in the United States will increase the cost of the overall Work by more than 25 percent. The Contractor must obtain any waiver(s) directly. All requests for waivers shall be provided to the Authority for review prior to submission. Copies of any waivers granted to the Contractor by must be provided to the Authority. Additional guidance on the Buy American requirements and waiver process can be found on [www.recovery.gov](http://www.recovery.gov).

### III. Wage Rate Requirements

In accordance with the Recovery Act and other Federal requirements and the New York State Labor Law, all laborers and mechanics employed by contractors and subcontractors providing construction related services on the Work shall be paid wages at rates not less than those prevailing on Works of a character similar in the locality as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the Work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. An additional classification and wage rate and fringe benefits therefore will be approved only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contractor agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Authority to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, is required to approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Authority or will notify the Authority within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contractor do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contractor shall refer the questions, including the views of all interested parties and the recommendation of the Contractor, to the Administrator for determination. The Administrator, or an authorized representative, is required to issue a determination within 30 days of receipt and so advise the Contractor or will notify the Contractor within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such

violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under [29 CFR 5.5\(a\)\(3\)\(i\)](#), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Authority or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Contractor to require a subcontractor to provide addresses and social security numbers to the Contractor for its own records, without weekly submission to the Authority.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information described under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and [section 231 of title 31 of the United States Code](#).

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Authority or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, after written notice to the Contractor, sponsor, applicant, or owner, the Authority and other Federal agencies may take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.

(4) Apprentices and trainees -- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage

determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in [29 CFR 5.16](#), trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert this section in any subcontracts and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these requirements.

(7) Contract termination: debarment. A breach of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in [29 CFR 5.12](#).

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the Authority, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or [29 CFR 5.12\(a\)\(1\)](#).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or [29 CFR 5.12\(a\)\(1\)](#).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#)

Contractor shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any contract in excess of \$2,000 for construction, alteration or repair (including painting and decorating) being paid with Recovery Act Funds

#### IV. New York State Requirements

Contractor, if it is a vendor, shall comply with the following New York State requirements:

##### 1. Posting Job Listings on the New York State Job Exchange

###### **Option 1:**

The **preferred** approach is for the company to initially register through the New York State Department of Labor's Job Exchange <http://www.labor.state.ny.us> website for an employer account. This service allows the employer to directly manage their job orders status throughout the recruitment process. Approval for access is received within 3 business days which allows the employer to then list their job orders. The job orders are open to the public on this website and the job orders also roll over into the Department of Labor's One Stop Operating System (OSOS) for local One-Stop service.

###### **Option 2:**

The employer can complete a job order form and fax it to either of the following as appropriate. For jobs that are located in New York City the employer can use the NYC Fast Fax form [http://www.labor.state.ny.us/formsdocs/does/ES515\\_584.pdf](http://www.labor.state.ny.us/formsdocs/does/ES515_584.pdf) and fax it to (718) 780-9458. Regarding jobs that are located outside of New York City, the employer can use the NYS Fast Fax Form <http://www.labor.state.ny.us/formsdocs/does/es515.pdf> and fax to (518) 485-1333.

###### **Option 3:**

The employer can e-mail specifics of their job orders by using a fillable NYS Job Order Form <http://www.labor.state.ny.us/businessservices/PDFs/FastFax%20Electronic.rtf>. If the jobs are located in New York City, the employer would send the completed form to [DoES\\_LO584@labor.state.ny.us](mailto:DoES_LO584@labor.state.ny.us)

address. If the jobs are located outside of New York City the employer would send the completed form to the [nysjobbank.does@labor.state.ny.us](mailto:nysjobbank.does@labor.state.ny.us) address.

**Option 4:**

The employer can speak with a representative concerning the placement of a job order. If the jobs are located in New York City, the employer should call (718) 780-9499. If the jobs are located outside of New York City the employer should call 1-888-4-NYSDOL.

2. Since this agreement contains ARRA stimulus funds, the vendor will post any jobs that is creates or seeks to fill as a result of the stimulus funding. Vendors will post through the New York State Department of Labor (<http://labor.state.ny.us>, notwithstanding any other posting they might make. Any advertisements posted by the vendor for positions pursuant to this contract must indicate that the position is funded with stimulus funds. The department may waive the requirements of this section at its discretion.

3. The vendor will maintain detailed records of their expenditure of 2009 Stimulus Funds in connection with this agreement and submit as reports as requested by the State of New York. The State of New York as the recipient of funds under the ARRA is subject to quarterly reporting requirements and oversight by federal agency inspectors. Additional reports may be required under this agreement.

4. The vendor is also responsible for holding all sub grantees to the above reporting requirements.

5. Agreement Funding

- a. State General Fund Dollars \_\_\_\_\_
- b. Federal Fund Dollars \_\_\_\_\_
- c. ARRA Stimulus Dollars \_\_\_\_\_
- d. Other Fund Dollars \_\_\_\_\_

Agreement Total \_\_\_\_\_

V. Additional Covenants

1. The Contractor agrees to promptly refer to DOE’s Inspector General any credible evidence that a principal, employee, agent, contractor, subcontractor, loan contractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Agreement.

