Flexible Technical
Assistance Services Program for
Consolidated Edison Company of New York, Inc.
And Orange and Rockland Utilities, Inc.
Electric and Gas Service Territories
Request for Proposal (RFP) 1209

Proposal Due: June 22, 2009 by 5:00 PM Eastern Time*

Summary of Revisions

The following change has been made to RFP 1209, "Flexible Technical Assistance Services Program for Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. Electric and Gas Service Territories":

- The proposal due date has been extended from May 27, 2009 to June 22, 2009.
- The information session date has been changed from 10:00am on April 29, 2009 to 10:00am on May 21, 2009.
- An RSVP date has been added (May 15, 2009) for proposers who wish to attend the information session on May 21, 2009. The information has been included in the first page of the RFP document.

Flexible Technical Assistance Services Program for Consolidated Edison Company of New York, Inc. And Orange and Rockland Utilities, Inc. Electric and Gas Service Territories Request for Proposal (RFP) 1209

Proposals Due: June 22, 2009 by 5:00 PM Eastern Time*

PROGRAM SUMMARY:

The New York State Energy Research and Development Authority (NYSERDA) requests proposals from firms interested in providing energy efficiency technical assistance services through NYSERDA's Flexible Technical Assistance (FlexTech) Program in the Electric and Gas Service Territories of Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R), a Consolidated Edison, Inc. company. Selected Contractors must show a thorough understanding and experience working in the Con Edison and O&R electric and gas service territories (which includes Bronx, Kings, New York, Orange, Queens, Richmond, Rockland, Sullivan, and Westchester Counties).

Proposal Submission: Proposers must submit two (2) paper copies of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, both of which **must** contain an original signature. One (1) electronic copy of the proposal must also be submitted on a standard compact disk (CD). This electronic document (pdf format only) must be an exact scanned image of the final paper copy proposal and include all relevant forms and signatures. Proposals must be clearly labeled and submitted to:

Roseanne Viscusi, RFP 1209
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

Information Session: An informational session for potential proposers will be held on May 21, 2009 at 10:00AM in NYSERDA's New York City office at 485 Seventh Avenue, Suite 1006, New York, NY 10018. A conference call dial-in number will be available. Additional information is available at www.nyserda.org. Please RSVP to Teresa Cobena by COB May15, 2009 at sc2@nyserda.org if you wish to attend.

If you have technical questions concerning this solicitation, contact the Designated Contact: Sandy Hwang at (212) 971-5342, ext. 3009 or sh2@nyserda.org. If you have contractual questions concerning this solicitation, contact: Venice Forbes at (518) 862-1090, ext. 3507 or vwf@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting the Designated Contact. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the person'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.

Existing Statewide FlexTech Contractors <u>need not apply</u> to this RFP unless they would like to:
- **Potentially extend or provide services in the preferred areas of expertise requested in this RFP in Con Edison and O&R Service Territory though 2012**

(the Statewide RFP will be reissued in summer 2009 to obtain services for 2010-2013)

I. INTRODUCTION

OBJECTIVE OF PROGRAM

NYSERDA's Flexible Technical Assistance Program (FlexTech) provides New York State businesses, institutions, industrial and manufacturing facilities, data centers, local governments, multifamily facilities, farms and other facilities with technical assistance services that are customized to each site's needs to help make informed energy decisions. FlexTech's primary goal is to increase productivity and economic competitiveness by identifying and encouraging the implementation of cost-effective energy efficiency and carbon reduction measures. FlexTech services focus on systems-based approaches that use proven technologies and strategies to increase energy efficiency or mitigate carbon impacts. FlexTech also has been used to support other NYSERDA Programs.

Through New York State's Energy Efficiency Portfolio Standard (EEPS) and the Regional Greenhouse Gas Initiative (RGGI), NYSERDA has been tasked to support the State in achieving its energy efficiency and carbon emission reduction potential. It will be necessary for selected FlexTech Contractors to provide focused assistance relating to electric, fossil fuel, and carbon reduction in energy intensive industries to achieve substantial program penetration and deliver results in the most efficient and cost-effective manner. In order to meet the new goals and increased efforts, NYSERDA is expanding existing programs and creating new program offerings to increase opportunities for customer participation in the Con Edison and O&R service territories. As part of this effort, RFP1209 is seeking qualified contractors to provide services and expertise in the Con Edison and O&R Service Territories.

SERVICES REQUESTED

As a result of this RFP, NYSERDA plans to retain a number of qualified contractors to provide a range of services to commercial and industrial customers in Con Edison and O&R service territories. Contracts will be awarded for one year with two one-year options to renew at NYSERDA's discretion, for a total possible contract length of three years. Services will generally fall into the categories below.

- General Feasibility Studies and Technical Support
- Carbon Mitigation Studies (includes carbon master planning and carbon lifecycle assessments)
- Peak-Load Reduction Strategies
- Industrial and Process Energy Analysis (includes data center efficiency projects)
- Combined Heat and Power, Distributed Generation, and Renewable Generation
- Retro-commissioning Services
- Agricultural Technical Assistance
- Alternate-Fuel Technology
- Energy Procurement (includes hourly pricing, rate analysis, and aggregation)
- Executive Order No. 111 Requirements
- Green Buildings

- Water and Wastewater Services
- Energy Advisor Services
- Multifamily (NOTE: Multifamily residences are defined as properties that provide residential housing and contain five or more units. In general, NYSERDA's Residential Energy Affordability Program will handle multifamily facilities. However, FlexTech may be needed on a case-by-case basis and proposers are encouraged to demonstrate their expertise in servicing this sector.)

More specifically, within these categories, technical assistance services may include any of the following:

- Preliminary surveys or detailed on-site engineering studies of specific energy efficiency and carbon reduction measures/techniques
- Analysis of load shaping and peak-reducing energy management methods
- Energy or carbon-related design assistance
- Computer-assisted building or system modeling
- Monitoring and metering energy-consuming/carbon-emitting equipment and systems
- Technical guidance in improving environmental performance by reducing energy consumption and carbon emissions
- Providing guidance to comply with Executive Order No. 111 requirements
- Developing guidelines for specification or design criteria
- Developing training materials, conducting seminars, promoting or marketing technical subjects of NYSERDA services
- Other technical support and related assistance as needed for NYSERDA and its customers

EVALUATION OF PROPOSALS - OVERVIEW

One of the keys to the success of FlexTech has been the flexibility of its Contractors and the services they provide. Although each selected proposer will have expertise in one or more of the above categories, successful proposers must also have the desire to expand their technical expertise. When NYSERDA launches new programs and initiatives, the FlexTech Contractors are often used to assist in program development and to help expedite program delivery.

FlexTech emphasizes fuel-neutral, objective technical assistance for its customers. It is important that the analysis provided through FlexTech is based on customer need. Proposers to this RFP must demonstrate their ability to provide an objective, third-party perspective on FlexTech projects.

The proposer's ability to respond in a timely manner to customer and NYSERDA requests will be considered in the evaluation process. Proposers must delineate how they plan to respond to NYSERDA assistance requests including current NYSERDA and other contract commitments outside of FlexTech.

Proposers will be awarded contracts based upon their experience, ability, and qualifications to perform one or more of the services outlined in this RFP. The number and type of services requested from the selected Contractor will depend on the customer requirements and input, the Contractor's expertise, the volume of requests, geographic distribution of requests, and the Contractor's performance. Contractors are encouraged to submit proposals highlighting their specialized expertise as per the Services Requested section. NYSERDA seeks experts and firms to help with problem-solving, based on their specialized hands-on experience.

Targeted, cost-effective strategies will be key to meeting the aggressive energy savings goals established by EEPS and RGGI. NYSERDA intends to strengthen its capacity to better serve large, energy-intensive commercial and

industrial customers in the Con Edison and O&R service territories. Proposers will be evaluated based on their existing relationships, as well as their ability to develop and maintain new relationships with large commercial and industrial energy users in the Con Edison and O&R service territories.

Proposers are encouraged to submit strategies to minimize the overall cost of services (travel, indirect overhead, etc.) and maximize the benefits to customers. Proposers should clearly specify office locations that will participate in the FlexTech program and the corresponding geographic locations they will serve. Proposers do not have to have offices located in New York State to respond to this RFP.

II. RANGE OF SERVICES TO BE PROVIDED

Through this RFP, proposers with specific capabilities and experience will be retained for the purpose of providing technical assistance services to NYSERDA and its customers. These contracts are expected to provide NYSERDA with the ability to offer a full range of energy-related technical services to its customers in the Con Edison and O&R Service Territories. The following is a more detailed description of each of the general categories and services that may be requested.

