Professional Services for the Sale of Emissions Allowances

Request for Proposals (RFP) 1186

PROPOSAL DUE DATE: May 21, 2008 5:00 P.M. Eastern Time*

The New York State Energy Research and Development Authority ("NYSERDA") is a public-benefit corporation established by the State Legislature in 1975 to address the State's energy and environmental challenges. NYSERDA's principal mission is to use innovation and technology to solve some of New York's most difficult energy and environmental problems in ways that improve the State's economy.

Through rules and regulations promulgated by the Department of Environmental Conservation ("DEC"), NYSERDA will be responsible for selling nitrogen oxide ("NOx") allowances under the Clean Air Interstate Rule ("CAIR"). The objective of this solicitation is to select a qualified firm to provide NYSERDA market advice and brokerage services for the sale of these allowances.

Proposers are asked to present their qualifications, experience, and approach to providing the services mentioned above. Proposers must submit ten (10) copies of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to:

Roseanne Viscusi, RFP No. 1186
NYSERDA
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Kevin Hale at (518) 862-1090, ext. 3266 or kch@nyserda.org. If you have contractual questions concerning this solicitation, contact Nancy Marucci at (518) 862-1090, ext. 3335, or nsm@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting Kevin Hale (Designated Contact) at (518) 862-1090, ext. 3266 or kch@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 proposals and proposals lacking the appropriate completed and signed Proposal Checklist 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 web site at www.nyserda.org.

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I. INTRODUCTION

The New York State Department of Environmental Conservation ("DEC") promulgated state administrative regulations 6 NYCRR Part 243 and 6 NYCRR Part 244 to establish the CAIR NOx Ozone Season and the CAIR NOx Annual Trading Programs respectively. According to these regulations, certain power plants must comply with the program by obtaining and retiring one allowance for every short ton of NOx emitted during the compliance period. While 90% of the budgeted allowances will be allocated to the Budget Sources at no cost, DEC will allocate 10% to NYSERDA for eventual sale into the existing NOx allowance marketplace. NYSERDA will use the proceeds of the sale of the NOx allowances under CAIR to support programs that encourage and foster energy efficiency measures and renewable energy technologies.

More information about CAIR can be found at: http://www.dec.ny.gov/regs/2492.html

II. QUANTITY OF ALLOWANCES

Currently, the total quantity of NOx allowances available for sale in NYSERDA's allowance accounts on the EPA tracking system is 23,010, or 7,670 per year for three years. This total is broken down as follows:

- 9,327 for the Ozone Season Program. (3,109 each year for the 2009 through the 2011 allocation period).
- 13,683 for the Annual Program (4,561 each year for the 2009 through the 2011 allocation period).

Depending on future rules and regulations regarding allowance programs, the actual quantities of allowances may increase during the Contract Term, described in Section IV.

III. SERVICES REQUESTED

NYSERDA seeks the services of a firm with expertise in the emissions marketplace. These services would include, but not be limited to: the development of a strategy and schedule to best sell the allowances, the creation and distribution of a public notice to announce a sale of allowances, the actual placement or sale of these allowances into the appropriate market, and handling all aspects of the sale, transfer/delivery, record-keeping, and financial settlement for such allowances.

The selected proposer will be required to provide notice to the marketplace indicating that the allowances are available for sale. Such notice must be communicated to every power plant owner located in New York State and subject to compliance under 6 NYCRR Part 243 and Part 244. Such notice shall include all procedures and requirements relevant to the sale of the allowances. Such notice must also include a contact person employed by the contractor who will be responsible for correspondence with parties interested in purchasing the allowances.

The selected proposer shall maintain and make available to NYSERDA all books and records with regard to the sale of allowances sufficient for evaluation and audit. Such records should include but not be limited to: all documentation regarding each transaction including payment details, allowance transfer confirmations, and other relevant documentation.

IV. CONTRACT TERM

The term of the agreement with the selected proposer will be for twenty-four (24) months and thereafter may be extended for an additional twenty-four (24) month term upon mutual agreement.

V. CONTRACTOR RESPONSIBILITIES

The Contractor will work under the direction of NYSERDA's Project Manager. In any area where services are requested, all written deliverables will be presented to NYSERDA's Project Manager in draft form for review and ultimate approval by NYSERDA.