2. The Contractor acknowledges, and agrees to comply with, the “whistleblower” protections set forth in Section 1553 of the Recovery Act related to disclosure of mismanagement of contracts, waste of funds, health and safety dangers, abuse of Authority, or any violation of laws, rules or regulations related to the use of fund provided under this Agreement. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee’s duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law

enforcement agency, a person with supervisory Authority over the employee (or other person working for the employer who has the Authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of: gross management of an agency contract or grant relating to covered funds; a gross waste of covered funds; a substantial and specific danger to public health or safety related to the implementation or use of covered funds; an abuse of Authority related to the implementation or use of covered funds; or as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds. Contractor shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the Recovery Act, see [www.Recovery.gov](http://www.Recovery.gov), for specific requirements of this section and prescribed language for the notices).

3. Contractor shall include Recovery Act special terms and conditions in any subcontract.

4. Contractor shall segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. Contractor shall maintain backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Contractor shall provide copies of backup documentation at the request of the Authority.

5. SEP funding may not be used to supplant or replace existing state, ratepayer or other funding.

6. No part of the funds from the Recovery Act shall be commingled with any other funds or used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

7. Contractor shall cooperate with and agrees to allow, with respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the Recovery Act, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General:

(i) to examine any records of the Contractor, any of its subcontractors, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the contract or subcontract; and

(ii) to interview any officer or employee of the Contractor, grantee, or agency regarding such transactions.

8. The Contractor acknowledges and agrees that the Work is subject to the federal audit requirements of the Single Audit Act of 1984, and that it will comply with the requirements of the Single Audit Act of 1984 (31 USC 7501 *et seq.*) and all laws and regulations implementing same including without limitation 40 CFR Part 31, all as amended from time to time (collectively, the "Single Audit Act"). This shall include, without limitation, having either a single audit or a program-specific audit for any of the Contractor's fiscal years in which it expends a total amount of federal financial assistance equal to or in excess of \$500,000.

9. Contractor shall also comply with the applicable requirements of:

- (i) Anti-Discrimination and Equal Opportunity requirements
- (ii) Title VI of the Civil Rights Act of 1964
- (iii) Title IX of the Education Amendments of 1972
- (iv) Section 504 of the Rehabilitation Act of 1973
- (v) Age Discrimination Act of 1975
- (vi) Anti-discrimination requirements of program-specific statutes
- (vii) Fair Housing Act
- (viii) Fair Credit Reporting Act
- (ix) Americans With Disabilities Act
- (x) Title VII of the Civil Rights Act of 1964
- (xi) Equal Educational Opportunities Act
- (xii) Age Discrimination in Employment Act
- (xiii) Uniform Relocation Act
- (xiv) Intellectual Property Provisions
- (xv) National Environmental Policy Act
- (xvi) National Historic Preservation Act, and related statutes (including processes for project review and documentation)
- (xvii) DOE contract requirements (10 CFR Part 600 et. seq.).

Contractor shall comply with all additional Federal and State requirements that are or may be attached hereto in the form of Addenda.

**Contractor**

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

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Jeffrey J. Pitkin  
Treasurer

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 A

Statement of Work

[To be provided in final form Agreement]

## 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.

Agreement: This Agreement including Exhibits A, B, C, and D and any Addenda hereto, all of which are made a part hereof as though herein set forth in full.

Budget: The Budget set forth in Exhibit A hereto.

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

Contract Data: Technical Data first produced in the performance of the contract, Technical Data which are specified to be delivered under the contract, or Technical Data actually delivered in connection with the contract.

Contractor: The Contractor identified in Item 1 of page one of the Agreement.

Effective Date: The effective date of this Agreement shall be the date appearing in Item 7 of page one of the Agreement.

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.

Proprietary Data: Technical Data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) have not been made available by the owner to others without obligation concerning their confidentiality; and

(iii) are not already available to NYSERDA without obligation concerning their confidentiality.

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.

Technical Data: Recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental or developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer software programs, computer software data bases, and computer software documentation). Examples of Technical Data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.

Unlimited Rights: Rights to use, duplicate, or disclose Contract Data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

Work: The Work described in 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 "Contact Person" identified in Item 2 of page one of the Agreement shall serve as Project Director and as such shall have the responsibility of 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.

### Article III

#### Deliverables

Section 3.01. Deliverables. All deliverables shall be provided in accordance with the Exhibit A Statement of Work and the other provisions of this Agreement.

### Article IV

#### Payment

Section 4.01. Compensation. In consideration for this Agreement and as full compensation for the costs for 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 the actual cost incurred as set forth in the Budget up to a maximum amount set forth in Item 8 of page one of the Agreement, subject to the provisions and restrictions contained herein. Such amount shall be paid only to the extent that costs are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, the Budget and the following:

(a) Staff Charges: The Contractor shall be compensated for the services performed by its employees under the terms of this Agreement at the employee's actual wage rate.