General Feasibility Studies and Technical Support

This represents a majority of the services provided through FlexTech. Feasibility studies aim to assist customers in making more informed energy decisions at their facilities. This service may include equipment replacement or upgrade recommendations, comprehensive energy analysis on campus-type settings, energy-related design assistance through computer-assisted building modeling, or engineering support and other analysis requested by the customer and approved by NYSERDA. A feasibility study may require some level of design concepts to determine the feasibility of potential improvements. Although FlexTech does not provide design services, a feasibility study may require some level of design concepts to determine the feasibility of potential improvements.

Contractors may be asked to provide technical analysis and technical services for other NYSERDA efforts, which may include supplementing NYSERDA's technical staff to provide technical support on programs. This support may include: program design assistance and research, analysis of performance standards for equipment or appliances; assessing energy code, energy code compliance, and above-code opportunities; and other non-customer-specific analysis.

Additional services include assisting in the development of new programs, technical manuals, papers, and seminars. NYSERDA may use the data and knowledge gained from conducting surveys and studies to develop technical material and present seminars to other energy consumers throughout the state and country.

Carbon Mitigation Studies

Carbon mitigation studies assist customers in making more informed carbon management decisions at their facilities. This service may include, but is not limited to: performing carbon footprint analyses and developing carbon action plans to address carbon-intensive areas, water efficiency and water conservation studies, developing procurement strategies for acquiring carbon-neutral resources, equipment replacement or upgrade recommendations resulting in carbon mitigation, comprehensive carbon master planning for campus-type settings, carbon lifecycle "cradle-to-grave" assessments for processes, supply chains, company operations, specific products/product lines, etc. and various other analyses requested by the customer and approved by NYSERDA.

Peak-Load Reduction Strategies

Contractors may be asked to provide detail on peak demand impacts of study recommendations. Electric grid reliability and availability of demand response or demand reduction initiatives in the Con Edison electric service

territory during summer peak periods is especially critical and particular focus should be paid to calculating this impact in addition to the customer billing impact. The historic peak load in Con Edison's electric service territory occurs between May 1 and October 31, during the hours of 11:00 A.M. to 6:00 P.M., with the exception of some night peaking load pockets. Contractors will need to provide analysis showing how the measure coincides with or impacts the system electric summer peak. Both short term load management and long term permanent load reduction opportunities may be investigated.

This service may also provide review of real-time metering information and the benefits to facilities interested in participating in load curtailment programs within the Con Edison and O&R service territories or in tracking daily load profiles to monitor the effects of energy consuming systems. This service may help customers identify their ability to, and the financial benefit from, participating in such programs and the associated energy savings from installing real-time metering or web-enabled metering when it is used to curtail or shift loads at their facility. Contractors will be asked to identify and analyze opportunities for customers to participate in load curtailment activities of New York Independent Systems Operator (NYISO) such as Installed Capacity Special Case Resources (ICAP/SCR), Con Edison's Rider U Distributed Load Relief Program, or a Time of Use (TOU) or Real Time Pricing (RTP) program.

Industrial and Process Efficiency Analysis

Industrial facilities and processes require customized approaches to energy efficiency. Production lines and processes often have unique characteristics and functions. Site and sector specific approaches will be used to ensure that the best energy efficiency opportunities are identified and addressed. This approach will maximize process and energy reliability, productivity and energy savings. Through this RFP, NYSERDA seeks to increase its engagement of service providers who are experts in particular industrial processes and data centers. Credibility and quality of technical assistance are essential to program success as well as customer and stakeholder engagement.

Industry

NYSERDA will have an increased focus on industrial process improvements that increase the efficiency of energy or material use. Projects may also focus on increasing productivity, improving environmental performance, or minimizing waste. In addition to strong general industry experience, NYSERDA is seeking contractors with expertise and experience working with specific sub-sectors and processes (e.g. ceramics, pulp and paper, chemicals, chip fabrication, separations/purification). Analysis will predominantly focus on defining and reducing energy use per unit of production.

Data Centers

Data center energy analysis assistance will assess energy efficiency and carbon reduction potential of data center support systems and IT equipment. Strategies can include but are not limited to: cooling/IT equipment replacement or upgrade recommendations, server virtualization, redundancy optimization, temperature set point investigations, etc. NYSERDA is looking for contractors with expertise and experience working to improve the efficiency of supports systems (i.e. cooling and UPS systems) and IT equipment (i.e. server replacement, virtualization, application management). Analysis will predominantly focus on defining and reducing energy cost per unit of productive data throughput.

Combined Heat and Power, Distributed Generation, Renewable Generation

Contractors may be asked to provide technical assistance in evaluating the technical and economic feasibility of installing on-site power generation, either distributed generation (DG) alone or distributed generation with heat recovery otherwise referred to as combined heat and power (CHP). All generation studies will require specific information in the final reports as detailed in Attachment E. Generation studies will require detailed review of: energy profiles of thermal and electrical loads, overall system efficiency, pressure and availability of the fuel

source, permitting, sensitivity analysis, tariff impacts, interconnection issues, and overall system reliability.

Energy Procurement

Energy planning and purchasing support in response to the changing energy marketplace are included in this service. These analyses help customers analyze their energy rates, load shapes, energy consumption, and energy service aggregation opportunities. In addition, it can help customers prepare RFPs, review proposals, and allow them to better negotiate with power marketers and other service providers. Experience and knowledge with hourly pricing structures within specific electric territories should be highlighted.

Retro-commissioning Services

Retro-commissioning is the systematic process of verifying that all building systems perform interactively according to design intent, that they meet the operational needs of the owners and occupants, and that staff responsible for operation and maintenance are sufficiently trained. The goal of this service is to improve system performance, operation and maintenance, energy efficiency, occupant comfort, and indoor environmental quality. Retro-commissioning services will need to focus specifically on energy efficiency. Commissioning of new equipment and new facilities may be required on a case-by-case basis. In general, NYSERDA's FlexTech Contractors perform retro-commissioning on facilities and equipment that have been in use for at least one year.

Proposers wishing to perform this service should highlight experience and completion of substantive training courses on retro-commissioning such as completion of the Building Commissioning Association service provider course, or other equivalent training courses pre-approved by NYSERDA.

Agricultural Technical Assistance

This service provides technical assistance throughout the agricultural community. The proposal must present information in a manner that shows the proposer is knowledgeable in this sector including the opportunities for efficiency improvements that exist and which improvements have been generally accepted. These areas have traditionally been: motors, refrigeration, lighting, and ventilation.

Alternate Fuel Technology

Alternate fuel technology covers a broad range of expertise from vehicle fleet management and economics to renewable fuels such as ethanol or biodiesel to technical issues such as compressed natural gas refueling stations. NYSERDA seeks experts and firms to help with problem-solving, based on their specialized hands-on experience with specific alternative fuel or vehicle applications. The FlexTech Contractors will be called upon to answer challenging problems where solutions may come from applications in multiple disciplines. Some examples are: fleet management systems and purchasing decisions; re-fueling station design and siting issues; interaction with alternate-fuel providers and fire safety code officials; fueling station performance and maintenance requirements; implementation of Intelligent Transportation Systems and transportation demand management programs; and user/operator training. Expertise is also sought to help evaluate local market and economic conditions pertinent to projects, conducting technical assessments of infrastructure and equipment needs, and determining project feasibility. The FlexTech Contractor may be asked to help the end user develop an action plan with specific implementation steps and procedures identified.

Executive Order No. 111 Requirements

FlexTech provides technical assistance to customers who are required or who desire to comply with Executive Order No. 111 requirements. Services may include general technical support for commissioning green buildings, assistance with overall implementation plans, development of design or specification guidelines, review of procurement standards, limited on-site training, utilization of ENERGY STAR® Portfolio Manager, recommendation of ENERGY STAR® products, examining current building stock and developing operation and maintenance guidelines for continuous commissioning or re-commissioning.

Green Buildings
Green buildings minimize the environmental impacts of buildings throughout their life cycle. Services provided by NYSERDA FlexTech Contractors include computer modeling and energy analysis to optimize building energy performance and materials analysis to improve indoor environmental quality and occupant health. Services may also include aiding customers interested in complying with U.S. Green Building Council LEED® certification for Green Buildings or the New York State Green Building Tax Credit. In addition to energy modeling and materials analysis, these services may include design and specification guideline development. Firms with LEED® accredited professionals and experience acquiring LEED certification for Green Buildings are encouraged to apply.