VI. PROPOSERS' CONFERENCE CALL

NYSERDA will conduct a teleconference on **May 6, 2008 at 11:00 a.m. EST.** The Proposers' Conference Call will provide interested firms an opportunity to seek clarification of the requirements of this RFP, to the extent practicable. To participate in the Proposers' Conference Call, NYSERDA must receive a completed Notice of Intent to Propose Form (Attachment C to this RFP) no later than May 5, 2008. Call-in information will be provided to the designated contact listed on the Notice of Intent to Propose Form returned to NYSERDA.

VII. PROPOSAL REQUIREMENTS

Proposers must submit ten (10) copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this Request for Proposals. A completed and signed Proposal Checklist must be attached as the front cover of each copy of your proposal, <u>one of which must contain an original signature</u>.

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

signed copy of the Proposal Checklist referenced in this solicitation will disqualify your proposal.

All responses submitted as part of this RFP solicitation process become the property of NYSERDA. Proposers will not be reimbursed by NYSERDA for any costs associated with the preparation of their proposals. Proposals may be either single- or double-sided, but a page is considered one side of an 8-1/2" x 11" piece of paper. Proposals should 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 influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, the page number, and be labeled with "RFP 1186". The font size shall not be smaller than 11 point. Each proposal must be organized in clear distinguishable sections as listed below and shall contain the following:

1) Cover Letter (1 page)

Proposers shall submit a cover letter on company letterhead that references RFP 1186. The cover letter should summarize the proposer's ability to perform the requested scope of services. The cover letter must be signed by a representative possessing the authority to enter into a contract with NYSERDA. Should subcontracting arrangements be proposed, a similar cover letter from each subcontractor must also be submitted. Letters from subcontractors must be attached to the proposal and include the same information included in the proposers cover letter, including the signature of a representative possessing the authority to commit the subcontracting firm to provide the services proposed.

2) Section A. Overall Experience and Capabilities (3-5 pages)

Identify and describe the company or organization that will be the prime contractor under this RFP. Identify any subcontractors. Proposers must describe their expertise and ability as a team/firm to deliver the requested services. This should include the number of years in providing advisory and brokerage services for emissions allowances or related energy/environmental commodities, number of similar engagements, total number of full-time employees, and number of personnel engaged in providing advisory and brokerage services.

Proposers must also provide a brief summary of at least two and no more than four similar engagements where brokerage services have been provided. The summaries should specify the level of involvement of the proposing firm(s), the approach used to conduct the services, the objective, the deliverables provided, and the relative success of the project in achieving the objectives. For at least two of the engagements mentioned, proposers must include customer contact names and phone numbers.

3) Section B. Personnel and Qualifications (1-2 pages)

List and describe any personnel, teams, and subcontractors along with each individual's role in providing the requested services. Clearly identify the project manager. Describe past

relationships with team members and subcontractors. Include an organizational chart, if necessary. Describe the accomplishments, experiences, and expertise of the individuals comprising the proposing team relevant to this RFP.

4) Section C. Technical Proposal (up to 15 pages)

a. Approach and Strategy: Describe your approach for providing advisory and brokerage services. Explain how you propose for notice to be provided to the marketplace and how your brokerage process functions. Explain the financial settlement and allowance transfer process that will be employed. Explain your documentation and record keeping processes and procedures. Also, identify what NYSERDA's roles and responsibilities will be in the process such as timely approval of transactions or other relevant responsibilities that are expected of NYSERDA in the sale of allowances.

b. Work Plan: Provide a work plan with specific tasks that the proposal team will undertake to deliver these services and the associated timeline for such tasks, in weeks. In writing each task, indicate who will perform it (e.g., primary contractor, subcontractor, etc.), how it will be performed, and anticipated results. Describe the work to be performed under each task in clear, concise, action-oriented sentences. Use the following phrase to start each sentence: "The (insert name of proposing firm) shall..."; and clearly indicate the scope of work to be performed. Proposers must also identify any and all deliverables for each task.

5) Section D. Cost Proposal

Proposers must present a not-to-exceed cost, in $ per allowance sold, to perform all requirements of this RFP. All anticipated costs or other charges for which reimbursement is expected should be included in the not-to-exceed fee.

6) Appendices

As Appendix A, include one- to two-page résumés for each individual listed in Section B of your proposal.

As Appendix B, provide a copy of your standard service agreement along with any sample transaction documentation such as transaction confirmations, financial settlement receipts and allowance transfer confirmations.

VIII. EVALUATION OF PROPOSALS

A Technical Evaluation Panel ("TEP") will review and score each proposal based on the criteria listed below. A final ranking will be determined based on the scores and analyses developed by the TEP.