(b) Direct Charges: 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 in accordance with the provisions of the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs should generally 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.

(c) Indirect Costs: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs included in the Budget at such rates as the Contractor may periodically calculate, consistent with appropriate Federal guidelines or generally accepted accounting principles.

Furthermore, NYSERDA shall have no liability under this Agreement to the Contractor or to anyone else beyond funds paid to NYSERDA by the U.S. Department of Energy or other third parties for the purposes of this Agreement.

Section 4.02. Progress Payments. The Contractor may submit invoices for progress payments in accordance with Exhibit A, as applicable. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable." Such invoices shall make reference to the Agreement number shown in Item 6 of page one of the Agreement. Invoices shall set forth total project costs incurred. They shall be in a format consistent with the cost categories set forth in the Budget and any prevailing wage requirements. Invoices shall provide reasonable documentation for the above to provide evidence of costs incurred, including:

(a) Staff charges: for each employee, the name, title, number of hours worked, hourly rate and labor extension;

(b) Direct charges: all direct costs shall be itemized on the invoice and supported by documentation, such as vendor invoices, travel vouchers or other documentation; and

(c) Indirect charges: indirect cost rates and method by which rates are applied.

The Contractor shall be notified by NYSERDA in accordance with Section 504.4 (b)(2) of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, of any such information or documentation which the Contractor did not include with such invoice.

In accordance with and subject to the provisions of such Exhibit D, NYSERDA shall pay progress payments as described in the Budget section of Exhibit A to the Contractor, within the prescribed time after receipt of an invoice for a progress payment, 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. Title to Equipment. Except as specifically set forth in the Statement of Work, title shall vest in NYSERDA to all equipment purchased hereunder using ARRA funds, until such time as the equipment is permanently attached and becomes a fixture. Once equipment is permanently attached and becomes a fixture, title shall vest in the Contractor.

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, and any required measurement and verification, 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. 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 previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Item 8 of page one of the Agreement.

Section 4.05. 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 4.06. 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 the performance of the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance.

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is the amount shown in Item 8 of page one of the 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 4.08. Audit Adjustment. NYSERDA, the State and involved Federal agencies shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.06 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA, the State or a Federal agency on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA 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. Contractor shall comply with its normal competitive procurement process to select all sub-contracts and equipment purchases. 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 B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action which would impair its rights

thereunder. The Contractor shall not assign, cancel or terminate any Subcontract without prior written notification to the Contract Administrator as long as this Agreement remains in effect.

## Article VI

### Schedule

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in Exhibit A, Statement of Work.

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 and this Agreement.

## 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 there from, 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

### Technical Data

Section 8.01. Rights in Technical Data.

(a) Technical Data: Rights in Technical Data shall be allocated as follows:

(1) NYSERDA shall have:

- (i) Unlimited Rights in Contract Data except as otherwise provided below with respect to Proprietary Data; and
- (ii) no rights under this Agreement in any Technical Data which are not Contract Data.

(2) The Contractor shall have:

- (i) the right to withhold Proprietary Data in accordance with the provisions of this clause; and
- (ii) the right to use for its private purposes, subject to patent, or other provisions of this Agreement, Contract Data it first produces in the performance of this Agreement provided the data requirements of this Agreement have been met as of the date of the private use of such data.

The Contractor agrees that to the extent it receives or is given access to Proprietary Data or other technical, business or financial data in the form of recorded information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless another use is specifically authorized by prior written approval of the Contract Administrator.

## Article IX

### Warranties and Guarantees

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

- (a) it is financially and technically qualified to perform the Work;
- (b) 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;
- (c) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted construction and design standards and best engineering practices;
- (d) 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 construction and design standards and best engineering practices;
- (e) 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;
- (f) 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;

(g) 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; and

(h) Contractor certifies that all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.

## Article X

### Indemnification

Section 10.01. Indemnification. If the Contractor's Proposal is to provide funds to another entity for a Project located within the Contractor's jurisdiction, the Contractor shall require such entity to 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 the 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 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) 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

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 this Article and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. 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

#### 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 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 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 30 days prior written notice to the Contractor. In such event, compensation 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).

(b) NYSERDA reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

(c) NYSERDA reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a was intentionally false when made. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

## Article XIII

### Independent Contractor

Section 13.01. Independent Contractor. 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 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, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

## 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 or the Recovery Act or a Federal rule or regulation or directive, interpretation or guidance 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 through Addenda or other written communication from the Authority so as to comply strictly with the laws of the State of New York or the United States and to comply with such directive, interpretation or guidance 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

### Publicity, Notices, Entire Agreement, Amendment

Section 15.01. 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) The Contractor shall not use NYSERDA's corporate name, logo, identity, any affiliation, or the service mark **New York Energy \$mart<sup>sm</sup>**, and any related logo, without NYSERDA's prior written consent.