Water and Wastewater Services
FlexTech provides assistance to municipal water and wastewater treatment plants to identify ways for them to use energy more efficiently. These studies may include providing the municipality with the information it needs to grow or change in the most energy efficient way possible. This could apply to facilities that are nearing capacity, ones that must meet new regulations, or any facility simply considering retrofitting the current design or wanting to become more energy efficient. Services may include equipment replacement studies, energy related process improvement studies or energy operation studies such as sub-metering and electrical peak shifting.

Energy Advisor Services
FlexTech allows commercial and industrial customers to engage a qualified contractor for long-term energy and carbon related services. The contractor will act as a member of the customer team to provide long-term support on energy and carbon management issues, actively identify opportunities, and perform analyses with the customer's and NYSERDA's approval. Services may include, but are not limited, to providing detailed technical support for decisions regarding the purchase of energy-efficient equipment, preparing bid documents for the purchase and installation of equipment, preparation of requests for proposals (RFPs), review of energy service company (ESCO) proposals, development of scopes-of-work for comprehensive energy audits conducted by a selected ESCO, review of comprehensive energy audits, review of proposed energy performance contracts, design assistance, independent verification that equipment and installations are as specified, review of annual savings reports from ESCOs during the guarantee period, conflict resolution, and guidance for regulatory or environmental permitting.

Multifamily
Multifamily residences are defined as properties that provide residential housing and contain five or more units. In general, NYSERDA's Residential Energy Affordability Program will handle multifamily facitilies. However, FlexTech may be needed on a case-by-case basis and proposers are encouraged to demonstrate their expertise in servicing this sector.

III. FLEXTECH PROJECT INFORMATION

ASSIGNMENT OF PROJECTS

Proposers selected under the RFP will be offered Task Work Order contracts. The Task Work Order contract is selected because an estimate cannot be made in advance as to the type, amount, or complexity of the projects or studies each Contractor will be required to perform. Assignment of projects under this RFP will be made by NYSERDA based on the Contractor's knowledge and experience, customer preference, geographic proximity to the customer, past performance, and NYSERDA-wide workload at the time of the assignment.

TASK WORK ORDER PLANS

Each FlexTech project assigned to a retained Contractor under this RFP will be defined by a written Task Work Order Plan, which will become a binding agreement for all parties involved. The Task Work Order Plan will be

prepared by the Contractor in cooperation with NYSERDA and the customer.

The Task Work Order Plan shall include:

- the project's purpose and goals
- the approach that will be taken (type of analysis)
- names of all parties involved
- background information on the customer and the customer's energy systems
- recent energy consumption data, including annual energy expense by source
- defined deliverables including development of a Case Study and completion of a Project Summary Sheet
- the project time frame
- the names or titles of individuals to work on the project
- the total not-to-exceed cost of the project or study, including a breakout by task and by title, hourly rate, hours, and non-labor costs

The detail of the Task Work Order Plan will be consistent with the level of complexity of the proposed project or study. NYSERDA must review all Task Work Order Plans before they are sent to the customer to ensure they are compliant with the program guidelines. The Task Work Order Plan Guideline is attached as Attachment F.

IV. CONTRACTOR RESPONSIBILITIES

Contractors selected under this RFP will be responsible for completing various tasks dependent on the level and type of services requested by NYSERDA. All tasks will be clearly defined in a Task Work Order Plan.

For every FlexTech technical service offered, the selected Contractor shall be required to:

1. Attend a site visit with a NYSERDA FlexTech Project Manager.
2. Prepare a Task Work Order Plan for review and approval by NYSERDA and the customer, according to the level of service being provided.
3. Negotiate the scope and cost of the technical assistance with NYSERDA, the customer, and any other co-funding entity.
4. Upon agreement by all parties to the Task Work Order Plan, provide the required assistance within the required time frame.
5. Submit periodic project updates to the NYSERDA Project Manager.
6. Submit the technical assistance deliverable to NYSERDA for review and approval; NYSERDA's review will ensure that the deliverable conforms to the Task Work Order and Participation Agreement that governed the analysis. NYSERDA will submit the deliverable to the customer. Often the deliverable is referred to as a final report. Final Report Guidelines are attached as Attachment H, Exhibit E.
7. Provide required documentation of expenditures by task based on the Task Work Order Plan when seeking payment from NYSERDA.
8. Provide NYSERDA with basic energy and facility data for each project.
9. Assist NYSERDA in the collection of data for purposes of program evaluation and database analysis.
10. Provide, when requested, on-site follow-up assistance to discuss recommendations, answer questions, and facilitate implementation.
11. Provide detailed information to customers on NYSERDA implementation programs.
12. Provide a draft case study of the project.

In addition, FlexTech Contractors are encouraged to notify NYSERDA of clients they believe are in need of, or interested in, energy-related technical assistance. FlexTech Contractors are especially encouraged to target customers with energy intensive processes and building operations in the large commercial and industrial sector. In all cases, the potential FlexTech customer has the choice of selecting any of the FlexTech Contractors.

V. NYSERDA RESPONSIBILITIES

NYSERDA will maintain overall management and control for all technical assistance services including the selection, supervision, and coordination of the Contractors. The major responsibilities of NYSERDA are to:

- Market services to various customer groups and organizations.
- Identify potential FlexTech participants and make service referrals to Contractors.
- Assist Contractors in developing Task Work Order Plans with customers.
- Provide Contractors with administrative procedures.
- Monitor the progress of each Contractor through ongoing telephone contact, review of status reports and field monitoring activities, etc., for the purpose of meeting customer needs, identifying problems and initiating corrective action.
- Provide technical review of project reports and deliverables to ensure that the deliverables conform to the Task Work Order and Participation Agreement that governed the analysis.
- Ensure adherence to NYSERDA's established policies and procedures.
- Provide completed reports to the customer under NYSERDA cover and letterhead.
- Promote the availability of technical assistance and other services to customers.
- Maintain databases of customers, technologies, and energy and dollar savings resulting from the services, reports, case studies, fact sheets, and newsletter articles.
- Disseminate technical and financial-related energy-efficiency information to Contractors.
- Process properly documented payment reimbursement requests.
- Conduct FlexTech program evaluations.

VI. COMPENSATION

The contract term for the FlexTech program is for one (1) year with two (2) one-year renewals at NYSERDA's discretion.

Compensation will be based on the Contractor's direct and indirect personal service costs plus allowable expenses; contractor fees will be fully described in each Task Work Order Plan. NYSERDA's share is expected to range from 0% to 100% depending on the number of parties sharing in the cost and the type of technical assistance being provided. For projects in which NYSERDA is not directly paying 100% of Contractor fees, the Contractor will be responsible for negotiating a payment schedule and collecting from all other parties involved.

The Contractor's fees may be paid directly to the Contractor by a combination of NYSERDA, the customers, and a third party such as a utility company. NYSERDA will only be responsible for its share of the project costs as outlined in the Participation Agreement.

Fees for technical assistance will be based on the Contractor's hourly rates for the appropriate level of staff. Staff assignments should be made with the most cost-efficient team available. Fees for all work conducted will be included in the Task Work Order Plan and approved by NYSERDA. The Task Work Order Plan will also place a ceiling or not-to-exceed dollar amount for each project. Contractors who accrue billable hours beyond the ceiling

in the Task Work Order Plan, without approval in writing by NYSERDA and all other parties to the technical assistance, will do so at their own risk. Contractors will not be compensated for time spent in the preparation of any Task Work Order Plan, including the site visit. Preparation of the Task Work Order Plan is considered to be part of the proposal to the customer, and as such, would normally be covered by the Contractor's overhead expense.

It must be noted that the Contractor is being retained by NYSERDA, and will be performing services for NYSERDA, even when these services may be related to privately owned facilities. All work done under FlexTech will be clearly identified with NYSERDA and any other parties co-funding the study. All Task Work Order Plans, reports, and project materials will be submitted to NYSERDA for review for program compliance, prior to submission to the customer by NYSERDA.

The NYSERDA agreement with a Contractor will not prevent the Contractor from providing services to NYSERDA's customers outside the energy services provided under this RFP or an individual Task Work Order Plan.

VII. PROPOSAL REQUIREMENTS

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, an additional form (or 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.

To participate in FlexTech and be eligible to provide services under this RFP, proposers must submit a Statement of Qualifications and Experience and agree to the terms and requirements of this Request for Proposals. Proposers must submit seven (7) copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this Program Opportunity Notice/Request for Proposal. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned**. Faxed or e-mailed copies will be not be accepted.