- Response to the scope of services requested in this RFP as presented in your technical proposal
- Qualifications and expertise of the personnel/team
- Clear identification of staff that will be assigned to various aspects of the services
- Demonstrated experience and capability in providing the services requested
- Quality and relevance of previous work as evidenced by sample projects
- Reasonableness of the cost proposal
- Other programmatic and management factors deemed appropriate by the TEP

NYSERDA may request further information from any proposer as a part of the evaluation process. Further, as part of the evaluation process, proposers may be required to have appropriate representatives attend an interview or to provide a presentation regarding the proposal prior to final selection.

IX. PAYMENT

All costs associated with the sale of allowances, as presented in the Cost Proposal, will be paid through netting of expenses from the actual proceeds from the sale of allowances. In the event that no allowances are sold, no payments will be made.

X. GENERAL CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to accept 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. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

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

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

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

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

State Finance Law sections 139-j and 139-k - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at http://www.ogs.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). 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 perspective 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). The Department has developed guidance for contractors which is available at http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf.

Contract Award - NYSERDA anticipates making one award under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will review the proposers' standard service agreement requested as Appendix B to the proposal to negotiate a contract with the successful proposer. The resulting contract will include, at a minimum, STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

(Attachment D to this RFP). NYSERDA expects to notify proposers in approximately eight weeks from the proposal due date whether your proposal has been selected to receive an award.

Limitation - This solicitation does not commit NYSERDA to award a contract, pay any costs incurred in preparing a proposal, or to procure or contract for services or supplies. NYSERDA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in NYSERDA's best interest.

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

XI. ATTACHMENTS

Attachment A – Proposal Checklist
Attachment B – Disclosure of Prior Findings of Non-responsibility
Attachment C – Notice of Intent to Bid
Attachment D– Standard Terms and Conditions for all NYSEDA Agreements

ATTACHMENT A - RFP No. 1186 PROPOSAL CHECKLIST (MANDATORY)

Proposal Title		**Due Date** May 21, 2008	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
Address	City	State or Province	Zip
Secondary Contact		Title	
Company		Phone	Fax
Address	City	State or Province	Zip

THE PRIME CONTRACTOR MUST SIGN THIS FORM BELOW and ANSWER THE FOLLOWING QUESTIONS:

Do you accept all Terms & Conditions in the Sample Agreement? (if no, explain on separate pg) __ Yes __ No

Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) __ Yes __ No

Are you a Minority or Women-Owned Business Enterprise? __ Yes __ No

Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? __ Yes __ No

Are you submitting the required number of copies? (See proposal instructions.) __ Yes __ No

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)

ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?

Cover letter	____	Indictment/Conviction of Felony (if applicable)	____
Section A Overall Experience and Capabilities	____	NYSERDA Contracts Awarded (if applicable)	___
Section B Personnel and Qualifications	____	Prior and/or Competing Proposals (if applicable)	___
Section C Technical Proposal	____	Exceptions to Terms & Conditions (if applicable)	___
Section D Cost Proposal	____		
Appendices	____	Disclosure of Prior Findings of Non-responsibility Form	___

AUTHORIZED SIGNATURE & CERTIFICATION

I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, 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	Date

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

RFP 1186 - Attachment B
Disclosure of Prior Findings of Non-responsibility Form

(Mandatory)

Name of Individual or Entity seeking to enter the procurement contract:		
Address:		
Date:		
Solicitation or Agreement Number: Name and Title of Person Submitting this Form:		
Has any Governmental Entity made a finding of non-responsibility regarding the Individual or Entity seeking to enter the Procurement Contract in the last four years? (Please indicate with an "X")		Yes
		No
Was the basis for the finding of non-responsibility due to 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 Government al 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

(Please indicate with an "X")

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

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

By:_____ Date:_____

Signature

Name:_____ Title:_____

ATTACHMENT C - NOTICE OF INTENT TO BID

Notice of Intent to Bid form must be returned to NYSERDA no later than May 6, 2008.

Submit forms via fax, email or mail to:

NYSERDA, Attn : Roseanne Viscusi
17 Columbia Circle
Albany, NY 12203

fax: 518-862-1091
e-mail: rdv@nyserda.org

Date: _____

Company Name: _____

Designated Contact: _____

Title: _____

Address: _____

City: _____

State: _____

Zip + 4: _____

Phone Number: _____

E-mail Address: _____

RFP 1186 - Attachment D

STANDARD TERMS AND CONDITIONS
FOR ALL NYSERDA AGREEMENTS
(Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)
REVISED 9/06

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 terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit B, the terms of this Exhibit B 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.