Section 15.02. 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: 862-1090  
E-Mail Address: [cle@nyserda.org](mailto:cle@nyserda.org)  
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 15.03. 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 to comply with future Federal or State requirements relating to the Recovery Act, which shall be effective in accordance with its terms or as directly by the Authority, this Agreement may not be further changed, waived, discharged or terminated except by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

## EXHIBIT C

REVISED 9/06

### 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 attached agreement, contract, license, lease, amendment, modification or other agreement of any kind (hereinafter, "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the Agreement (the word "Contractor" herein refers to any party other than NYSERDA, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. NON-DISCRIMINATION REQUIREMENTS. In accordance with 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, age, disability 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.

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. CONFLICTING TERMS. In the event of a conflict between the Special Terms and Provision Applicable to Receipt of Recovery Act Funds, any Addenda, and the terms of any Exhibits and attachments thereto, the terms of the Special Terms and Provision Applicable to Receipt of Recovery Act Funds, the Addenda and this Exhibit C shall control.

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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

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

## EXHIBIT D

### PART 504

#### PROMPT PAYMENT POLICY STATEMENT

Section 504.1 Purpose and applicability. (a) The purpose of this Part is to implement section 2880 of the Public Authorities Law by detailing the authority's policy for making payment promptly on amounts properly due and owing by the authority under contracts. This Part constitutes the authority's prompt payment policy statement as required by that section.

(b) This Part generally applies to payments due and owing by the authority to a person or business in the private sector under a contract it has entered into with the authority on or after May 1, 1988. This Part does not apply to payments due and owing:

- (1) under the Eminent Domain Procedure Law;
- (2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;
- (3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
- (4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or
- (5) if other State or Federal law or rule or regulation specifically requires otherwise.

Section 504.2 Definitions. As used in this Part, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (a) "Authority" means the New York State Energy Research and Development Authority.
- (b) "Contract" means an enforceable agreement entered into between the Authority and a contractor.
- (c) "Contractor" means any person, partnership, private corporation, or association:
  - (1) selling materials, equipment or supplies or leasing property or equipment to the Authority pursuant to a contract;

(2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, the Authority pursuant to a contract; or

(3) rendering or providing services to the Authority pursuant to a contract.

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

(e) "Designated payment office" means the Office of the Authority's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(f) "Payment" means provision by the Authority of funds in an amount sufficient to satisfy a debt properly due and owing to a contractor and payable under all applicable provisions of a contract to which this Part applies and of law, including but not limited to provisions for retained amounts or provisions which may limit the Authority's power to pay, such as claims, liens, attachments or judgments against the contractor which have not been properly discharged, waived or released.

(g) "Prompt payment" means a payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Part in order for the Authority not to be liable for interest pursuant to Section 504.6.

(h) "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 Part, in order for the Authority not to be liable for interest pursuant to Section 5.06.

(i) "Proper invoice" means a written request for a contract 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 the Authority may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to the Authority's Controller, marked "Attention: Accounts Payable," at the designated payment office.

(j)(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, the Authority has actually received all the purchased goods, property or services covered by a proper invoice previously received in the designated payment office.

(ii) if a contract 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 contract 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 the Authority for the portion working, completed or delivered, the Authority 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.

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

Section 504.3 Prompt payment schedule. Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Part, the date of payment by the Authority of an amount properly due and owing under a contract shall be no later than 30 calendar days, excluding legal holidays, after such receipt.

Section 504.4 Payment procedures.

(a) Unless otherwise specified by a contract provision, 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 the Authority.

(b) The Authority shall notify the contractor within 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; and
- (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 the Authority fails to notify a contractor of a defect or impropriety within the fifteen 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 the Authority 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, the Authority shall make payment, consistent with any such correction or resolution and the provisions of this Part.

Section 504.5 Exceptions and extension of payment due date. The Authority has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Part, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the payment due date:

(a) If the case of a payment which a contract provides 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 the contract or other State or Federal mandate has not been submitted to the Authority 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 the Authority and the date when the Authority 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 the contract or by other State or Federal mandate, whether to be performed by or on behalf of the Authority or another entity, or is specifically permitted by the contract or by other State or Federal provision and the Authority 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, the Authority 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 the Authority 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 the Authority, 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 the Authority.

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. 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.

Section 504.7 Sources of funds to pay interest. Any interest payable by the Authority pursuant to this Part shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related contract payment.

Section 504.8 Incorporation of prompt payment policy statement into contracts. The provisions of this Part in effect at the time of the creation of a contract shall be incorporated into and made a part of such contract and shall apply to all payments as they become due and owing pursuant to the terms and conditions of such contract, notwithstanding that the Authority may subsequently amend this Part by further rulemaking.

Section 504.9 Notice of objection. Unless a different procedure is specifically prescribed in a contract, a contractor may object to any action taken by the Authority pursuant to this Part which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to the Authority. 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 address set forth in Section 504.2(e). The Vice President of the Authority, or his or her designee, shall review the objection for purposes of affirming or modifying the Authority's action. Within 15 working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the contractor either that the Authority'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 30 working days.

Section 504.10 Judicial Review. Any determination made by the Authority pursuant to this Part which 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 Part or any other review procedure that may be specified in the contract or by other law, rule, or regulation.