Responses to this solicitation will be reviewed and scores will be assigned based on the information submitted. A Technical Evaluation Panel will review and score all proposals. Attachment G is a guide on how the reviewers will score the proposals. Proposals will be evaluated based on the firm's previous successful experience with providing services similar to those requested for this solicitation, sample project, and available staff and their billable rates. Points will be awarded to proposers that help improve and build a network of technical assistance providers to serve Con Edison and O&R Service Territories. NYSERDA intends to contract with up to 15 firms to serve various regions of Con Edison and O&R Service Territories.

NYSERDA will negotiate contracts for services in fulfillment of the needs of this RFP on the basis of demonstrated competence, qualifications, and rates. Contract negotiations will include the Contractor's fee schedules. The contract amount will not guarantee any specific amount of work, but will contain a maximum dollar amount. The amount of funding allocated to each Contractor may be adjusted based on the number of participants in FlexTech.

All responses submitted as part of the RFP 1209 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. The font size shall not be smaller than 12 point. Some sections stipulate a page limit. Additional pages provided will not be reviewed.

To facilitate comparison of proposals, applicants must submit proposals in a format that corresponds to the following outline:

- **RFP 1209 Proposal Checklist (*Attachment A)***
- **Disclosure of Prior Findings of Non-Responsibility Form (*Attachment B)***
- **Areas of Expertise Checklist (*Attachment C)***
- **A: General Information**
- **B: Statement of Work**
- **C: Sample of Energy Related Work**
- **D: Rates - Project Personnel and Rates (*Attachment D)***
- **E: Liability and Insurance Bonding**
- **Contractor's Designated Contacts (*Attachment I)***

A. General Information (Not to exceed **three (3)** pages, including Attachment C)
Responding proposers must include the following information with their response. If subcontractors are intended to be included as part of the proposer's team, include the following information for the subcontractor as well.

1. Attachment C – Areas of Expertise Checklist
2. Firm name, address, telephone and fax number, e-mail address and contact person
3. Federal Employer Identification Number
4. Year that firm was established
5. Name and address of parent company (if applicable)
6. Indicate type of firm:
   [ ] Partnership
   [ ] Corporation (also indicate State incorporated in)
   [ ] Sole Proprietor
   [ ] Branch Office of
   [ ] Joint Venture (List venture partners)
   [ ] Other (Explain)

7. This submittal applies to:
   [ ] Parent Company
   [ ] Subsidiary
   [ ] Division
   [ ] Branch Office
   [ ] Other (Explain)

B. Statement of Work
A Statement of Work which fully specifies how the proposer will provide the required technical assistance and other services is required. The Statement of Work must contain the following components.

1. General Description: (Not to exceed **three (3)** pages) Provide a general description of the proposer and the services that can be offered under the FlexTech program.

2. Area(s) of Expertise: For each area of expertise, proposers should describe their ability to deliver technical assistance within the selected expertise **and** include 5-10 sample projects completed by the proposing firm within the selected expertise. The sample projects should have been completed within the past three years and should demonstrate the firm's experience in servicing the targeted customer base and market in Con Edison and O&R service territories. For each sample project, the proposer should specify their level of involvement, project results, and customer contact names and phone numbers.

   Proposers responding to perform services under the area of combined heat and power, distributed generation or renewable generation should demonstrate their experience in respect to Appendix E – Cogeneration, Distributed Generation and Renewable Generation Final Report Requirements. Experience with interconnection of these types of systems should also be demonstrated. FlexTech services may be reviewed by a third party under contract to NYSERDA.

3 Personnel and Abilities

   Include:

   - A **chart or matrix** depicting the offices from which services will be provided, the geographic region the office will serve, which areas of expertise will be covered by each office, and the personnel located in each office that will be working on FlexTech projects.
   - The individual who will be the **main contact** for FlexTech projects. This individual should be experienced in client relations and project development. The description of the main contact's expertise should highlight these abilities.
   - **One-page resumes** that highlight recent experience of the personnel who will be directly involved in providing the technical services from each office expected to provide FlexTech services.
   - A **one (1) page** description of any product, manufacturer, service **or other NYSERDA related affiliations,** including existing contracts. NYSERDA shall consider the proposers' performance in other NYSERDA contracts to help determine the proposer's ability to fulfill a potential FlexTech contract and any perceived conflicts of interest.
   - A **one (1) page** explanation of how the proposer will adequately service the targeted customer base in Con Edison and O&R service territories while **minimizing travel/lodging costs**. Travel costs will be limited to 3% of total project costs on a project by project basis.
   - A **one (1) to two (2) page** description of the proposer's ability to service large commercial and industrial customers in Con Edison and O&R service territories. Include past experiences and relevant references. Proposed targeted strategies to develop and maintain new relationships with large commercial and industrial customers are encouraged.

4. Objectivity (not to exceed **two (2)** pages)

   Proposers to this RFP must demonstrate their ability to provide objective, third-party assistance to NYSERDA and its customers. The proposer shall:

   - List any current or past (within the last three (3) years) subcontractors, affiliations, partnerships or company divisions, including NYSERDA contracts which could affect

objectivity.

- Be free from any financial interest in any product or service which may conflict with or appear to conflict with the objectivity of the technical service provided to NYSERDA and its customers. Please describe all of your product, manufacturer or service-related affiliations. If any affiliations exist, you must provide a statement verifying these affiliations do not conflict with or appear to conflict with the objectivity of providing services to NYSERDA and its customers. Non-disclosure of any affiliation can result in the termination of a contract, if awarded. These affiliations may assist customers in the implementation of recommended projects, however, it is also important to NYSERDA and its customers to be aware of the Contractor's affiliations before a FlexTech project is initiated.

Examples of such affiliations shall include, but not be limited to: a manufacturer's representative of energy-consuming or energy-efficiency equipment, financial interest in equipment that potentially may be specified or recommended in a FlexTech report, ability to provide construction services, or affiliation with a service provider to an energy service or similar company providing services in Con Edison and O&R Service Territories.

C. **Sample of Energy and Carbon Reduction Related Work** (Not to exceed **ten (10)** pages)
Proposers must submit a sample project pertaining to an area of expertise in which they are proposing to provide the majority of their assistance. The sample report must be consistent with the objectives of the FlexTech program and its associated scope of work and budget must be included.

Proposers are encouraged to condense the report to an executive summary accompanied by supporting engineering analysis. The executive summary should not exceed **ten (10)** pages.

The sample project must meet the following requirements:

- The project's budget must be over $40,000 or have projected savings of at least 80,000kWh;
- The project must have been completed within the last two years;
- Inclusion of the project's Scope of Work (initial proposal);
- Inclusion of the final deliverable for the Scope of Work provided; and
- A deliverable that provides adequate calculations and data to support the energy savings estimates

D. Rate Structure
The proposer shall use the Project Personnel and Billing Rates form, Attachment D, to clearly indicate hourly salary rate range for each title classification proposed under the agreement with NYSERDA and other overhead multipliers you propose to use for the duration of the agreement with NYSERDA. The contract will last for one year with two (2) one-year renewal options at NYSERDA's discretion. Please provide rates and multiplier for each of the three years. The multiplier stated shall include all overhead, profit, and other costs. Please do not provide fully burdened rates in the chart.

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

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

confirm that the rate(s) are consistent with generally accepted accounting principles for indirect costs.

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

E. Liability Insurance/Bonding

The response must include information on the liability insurance coverage or bonding which the proposer carries applicable to work performed under this program.

VIII.PROPOSAL EVALUATION AND CONTRACTOR SELECTION

Responses to this RFP will be reviewed and assigned scores based on the criteria highlighted in the Scoring Guide included as part of this RFP. NYSERDA, through its Technical Evaluation Panel, will review each Proposal and may contact selected references to determine whether a proposer has the necessary technical resources to successfully provide energy services in Con Edison and O&R Service Territories.

The number of proposers selected for contracts will be determined by the number of firms required to efficiently and effectively provide comprehensive technical services for the Con Edison and O&R Service Territories. This number cannot be determined until all proposals are received and reviewed. Proposers who possess, or can obtain through cooperative or joint ventures, the following capabilities will be favored under this RFP:

- The ability to use technicians or junior engineers, under the supervision of senior level staff, to provide rudimentary energy surveys or support for more technical analyses.
- The ability to commit senior level staff to complex feasibility studies.
- The ability to commit staff to projects or studies on short notice.
- The ability to complete projects on schedule.
- The ability to have a team member who is licensed to practice either engineering or architecture in New York State. Certain services conducted through this program may require a stamp of an architect or engineer licensed to practice in New York State.

The following factors will be considered during the evaluation:

- Response relevancy and accuracy to NYSERDA's request as specified in this RFP.
- Expertise in relevant areas of expertise as listed in the Introduction section.
- Previous experience in the conduct and delivery of contracted technical assistance services.
- The ability to deliver service efficiently and economically.
- The ability to deliver objective services.
- Quality of energy-related work as evidenced by the sample projects.

Further, <u>as part of the evaluation process</u>, proposers may be required to have appropriate representatives attend an interview prior to final selection.

NYSERDA will negotiate contracts for services in fulfillment of the needs of this RFP on the basis of demonstrated competence and qualifications, at fair and reasonable fees. Contract negotiations may include the proposed Contractor's fee schedules to ensure work is accomplished at fair and reasonable rates. These contracts will not guarantee any specific amount of work, but may contain a maximum dollar amount. The amount of work assigned to each Contractor will depend on their particular expertise, geographic area in which they agree to conduct services, the amount of work requested in the Contractor's technical and geographic area and the ability of the Contractor to provide high quality, cost-effective, and timely services.

NYSERDA reserves the right to negotiate among finalists to assure services, and to assure access to specific expertise.

IX. 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 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. 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 & 139-k. State Finance Law §139-j(6) requires that NYSERDA incorporate a summary of its policy and prohibitions regarding permissible communications during a covered procurement.

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between NYSERDA and a Proposer/Offerer during the procurement process. A Proposer/Offerer is restricted from making contacts from the earliest notice of intent to solicit offers [such as a “Program Opportunity Notice”, “Invitation for Bid” or “Request for Proposal”, etc.] through final award of the Procurement Contract (the “restricted period”) to other than Designated Staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated Staff, as of the date hereof, are identified on the first page of this solicitation.

NYSERDA employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Proposer/Offerer pursuant to this law. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Proposer/Offerer is debarred from obtaining governmental Procurement Contracts.

Additional guidance regarding these procurement lobbying requirements and can be found at http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html.

Tax Law Section 5-a - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires Contractors, prior to entering an agreement with NYSERDA, to certify whether the Contractor, its affiliates, its subContractors and the affiliates of its subcontractors have registered with the New York State Department of Taxation and Finance to collect New York State and local sales and compensating use taxes. The Department of Taxation and Finance has developed guidance and a certification form (ST-220) for Contractors which is available at www.nystax.gov/sbc/nys_Contractors.htm. The completed Form ST-220 (which is available upon request or at http://www.nyserda.org/Funding/stdforms.asp), will be incorporated in the agreement between NYSERDA and the Contractor.

Contract Award - NYSERDA anticipates making up to 15 awards 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 use the Sample Agreement to contract successful proposals. NYSERDA expects to notify proposers in approximately 13 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.

X. ATTACHMENTS

- Attachment A: Proposal Checklist
- Attachment B: Disclosure of Prior Findings of Non-responsibility
- Attachment C: Areas of Expertise Checklist
- Attachment D: Project Personnel and Billing Rates Form Scoring Sheet
- Attachment E: Cogeneration, Distributed Generation and Renewable Generation Final Report Requirements
- Attachment F: Task Work Order Plan Guidelines

- Attachment G: Scoring Sheet Disclosure
- Attachment H: Sample Agreement (Includes Final Report Requirements)
- Attachment I: Contractor's Designated Contact(s)

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

ATTACHMENT A - RFP No. 1209 PROPOSAL CHECKLIST (MANDATORY)

Proposal Title		Due Date	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
Address	City	State or Province	Zip
Secondary Contact		Title	
Company		Phone	Fax
		e-mail	
Address	City	State or Province	Zip

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
(NYSERDA anticipates considering only specifically listed exceptions in negotiations.)

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?

REQUIRED		IF APPLICABLE	
Areas of Expertise Checklist	___		
A. General Information	___	Indictment/Conviction of Felony	___
B. Statement of Work	___	NYSERDA Contracts Awarded (if applicable)	___
C. Sample of Energy-Related Work	___	Prior and/or Competing Proposals (if applicable)	___
D. Rates – Project Personnel and Rates	___	Exceptions to Terms & Conditions (if applicable)	___
E. Liability and Insurance Bonding	___		
Contractor's Designated Contact(s)	___		
Disclosure of Prior Findings of Non-Responsibility	___		

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	

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

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Attachment B
Disclosure of Prior Findings of Non-responsibility Form

(Mandatory)

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

Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information ? (Please indicate with an "X")		Yes
		No

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

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

By:_____ Date:_____
Signature

Name:_____ Title:_____

Attachment C
Area of Expertise Checklist

Area of Expertise	*(Check all that apply)*
General Feasibility Studies	
Carbon Mitigation Studies	
Peak-Load Reduction Strategies	
Industrial and Process Energy Analysis	
Combined Heat and Power, Distributed Generation	
Retro-commissioning Services	
Agricultural Technical Assistance	
Alternate-Fuel Technology	
Energy Procurement	
Executive Order No. 111 Requirements	
Green Buildings	
Water and Wastewater	
Energy Advisor Services	
Multifamily	

Attachment D

Project Personnel & Rates

DIRECT PERSONNEL COSTS:

Title Classification	Not to Exceed Hourly Rate Range	
	Minimum	Maximum
Principal Investigator		
Technical Specialist		
Senior Project Manager		
Project Manager		
Senior Engineer/Architect		
Engineer		
Analyst		
Administrative Support		

MULTIPLIER:

Profit / Fixed Fee:

DIRECT NON-PERSONAL SERVICE COSTS:

Direct non-personal service costs will be allowed and reimbursed at cost for project related expenses. Items not listed but necessary to complete the work must be pre-approved by NYSERDA:

Travel	Laboratory Tests	Overnight Mail
Supplies	Test Equipment Rentals	Report Reproduction/Outside Printing
Postage	Computer Services	Subcontracts

Attachment E

Required Information in a Detailed CHP Feasibility Study
(Study cost greater than $10,000)

The following information must be included in detailed CHP feasibility studies, in addition to general final report requirements in Appendix H.

System Information

- Energy use profiles must be reviewed in detail to accurately determine the level of temporal coincidence between thermal and electrical loads to be satisfied by the CHP system. An electronic copy of a spreadsheet-based model that describes system operation, including electricity produced and heat recovered on an hourly basis must be provided with the study. Assumptions used in the model should be clearly indicated in the study.

- Thermal usage and electricity profiles must be illustrated in a figure for variance by month for one year and by hour on a summer, winter and shoulder day.

- The type and rating of the prime mover and an energy balance around the prime mover must be shown. The energy balance must be applied to a schematic of the system showing all major components, including the uses for the recovered heat. Annual totals for each energy input/output must be shown along with maximum, minimum, and average instantaneous values. Temperatures for each waste heat transfer fluid and sink must also be indicated.

- CHP system efficiency and emissions must be described.
    - Annual thermal utilization percentage must be given (i.e., the annual amount of heat that is recovered for space and/or process heating and/or cooling divided by the annual recoverable thermal output from the prime movers).
    - Fuel conversion efficiency (FCE) for the prime movers must be provided. FCE is defined as the ratio expressed as a percentage of the total usable energy produced by a technology to the sum of all fuel or other energy inputs to the technology measured at each fuel's lower heating value.
    - The annual emissions of the proposed system must be provided.
    - Any additional emission control technology must be provided if necessary to meet emission regulations.

- The description of the proposed system must include a preliminary floor plan indicating equipment location. Construction cost estimates should include estimates for rigging, building construction (if necessary) and any anticipated structural modifications.

- If natural gas is used as the fuel for the proposed CHP system, the pressure and availability of gas must be described in the study. If fuel oil is to be used as the fuel for the proposed CHP system, system cost must include tank construction requirements.

- An operational sequence must be included that specifies the control system to be used along with a discussion of its integration with other on-site control systems and who will have responsibility for system operation.

Attachment E

- A project schedule that includes durations for design (engineering & architectural), utility coordination and review, permitting (environmental and construction), construction, start-up, and commissioning must be provided.

Economic Evaluation

- Electricity, fuel, operation, and maintenance costs before and after the proposed installation along with a summary of project economics must be included.
- Economics must be presented in a simple payback format. Additionally, a cash flow analysis or life cycle cost analysis must be presented.
- Operational costs must include any impact to the customer's energy tariffs.
- Maintenance costs can be listed in $/kWh, but must also be annualized.
- Capital costs must include:
    - Equipment purchase and system installation
    - Structural (new building, existing building modifications, etc)
    - Interconnection and Utility Connection (construction & utility fees)
    - Electrical distribution system changes
    - Rigging
    - Permitting
    - Design fees
    - Commissioning

Maintenance

- In addition to inclusion in the economic analysis described above, maintenance items must be described in detail. The source of the maintenance costs must be included along with a list of what would be covered (i.e. annual major overhaul of prime mover, oil changes, etc.).