Section 504.11 Court action or other legal processes.

(a) Notwithstanding any other law to the contrary, the liability of the Authority to make an interest payment to a contractor pursuant to this Part 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 the Authority 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.

Section 504.12 Amendments. These regulations may be amended by resolution of the Authority, provided that the Chair, upon written notice to the other Members of the Authority, may from time to time promulgate nonmaterial amendments of these regulations.

## Appendix E

### Project Description

#### Project Implementation Funding for State Energy Program American Recovery and Reinvestment Act (ARRA)

The project description must have the following sections and be in the following format: Microsoft Word, 12 point font, and be less than ten (10) pages in length.

**Proposer Description** - Provide information about the Proposer and current facilities, property or vehicle fleets, as applicable to the proposed Project.

**Project Description** - Include a description of the Project intent, approach, and tasks to be performed under the scope of work.

**Project Measures** – Describe the energy conservation measures proposed (e.g. lighting upgrade, solar electric panels, Compressed Natural Gas (CNG) buses). Include relevant energy savings, cost savings, and environmental impact statistics. All analysis must conform to generally accepted engineering practices. All calculations, assumptions and supporting data must be included as attachments. Note: Each proposal must only submit for one Project type.

**Project Costs** – Detail the cost of each measure. Project costs must comply with Buy American and Davis-Bacon prevailing wages requirements. For projects in leased facilities, demonstrate that the project pays for itself within the remaining term of the lease. For Clean Fleet projects, include the calculation of incremental project cost by including estimates of standard equipment.

For Projects where computer modeling is used, reports shall also include: 1) a brief presentation of the manipulations which the computer program performed; 2) The input data for the building and for each measure, presented in a manner which allows easy identification of input parameters; 3) clear and precise presentation of the results in both tabular and narrative forms; and 4) verification that interaction effects were taken into account.



**Appendix F**  
**Project Summary**  
**Project Implementation Funding for State Energy Program**  
**American Recovery and Reinvestment Act (ARRA)**

Projects must complete only the section that applies to their project type.

FOR ENERGY EFFICIENCY PROJECTS AND RENEWABLE ENERGY PROJECTS	
Total number of buildings to be impacted:	
Total square footage of buildings to be impacted:	
Electric distribution provider: (List company name)	
Gas, oil or other fossil fuel distributor: (List fuel type and company name)	
Total annual energy cost of spaces to be affected:	Annual \$:
For buildings, annual cost (\$ per square foot):	Annual \$/sqft:
Electricity	Cost (\$): Use (kWh): Peak Demand (kW):
Natural gas	Cost (\$): Use (Therms):
Oil	Cost (\$) Use (Gallons):
Propane	Cost (\$): Use (Gallons)
Other	Cost (\$) Use (_____):

**Appendix F**  
**Project Summary**  
**Project Implementation Funding for State Energy Program**  
**American Recovery and Reinvestment Act (ARRA)**

FOR CLEAN FLEETS PROJECTS:	
Check all measures proposed:	<input type="checkbox"/> Alternative fuel vehicles <input type="checkbox"/> Fueling, refueling and recharging equipment for alternative fuel vehicles <input type="checkbox"/> Anti-idling equipment
Is the project replacing old vehicles with new vehicles?	
Number and type of vehicles in current fleet: (ex: 12 cars, 7 trucks, 10 buses)	
Number and type of alternative-fuel vehicles currently in fleet: (ex: 10 natural gas buses)	
Number of proposed new alternative-fuel vehicles:	
Capacity of proposed refueling/recharging equipment:	
Number and type of proposed anti-idling equipment installations:	
Primary use of the current vehicle fleet:	
Average annual mileage per vehicle:	
Average annual idling time per vehicle (Idling reduction projects only)	
Average projected reduction in vehicle idling time (Idling reduction projects only)	
Gasoline:	Current Annual Gallons: Current Annual Cost:
Diesel:	Current Annual Gallons: Current Annual Cost:
Other vehicle fuel:	Current Annual Units: Current Annual Cost:
Total current vehicle fuel cost:	\$
Total proposed alternative-fuel vehicle cost:	\$
Total proposed alternative-fuel volume to be used:	

## Appendix G

### Energy Efficiency Project Selection Criteria

#### Project Implementation Funding for State Energy Program American Recovery and Reinvestment Act (ARRA)

Fill in the following information for the proposed Energy Efficiency Project.

<b>Information Required</b>	
Total Project cost:	
Funds requested as part of this Proposal:	
Cost sharing:	\$: %:
Projected annual energy saved in millions of BTUs. See Appendix N for conversion factors.	
Are all buildings in the Project benchmarked using EPA ENERGY STAR <sup>®</sup> Portfolio Manager? If yes, attach print outs.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will the Project meet ASHRAE 90.1 -2007 or (IECC) 2009, as applicable?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the Project located in a clean air act non-attainment county (PM or 8-hour ozone)?*	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the Project located in a potential environmental justice area?***	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the Project located in an economic distress zone?***	<input type="checkbox"/> Yes <input type="checkbox"/> No

Energy Efficiency Projects in each sector by region will be evaluated by a Technical Evaluation Panel (TEP) based on the following criteria. Note that project cost is required to be less than or equal to \$900 total project cost per 10 million BTUs source energy reduced by the Project.