- An estimate of downtime that would occur due to routine maintenance must also be included.

Tariff Impacts and Interconnections

- In addition to inclusion in the economic analysis described above, a detailed description of the relationship between the proposed CHP facility and the Customer's existing energy tariffs must be included. Contract dates and dates of potential tariff rule must be included. In the case where such future changes would significantly impact the economics of the Project, sensitivity analysis must be presented assuming the potential tariff or contract changes occurred.

- Site-specific grid interconnection issues and costs must be discussed. A brief, clear plan for if and how the system will be properly interconnected to the grid, natural gas pipelines and/or the Con Edison steam system must be presented.

Permitting

- A brief description of the necessary environmental and building permits that the customer needs to obtain must be provided. The permit determination should be based on the annual emissions potential for the size of the unit and the emissions of any existing equipment at the facility. Anticipated time frames and durations for environmental, utility and construction permitting should be incorporated in the Project schedule.

System Reliability and Availability

Attachment E

- The reliability and availability of the CHP System must be quantified (e.g. number of hours the system would be available at less than full capacity). This must be compared to service and discussed in the context of the Customer's core business and tolerance for risk.

Attachment E

Required Information in a Preliminary CHP Feasibility Study
(Study cost less than $10,000)

The following information must be included in preliminary CHP feasibility studies, in addition to general final report requirements in Attachment H.

System Information

- Energy use profiles must be reviewed in detail to accurately determine the level of temporal coincidence between thermal and electrical loads to be satisfied by the CHP system. An electronic copy of a spreadsheet-based model that describes system operation, including electricity produced and heat recovered on a daily basis, must be provided with the final report. Assumptions used in the model should be clearly indicated in the final report. Thermal demands must be shown for the specific heat sinks to be satisfied by the CHP system.

- Preliminary type and rating of and energy balance around the prime mover. The energy balance must be applied to a schematic of the system showing all major components, including the uses for the recovered heat. Annual totals for each energy input/output must be shown.

- Description of the proposed system must include a floor plan showing equipment location.

Economic Evaluation

- Electricity, fuel, operation and maintenance costs before and after the proposed installation along with a summary of project economics must be included.

- Economics must be presented in a simple payback format.

- Operational costs must include any impact to the Customer's energy tariffs.

- Maintenance costs can be listed in $/kWh, but must also be annualized.

- Capital costs must include any necessary one-time costs such as permitting, interconnection or electrical distribution system changes.

Maintenance

- In addition to inclusion in the economic analysis described above, maintenance items must be described in detail. The source of the maintenance costs must be included along with a list of what would be covered (i.e. annual major overhaul of prime mover, oil changes, etc.).

Tariff Impacts and Interconnections

- Site-specific grid interconnection issues and costs must be discussed. A brief, clear plan for if and how the system will be properly interconnected to the grid. In the absence of such a plan, natural gas pipelines interconnect issues must be presented.

Permitting

- A brief description of the necessary environmental and building permits that the Customer needs to obtain must be provided.

Attachment E

Required Information in a Renewable Generation Feasibility Study

The following information must be included in renewable generation feasibility studies, in addition to general final report requirements in Attachment H.

System Information

- Energy use profiles must be reviewed in detail to accurately determine the level of temporal coincidence between availability of the renewable resource and electrical loads to be satisfied by the system. An electronic copy of a spreadsheet-based model that describes system operation on a daily basis must be provided with the final report. Assumptions used in the model should be clearly indicated in the final report. Heat and fuel availability profiles must be illustrated for variance by month for one year and by hour on a peak and minimum demand day.
- The type and rating of the generating equipment.
- The description of the proposed system must include a floor plan indicating equipment location. Any structural modifications must be included in the capital cost of the system.
- An operational sequence must be included that specifies the control system to be used along with a discussion of its integration with other on-site controls systems and who will have responsibility for system operation.
- A construction schedule that includes engineering, permitting, construction, start-up, and commissioning must be provided.

Economic Evaluation

- Electricity, fuel, operation and maintenance costs before and after the proposed installation along with a summary of project economics must be included.
- Economics must be presented in a simple payback format. Additionally, a cash flow analysis or life cycle cost analysis must be presented.
- Operational costs must include any impact to the Customer's energy tariffs.
- Maintenance costs can be listed in $/kWh, but must also be annualized.
- Capital costs must include necessary one time costs such as permitting, interconnection, or electrical distribution system changes. Capital costs must also include any structural changes required to house the prime movers.

Maintenance

- In addition to inclusion in the economic analysis described above, maintenance items must be described in detail. The source of the maintenance costs must be included along with a list of what would be covered. An estimate of downtime that would occur due to routine maintenance must also be included.

Tariff Impacts and Interconnections

- In addition to inclusion in the economic analysis described above, a detailed description of the relationship between the proposed system and the Customer's existing energy tariffs must be included. Contract dates and dates of potential tariff rule changes must be included. In the case where such future changes would significantly impact the economics of the project, sensitivity analysis must be presented assuming the potential tariff or contract changes occurred.
- Site-specific grid interconnection issues and costs must be discussed. A brief, clear plan for if and how the system will be properly interconnected to the grid must be presented.

Permitting

Attachment E

- A brief description of the necessary environmental and building permits that the Customer needs to obtain must be provided. Estimates of permitting costs must be included in the economic analysis. In addition, a schedule of realistic permit receipt dates must be included in the schedule described above.

System Reliability and Availability

- The reliability and availability of the system must be quantified (e.g. number of hours the system would be available at less than full capacity). This must be compared to service and discussed in the context of the Customer's core business and tolerance for risk

Attachment F

Task Work Order Plan Guidelines

1. The Task Work Order should be a stand-alone document and should not be in letter format. The Service Provider doing the work should also be noted. In general, they range from four to eight pages. The document's title should be "Attachment A – Task Work Order Plan".

2. The first page of the Task Work Order should contain a one- or two-paragraph description of the customer's facility. This description should include: name, location, service provided or product produced, square footage of facility, number of employees, and approximate annual energy cost, fuel type, use (kW, kWh, MMBtu, dollars, etc), and energy provider.

3. The first page should also include a one- or two-paragraph description of the project making clear the need for the study. This should include a description of the current systems or methods in place and what will be reviewed to replace or change these systems or methods to become more efficient. This paragraph should also include the method of data collection (metering, motor nameplate etc.) and energy savings calculation (i.e. computer modeling, spreadsheets or manually etc.). For RCx projects, NYSERDA may require that the scope of work include a list of the components contained within the system being commissioned. This may include identifying the size, type, age and location of all air handlers, pumps, chillers, control points etc.

4. The next page or two should divide the project into numbered tasks. Each energy conservation measure (ECM) reviewed should be a single task. Each task should include a description of what will be reviewed in regard to that ECM, the current conditions and what will be evaluated as options. For example, if Task 1 were a lighting systems audit, the description under that task could note what lights are currently in place, that the audit would cover the entire facility and would include a review of lighting controls, reflectors, high efficiency ballasts and lamps, and a site review to reduce light levels in over-lit areas.

5. Following the Tasks section should be a paragraph describing the project assumptions, if necessary. Examples of this could be that the customer's facility would provide a knowledgeable guide to the consultants as they review the facilities, or note any information the customer has promised to provide the consultant for the completion of the study.

6. Following the Assumptions section should be a one-paragraph section describing the Deliverables. This should state that a draft report will be forwarded to NYSERDA addressing all of the tasks described and will follow NYSERDA's format. The deliverable should also include a Project Summary Sheet and a Case Study. Examples of these are available at:
http://www.nyserda.org/programs/Technical_Assistance/default.asp and
http://www.nyserda.org/programs/Technical_Assistance/tasuccess.asp respectively.

7. Following the Deliverable description should be a schedule to complete each of the tasks. This schedule should be in a "weeks from notice to proceed" format. For example: Kick-off meeting within two weeks of notice to proceed; Task 1.0 completed within four weeks of notice to proceed, etc.

8. Finally, a detailed project budget broken out by task should be attached. For each task, the number of hours and dollars to be spent should be clearly indicated. This will provide a clear understanding of how much emphasis is being placed on each task and therefore, the level of detail that can be expected.

In general, the Task Work Order should eliminate any ambiguity about the project. It should be clear what the current status of the facility is, what will be reviewed in the study and in what detail the study will be done. The Task Work Order will be used as the basis for payment by NYSERDA. The final report will be compared to this document to determine if it has met the requirements of the program. It should therefore, be as detailed as possible. Overall, the Task Work Order will help all parties involved understand what is expected of them and what they can expect of the other participants.

Attachment G

Flexible Technical Assistance - RFP 1209 - Scoring Guide

Clarity **(5 Points)**

Points shall be awarded for demonstration of an understanding of the major objectives of the RFP and NYSERDA's FlexTech Services Program. The following components should be included in the submission:

- Pass/Fail: A one page description of the proposer and the services that can be provided;
- Pass/Fail: A statement regarding potential or perceived conflicts of interest;
- An understanding of the Task Work Order Process; and
- An understanding of the deliverables of this program and how to provide them to the customers

Areas of Expertise / Relevant Experience **(30 Points)**

Points shall be awarded for this section by meeting the criteria listed under B2 Statement of Work-Areas of Expertise on Page 12 of the RFP document

- Demonstration of the proposer's knowledge in one or more of their preferred expertise (20 points)
- Demonstration of the proposer's knowledge in one or more of the other areas of expertise (5 points)
- Demonstration of proposer's ability to serve large commercial and industrial customers (5 points)

Proposers responding to perform services under the area of combined heat and power, distributed generation or renewable generation should demonstrate their experience in respect to Attachment E – Cogeneration, Distributed Generation and Renewable Generation Final Report Requirements. Experience with interconnection of these types of systems should also be demonstrated. FlexTech Services provided under the area of combined heat and power, distributed generation or renewable generation, may be reviewed by a third party under contract to NYSERDA to perform such services.

Proposers will receive points towards the area(s) described in the proposal. Proposers are strongly encouraged to highlight all areas of expertise the firm is capable of providing.

Note: Upon NYSERDA approval, consultants may be eligible to provide services in areas of expertise outside of those proposed for.

Personnel / Ability to Deliver Effective and Objective Services **(25 Points)**

Points will be awarded for providing the following information:

- The services available from the proposer's office;

- A one page resume of professional staff most likely to be billable on a FlexTech project. Listed staff should have relevant experience (for their title) to perform services;
- A description of any product, manufacturer, service or other NYSERDA related affiliations;
- Explanation of how you will adequately serve the targeted customer base in Con Edison and O&R Service Territories while minimizing travel/lodging costs from the offices from which services are to be performed; and
- An understanding of the Con Edison Service Territories markets

NYSERDA shall consider the proposer's performance in other NYSERDA contracts to help determine the proposer's ability to fulfill a potential FlexTech contract and any perceived conflicts of interest.

Proposers must disclose existing company and subcontractor divisions, affiliations or partnerships including NYSERDA contracts, which could affect objectivity. Please provide information on how the parties interact, ensuring to focus on the ability to provide objective technical assistance. Proposers with few or no perceived conflicting objectives are desired.

Sample of Energy Related Work **(25 Points)**

Points shall be awarded on the quality of the sample work provided. Points will be given for providing the following information (please also refer to page 13 of the RFP):

- A project resulting in large MW impact is preferred;
- The project must have been completed within the last two years;
- Inclusion of the project's Scope of Work (initial proposal);
- Inclusion of the final deliverable for the Scope of Work provided; and
- A deliverable that provides adequate calculations and data to support the energy savings estimates

Rate Structure **(10 Points)**

Points shall be awarded based on the competitiveness of rates. Staff title will be taken into consideration.

Other **(5 Points)**

Points shall be awarded for demonstrating the ability to perform work in one of the solicited areas of expertise not adequately addressed by other proposals.

ATTACHMENT H

New York State Energy Research and Development Authority
SAMPLE AGREEMENT

1. Agreement Number:

2. Contractor:

3. Contact:

4. Award Date:

5. Project Period:

6. Federal ID:

7. Total Amount of Award:

8. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement;
- Exhibit E, Flex Tech Final Report Requirements; and
- Exhibit F, Rate Schedule.

9. ACCEPTANCE

CONTRACTOR

By _____

Name _____

Title _____

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By _____
Jeffrey J. Pitkin
Treasurer

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

1 GENERAL

Under the terms and conditions of this Agreement, the Contractor shall provide technical assistance services to eligible NYSERDA customers or NYSERDA at the request and direction of NYSERDA.

Each service conducted under this Agreement will be defined by a written Task Work Order as defined in Section 3 of this Exhibit A.

2 RANGE OF SERVICES

The services provided by the Contractor under this Agreement will fall into the following general categories:

a. General Feasibility Studies and Technical Support
b. Carbon Mitigation Studies (includes carbon master planning and carbon lifecycle assessments)
c. Peak-Load Reduction Strategies
d. Industrial and Process Energy Analysis (includes data center energy analysis)
e. Combined Heat and Power, Distributed Generation, and Renewable Generation
f. Retro-commissioning Services
g. Agricultural Technical Assistance
h. Alternate-Fuel Technology
i. Energy Procurement
j. Executive Order No. 111 Requirements
k. Green Buildings
l. Water and Wastewater Services
m. Energy Advisor Services
n. Multifamily
o. Real-Time Metering Utilization
p. Other Energy Related Assistance as needed for NYSERDA and its customers (i.e. Waste Minimization, Sustainable Materials, and training and education, etc)

More specifically, within these categories, technical assistance services to be provided by the Contractor may include any one or more of the following:

a. Preliminary surveys or detailed on-site engineering studies of specific energy efficiency and carbon reduction measures and techniques.
b. Analysis of load shaping and peak-reducing energy management methods.
c. Energy and/or carbon-related design assistance.
d. Computer-assisted building or system modeling.
e. Monitoring and metering energy-consuming/carbon-emitting equipment and systems.
f. Technical guidance in improving environmental performance by reducing energy consumption

and carbon emissions.

g. Developing guidelines for specification or design criteria.
h. Developing training materials, conducting seminars, promoting or marketing technical subjects of NYSERDA services.
i. Other technical support and related assistance as needed for NYSERDA and its customers

The following is a more detailed description of each of the general categories and services to be provided by the Contractor. Services provided under any individual Task Work Order may include work under multiple categories.

General Feasibility Studies and Technical Support

This represents a majority of the services provided by the FlexTech program. Feasibility studies aim to assist customers in making more informed energy decisions at their facilities. This service may include equipment replacement or upgrade recommendations, comprehensive energy analysis on campus type settings, energy-related design assistance through computer-assisted building modeling, or engineering support and other analysis requested by the customer and approved by NYSERDA. A feasibility study may require some level of design concepts to determine the feasibility of potential improvements. Although FlexTech does not provide design services, a feasibility study may require some level of design concepts to determine the feasibility of potential improvements.

Contractors may be asked to provide technical analysis and technical services for other NYSERDA efforts, which may include supplementing NYSERDA's technical staff to provide technical support on programs. This support may include: program design assistance and research, analysis of performance standards for equipment or appliances; assessing energy code, energy code compliance, and above-code opportunities; and other non-customer-specific analysis.

Additional services include assisting in the development of new programs, technical manuals, papers, and seminars. NYSERDA may use the data and knowledge gained from conducting surveys and studies to develop technical material and present seminars to other energy consumers throughout the State and country.

Carbon Mitigation Studies

Carbon mitigation studies to assist customers in making more informed carbon management decisions at their facilities. This service may include, but is not limited to: performing carbon footprint analyses and developing carbon action plans to address carbon-intensive areas, water efficiency and water conservation studies, developing procurement strategies for acquiring carbon-neutral resources, equipment replacement or upgrade recommendations resulting in carbon mitigation, comprehensive carbon master planning for campus-type settings, carbon lifecycle "cradle-to-grave" assessments for processes, company operations, specific products/product lines, etc. and various other analyses requested by the customer and approved by NYSERDA.

Peak-Load Reduction Strategies

Contractors may be asked to provide detail on peak demand impacts of study recommendations. Electric grid reliability and availability of demand response or demand reduction initiatives in the Con Edison Territory

during summer peak periods is especially critical and particular focus should be paid to calculating this impact in addition to the customer billing impact. The historic peak load in Con Edison's Electric Service Territory occurs between May 1 and October 31, during the hours of 11:00 A.M. to 6:00 P.M., with the exception of some night peaking load pockets. Contractors will need to provide analysis showing how the measure coincides with or impacts the system electric summer peak. Both short term load management and long term permanent load reduction opportunities can be investigated.

This service may also provide review of real-time metering information and the benefits to facilities interested in participating in load curtailment programs within the Con Edison and Orange and Rockland service territories or in tracking daily load profiles to monitor the effects of energy consuming systems. This service may help customers identify their ability to, and the financial benefit from, participating in such programs and the associated energy savings from installing real-time metering or web-enabled metering when it is used to curtail or shift loads at their facility. Contractors will be asked to identify and analyze opportunities for customers to participate in load curtailment activities of New York Independent Systems Operator (NYISO) such as Installed Capacity Special Case Resources (ICAP/SCR), Con Edison's Rider U Distributed Load Relief Program, or a Time of Use (TOU) or Real Time Pricing (RTP) program.