<b>Criteria</b>	<b>Values for the Proposed Project</b>
40 points - Cost effectiveness of Project.	Project cost \$ / 10 source mmBTU
15 points - Cost sharing (amount not to be funded through this program or through other Federal sources)	% of Project cost
5 points - Are all buildings in the Project benchmarked using EPA ENERGY STAR <sup>®</sup> Portfolio Manager?	
5 points - Will the Project meet or exceed ASHRAE 90.1 -2007 or (IECC) 2009, as applicable.	
5 points - Is the Project located in a clean air act non-attainment county (PM or 8-hour ozone)?*	
5 points - Is the Project located in a potential environmental justice area?***	
5 points - Is the Project located in an economic distress zone?****	
20 points - Technical Evaluation Panel Assessment of Project. Criteria evaluated will include: completeness and reasonableness of costs, and energy and environmental savings projections; whether proposed costs are the result of estimates, valid bids or contracts; the readiness of the project to move forward; technical viability; persistence of savings; past experience with NYSERDA; proof of a Proposers commitment to energy efficiency and sustainability; and other similar project qualities that the Technical Evaluation Panel may consider.	

\*<http://www.epa.gov/air/oaqps/greenbk/ancl.html#NEW%20YORK>

\*\* <http://www.dec.ny.gov/public/899.html>

\*\*\*<https://www.nysdot.gov/recovery/goals/distressed>

## Appendix H

### Renewable Energy Project Selection Criteria

#### Project Implementation Funding for State Energy Program American Recovery and Reinvestment Act (ARRA)

Fill in the following information for the proposed Renewable Energy Project.

<b>Information Required</b>	
Total Project cost:	
Funds requested as part of this Proposal:	
Cost sharing:	\$: %:
Projected annual energy generation in millions of BTUs. See Appendix N for conversion factors.	
Are all buildings in the Project benchmarked using EPA ENERGY STAR <sup>®</sup> Portfolio Manager? If yes, attach print outs.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will the Project meet ASHRAE 90.1 -2007 or (IECC) 2009, as applicable?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the project located in a clean air act non-attainment county (PM or 8-hour ozone)?*	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the project located in a potential environmental justice area?***	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the project located in an economic distress zone?***	<input type="checkbox"/> Yes <input type="checkbox"/> No

Renewable Energy projects in each sector by region will be evaluated by a Technical Evaluation Panel (TEP) based on the following criteria. Note that the project cost is required to be less than or equal to \$8,000 of total project cost per 10 million BTUs of energy generated by the project.

<b>Criteria</b>	<b>Values for the Proposed Project</b>
40 points - Cost effectiveness of Project.	project cost (\$)/ source mmBTU
15 points - Cost sharing (amount not to be funded through this RFP or through other Federal sources)	% of project cost
5 points - Are all buildings in the Project benchmarked using EPA ENERGY STAR® Portfolio Manager?	
5 points - Will the Project meet or exceed ASHRAE 90.1 -2007 or (IECC) 2009, as applicable.	
5 points - Is the Project located in a clean air act non-attainment county (PM or 8-hour ozone)?*	
5 points - Is the Project located in a potential environmental justice area?**	
5 points - Is the Project located in an economic distress zone?***	
20 points - Technical Evaluation Panel Assessment of Project. Criteria evaluated will include: completeness and reasonableness of costs, and energy and environmental savings projections; whether proposed costs are the result of estimates, valid bids or contracts; the readiness of the project to move forward; technical viability; persistence of savings; past experience with NYSERDA; proof of a Proposers commitment to energy efficiency and sustainability; and other similar project qualities that the Technical Evaluation Panel may consider.	

\*<http://www.epa.gov/air/oaqps/greenbk/ancl.html#NEW%20YORK>

\*\* <http://www.dec.ny.gov/public/899.html>

\*\*\* <https://www.nysdot.gov/recovery/goals/distressed>

Clean Fleet Project Selection Criteria

Project Implementation Funding for State Energy Program  
American Recovery and Reinvestment Act (ARRA)

Fill in the following information for the proposed Clean Fleet Project. See Appendix N for conversion factors:

<b>Information Required</b>	
Total Project cost:	\$
Total incremental cost of Project:	\$
Funds requested as part of this Proposal:	\$
Gallons of diesel saved per year	
Gallons of gasoline saved per year	
Proposed amount of alternate fuel used per year.	Amount: Type: Units:
Pounds of particulate matter reduced per year****	
Pounds of NOx reduced per year*****	
Is the Project located in a clean air act non-attainment county (PM or 8-hour ozone)?*	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the Project located in a potential environmental justice area?***	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the Project located in an economic distress zone?***	<input type="checkbox"/> Yes <input type="checkbox"/> No

Clean Fleet projects in each sector by region will be evaluated by a Technical Evaluation Panel (TEP) based on the following criteria. Note that to receive points in any of these categories respectively, the following criteria must be met: requested funding is required to be less than or equal to \$5,000 per 10 million source BTUs reduced; petroleum displacement is required to be at a total project cost of \$35 per gallon saved per year or better; particulate matter reduction is required to be at a total project cost of least \$17,500 per pound per year; and NOx by at least \$500 of total project cost per pound per year or better; and greenhouse gas emissions must be reduced by at least \$3.50 of total project cost per pound CO2 or better per year.

<b>Criteria</b>	<b>Metric</b>
5 points - Cost effectiveness of Project.	Requested \$ / source mmBTU
5 points - Cost of annual greenhouse gas emissions reduction	Requested \$ / lb CO2 equivalent saved per year
20 points - Cost of the annual petroleum displaced	Requested \$/diesel and gasoline gallons saved per year
10 points - Cost of annual particulate matter emissions reductions	Requested \$/ lb PM saved per year
10 points - Cost of annual NOx emissions reductions	Requested \$/ lb NOx saved per year
10 points - Is the Project located in a clean air act non-attainment county (PM or 8-hour ozone)?*	
10 points - Is the Project located in a potential environmental justice area?***	
10 points - Is the Project located in an economic distress zone?****	
20 points - Technical Evaluation Panel Assessment of Project. Criteria evaluated will include: completeness and reasonableness of costs, and energy and environmental savings projections; whether proposed costs are the result of estimates, valid bids or contracts; the readiness of the project to move forward; technical viability; persistence of savings; past experience with NYSERDA; proof of a Proposers commitment to energy efficiency and sustainability; and other similar project qualities that the Technical Evaluation Panel may consider.	

\*<http://www.epa.gov/air/oaqps/greenbk/ancl.html#NEW%20YORK>

\*\* <http://www.dec.ny.gov/public/899.html>

\*\*\* <https://www.nysdot.gov/recovery/goals/distressed>

\*\*\*\*<http://cfpub.epa.gov/quantifier/>

**Appendix J**

**Funding Sources**

**Project Implementation Funding for State Energy Program  
American Recovery and Reinvestment Act (ARRA)**

List all funding sources being used for the Project. In-kind contributions are not eligible. Other Federal funds are not eligible for cost sharing, but must be listed.

**For Energy Efficiency and Renewable Energy Projects:**

Total Project Cost	\$
Funding requested through this RFP	\$
Other source_____	\$
Other source_____	\$

**For Clean Fleet Projects:**

Cost Sharing - The Proposal must show non-NYSERDA funding of at least 25% of the total cost of the project. Cost sharing can be from the Proposer, and other government or private sources. NYSERDA will not pay for efforts which have already been undertaken. The Proposer cannot claim as cost-share any expenses that have already been incurred. Show the cost-sharing plan in the following format (expand table as needed):

Total Project Cost	\$
Total Incremental Cost over standard equipment	\$
Funding requested through this RFP	\$
Other source_____	\$
Other source_____	\$



## Appendix K

### Progress Payments Request

#### Project Implementation Funding for State Energy Program American Recovery and Reinvestment Act (ARRA)

Proposers may request up to four (4) progress payments. Each progress payment must be tied to a specific deliverable, which must be met before payment will be issued. A minimum of at least 25% of the total funding amount being requested from NYSERDA will not be paid until the project is completed. At NYSERDA’s discretion, 5% of the total may be held until completion of a 12 month measurement and verification period. To request progress payments, Proposers must submit this Progress Payments Request to NYSERDA along with all other proposal documents. The Progress Payment Request should state the number of progress payments requested, the amount of each progress payment, and what deliverable the Proposer will submit to NYSERDA to justify each payment. After discussing the Progress Payment Request with the Proposer, NYSERDA will notify the Proposer of the approved Schedule of Payments. The Schedule of Payments will specify the amount of each progress payment and describe the milestones and deliverables required before each installment payment will be made.

#	Milestone	% Requested	Deliverables
1		___%	
2		___%	
3	Project is Complete	___% (at least 25%)	Pre Implementation Energy Use Data (see Appendix L). Copy of Service Provider’s invoices. Invoice from Applicant to NYSERDA
4	12 Months of Measurement and Verification Complete	5%	Post Implementation Energy Use Data (see Appendix M). Invoice from Applicant to NYSERDA.

If the Proposer does not submit a Progress Payments Request, NYSERDA will structure a milestone payment schedule to pay at least 95% of the total contract amount upon Project completion and receipt of the required deliverables. The remaining 5% may be held until completion of the 12 month Measurement and Verification Plan, as applicable.

**Pre Implementation Energy Use Data**

**Project Implementation Funding for State Energy Program  
American Recovery and Reinvestment Act (ARRA)**

When the Proposer has completed the Project, the following information must be submitted to NYSERDA:

**Energy Efficiency Projects**

- Monthly energy use and cost information for all fuels for at least the 12 months prior to the completion of the Project for each facility or non-facility integrated assets that are affected. Also include monthly kW for the 12 months as applicable.

**Renewable Energy Projects**

- Monthly energy use and cost information for all fuels for at least the 12 months prior to the completion of the Project for each facility or for the non-facility integrated assets that are affected. Also, include monthly kW for the 12 months as applicable.

**Clean Fleet Projects**

- Monthly fuel use and cost information for all vehicle fuels for at least the 12 months prior to the completion of the Project for the vehicle fleet. Also, include monthly mileage for the vehicle fleet.

## **Appendix M**

### **Post Implementation Energy Use Data**

#### **Project Implementation Funding for State Energy Program American Recovery and Reinvestment Act (ARRA)**

No later than 15 months after the Proposer has completed the project, the following information must be submitted to NYSERDA:

##### **Energy Efficiency Projects**

- Monthly energy use and cost information for all fuels for at least the 12 months following Project implementation of each facility or non-facility integrated asset that are affected. Also include monthly kW for the 12 months following implementation.

##### **Renewable Energy Projects**

- Monthly energy use and cost information for all fuels for at least the 12 months following project implementation of each facility or non-facility integrated asset that are affected. Also include monthly kW for the 12 months following implementation.

##### **Clean Fleet Projects**

- Monthly fuel use and cost information for all vehicle fuels for at least the 12 months following implementation. Also, include monthly mileage for the vehicle fleet.

## Appendix N

### Conversion Factors

#### Project Implementation Funding for State Energy Program American Recovery and Reinvestment Act (ARRA)

The following factors are included for reference.

<b>CO2 Equivalents</b>		
<b>Fuel Type</b>	<b>Unit</b>	<b>Lbs. CO<sub>2</sub>e per Unit</b>
Electricity	kWh	0.83200
Natural Gas	kBtu	0.11638
All Types of Fuel Oil	kBtu	0.15966
Propane	kBtu	0.13830
Diesel	Gallon	22.38400
Gasoline	Gallon	19.56400

<b>Source Energy Conversion Factors</b>			
<b>Fuel Type</b>	<b>Unit</b>	<b>Btus/Unit</b>	<b>10mmBtus/Unit</b>
Electricity	kWh	9,668	0.0009668
Natural Gas	Therm	100,000	0.01
#2 Fuel Oil	Gallon	140,000	0.014
#6 Fuel Oil	Gallon	152,000	0.0152
Propane	Gallon	91,333	.0091333
Diesel	Gallon	138,327	0.0138327
Gasoline	Gallon	125,070	0.012507

## Appendix O

### Definition of Large Municipality

#### Project Implementation Funding for State Energy Program American Recovery and Reinvestment Act (ARRA)

Under the Federal American Recovery and Reinvestment Act, the Department of Energy has made a distinction between large and small municipalities. For NYSERDA's reporting purposes to the DOE, please indicate on the Proposal Application Form (Appendix C) if the municipality is considered large by the DOE.

<b>Large Municipalities</b>					
Name	Level	County	Name	Level	County
Albany	City	Albany	New York	City	
Amherst, Town of	City	Erie	Niagara Falls	City	Niagara
Babylon, Town of	City	Suffolk	North Hempstead, Town of	City	Nassau
Binghamton	City	Broome	Onondaga	County	
Brookhaven, Town of	City	Suffolk	Orange	County	
Buffalo	City	Erie	Orangetown, Town of	City	Rockland
Cheektowaga, Town of	City	Erie	Oyster Bay, Town of	City	Nassau
Clarkstown, Town of	City	Rockland	Penfield, Town of	City	Monroe
Clay, Town of	City	Onondaga	Perinton, Town of	City	Monroe
Clifton Park, Town of	City	Saratoga	Poughkeepsie, Town of	City	Dutchess
Colonie, Town of	City	Albany	Rochester	City	Monroe
Dutchess	County		Rockland	County	
Erie	County		Schenectady	City	Schenectady
Freeport, Village of	City	Nassau	Smithtown, Town of	City	Suffolk
Greece	City	Monroe	Southampton, Town of	City	Suffolk
Greenburgh, Town of	City	Westchester	Suffolk	County	
Hamburg, Town of	City	Erie	Syracuse	City	Onondaga
Hempstead Town of	City	Nassau	Tonawanda, Town of	City	Erie
Hempstead, Village of	City	Nassau	Troy	City	Rensselaer
Henrietta, Town of	City	Monroe	Ulster	County	
Huntington, Town of	City	Suffolk	Utica	City	Oneida
Irondequoit, Town of	City	Monroe	Webster, Town of	City	Monroe
Islip, Town of	City	Suffolk	West Seneca, Town of	City	Erie
Monroe	County		Westchester	County	
Mount Vernon	City	Westchester	White Plains	City	Westchester
Nassau	County		Yonkers	City	Westchester
New Rochelle	City	Westchester	Yorktown, Town of	City	Westchester

# Appendix P

## Regions Defined

### Project Implementation Funding for State Energy Program American Recovery and Reinvestment Act (ARRA)