Industrial and Process Efficiency Analysis

Industry facilities and processes require customized approaches to energy efficiency. Production lines and processes often have unique characteristics and functions. Site and sector specific approaches will be used to ensure that the best energy efficiency opportunities are identified and addressed. This approach will maximize process and energy reliability, productivity and energy savings. Through this RFP, NYSERDA seeks to increase its engagement of service providers who are experts in particular industrial processes and data centers. Credibility and quality of technical assistance are essential to program success as are customer and stakeholder engagement.

Industry

NYSERDA will have an increased focus on industrial process improvements that increase the efficiency of energy or material use. Projects may also focus on increasing productivity, improving environmental performance, or minimizing waste. In addition to strong general industry experience, NYSERDA is seeking contractors with expertise and experience working with specific industry sub-sectors and processes (e.g. ceramics, pulp and paper, chemicals, chip fabrication, separations/purification). Analysis will predominantly focus on defining and reducing energy use per unit of production.

Data Centers

Data center energy analysis assistance will assess energy efficiency and carbon reduction potential of data center support systems and IT equipment. Strategies can include but are not limited to: cooling/IT equipment replacement or upgrade recommendations, server virtualization, redundancy optimization, temperature set point investigations, etc. NYSERDA is looking for contractors with expertise and experience working to improve the efficiency of supports systems (i.e. cooling and UPS systems) and IT equipment (.e. server replacement, virtualization, application management). Analysis will predominantly focus on defining and reducing energy cost per unit of productive data throughput.

Combined Heat and Power, Distributed Generation, Renewable Generation

Contractors may be asked to provide technical assistance in evaluating the technical and economic feasibility of installing on-site power generation, either distributed generation (DG) alone or distributed generation with heat recovery otherwise referred to as combined heat and power (CHP). All generation studies will require specific information in the final reports shown in Attachment E. Generation studies will require detailed review of: energy profiles of thermal and electrical loads, overall system efficiency, pressure and availability of the fuel source, permitting, sensitivity analysis, tarriff impacts, interconnection issues, and overall system reliability.

Energy Procurement

Energy planning and purchasing support in response to the changing energy marketplace are included in this service. It helps customers analyze their energy rates, load shapes, energy consumption, and energy service aggregation opportunities. In addition, it can help customers prepare RFPs, review proposals, and educate them to better negotiate with power marketers and other service providers. Experience and knowledge with hourly pricing structures within specific electric territories should be highlighted.

Retro-commissioning Services

Retro-commissioning is the systematic process of verifying that all building systems perform interactively according to design intent, that they meet the operational needs of the owners and occupants, and that staff responsible for operation and maintenance are sufficiently trained. The goal of this service is to improve system performance, operation and maintenance, energy efficiency, occupant comfort, and indoor environmental quality. Retro-commissioning services will need to focus specifically on energy efficiency. Commissioning of new equipment and new facilities may be required on a case-by-case basis. In general, NYSERDA's FlexTech Program performs retro-commissioning on facilities and equipment that have been in use for at least one year.

Proposers wishing to perform this service should highlight experience and completion of substantive training courses on retro-commissioning such as NYSERDA's advanced training course for service providers, completion of the Building Commissioning Association service provider course, or other equivalent training courses pre-approved by NYSERDA.

Agricultural Technical Assistance

This service provides technical assistance throughout the agricultural community. The proposal must present information in a manner that shows the consultant is knowledgeable of this sector including the opportunities for efficiency improvements that exist and which improvements have been generally accepted. These areas have traditionally been: motors, refrigeration, lighting, and ventilation.

Alternate-Fuel Technology

Alternate fuel technology covers a broad range of expertise from vehicle fleet management and economics to renewable fuels such as ethanol or biodiesel to technical issues such as compressed natural gas refueling stations. NYSERDA seeks experts and firms to help with problem-solving, based on their specialized hands-on experience with specific alternative fuel or vehicle applications. The consultants will be called upon to answer challenging problems whose solutions may come from applications in multiple disciplines. Some examples are: fleet management systems and purchasing decisions; re-fueling station design and siting issues; interaction with alternative-fuel providers and fire safety code officials; fueling station performance and maintenance requirements; implementation of Intelligent Transportation Systems and

transportation demand management programs; and user/operator training. Expertise is also sought to help evaluate local market and economic conditions pertinent to projects, conducting technical assessments of infrastructure and equipment needs, and determining project feasibility. For eligible projects, the consultant could help the end user develop an action plan with specific implementation steps and procedures identified.

Executive Order No. 111 Requirements: "Green and Clean" State Buildings and Vehicles

This service provides technical assistance to customers who are required or who desire to comply with Executive Order No. 111 requirements. Services may include general technical support for commissioning green buildings, assistance with overall implementation plans, development of design or specification guidelines, review of procurement standards, limited on-site training, utilization of ENERGY STAR® Portfolio Manager, recommendation of ENERGY STAR® products, examining current building stock and developing operation and maintenance guidelines for continuous commissioning or re-commissioning.

Green Buildings

Green buildings minimize the environmental impacts of buildings throughout their life cycle. Services provided by NYSERDA include computer modeling and energy analysis to optimize building energy performance and materials' analysis to improve indoor environmental quality and occupant health. Services may also include aiding customers interested in complying with U.S. Green Building Council LEED™ certification for Green Buildings or the New York State Green Building Tax Credit. In addition to energy modeling and materials' analysis, these services may include design and specification guideline development. Firms with LEED accredited professionals and experience acquiring LEED certification for Green Buildings are encouraged to apply.

Water and Wastewater Services

This service provides assistance to municipal water and wastewater treatment plants to identify ways for them to use energy more efficiently. These studies may include providing the municipality with the information it needs to grow or change in the most energy efficient way possible. This could apply to facilities that are nearing capacity, ones that must meet new regulations or any facility simply considering retrofitting the current design or wanting to become more energy efficient. Services may include equipment replacement studies, energy related process improvement studies or energy operation studies such as sub-metering and electrical peak shifting.

Energy Advisor Services

This service allows commercial and industrial customers to engage a qualified firm for long-term energy and carbon related services. The firm will act as a member of the customer team to provide long-term support on energy and carbon management issues identified by the customer with NYSERDA's approval. Services may include but are not limited to providing detailed technical support for decisions regarding the purchase of energy-efficient equipment, help preparing bid documents for the purchase and installation of this equipment, preparation of requests for proposals (RFPs), review of energy service company (ESCO) proposals, development of scopes-of-work for comprehensive energy audits conducted by a selected ESCO, review of comprehensive energy audits, review of proposed energy performance contracts, design assistance, independent verification that equipment and installations are as specified, review of annual savings reports from ESCOs during the guarantee period, conflict resolution, and guidance for regulatory or environmental permitting.

Multifamily
Multifamily residences are defined as properties that provide residential housing and contain five or more units. In general, NYSERDA's Residential Energy Affordability Program will handle multifamily facilities. However, FlexTech may be needed on a case-by-case basis and proposers are encouraged to demonstrate their expertise in servicing this sector.

Real-Time Metering Utilization
This service will provide review of real-time metering information and other benefits at facilities interested in participating in load curtailment programs within New York State or in tracking daily load profiles to monitor the effects of energy consuming systems. This service may help customers identify their ability to, and the financial benefit from, participating in such programs and the associated energy savings from installing real-time metering or web-enabled metering when it is used to curtail or shift loads at their facility.

3 TASK WORK ORDERS

Each project conducted under this Agreement will be defined by a project specific written Task Work Order. The following will be followed for all Task Work Orders:

a. NYSERDA identifies and approves the applicability of each project and service. The Contractors are expected to assist in identifying projects and in marketing FlexTech Services, but the final determination of applicability is at NYSERDA's discretion.

b. NYSERDA's Project Manager may issue a request to the Contractor to submit a proposed Task Work Order Plan, which will consist of a statement of work to be performed and a firm not-to-exceed budget, to accomplish a definitive effort within the scope of this Statement of Work. NYSERDA's request will include the date by which the Contractor shall submit the proposed Task Work Order Plan to NYSERDA. This request often occurs during a site visit when NYSERDA, the Contractor, and the customer are reviewing the customer facility to identify opportunities.

c. When a proposed project or service is for a NYSERDA customer, NYSERDA and the Contractor shall confer as to the appropriateness of the customer's request and possible alternatives.

d. In response to NYSERDA's request, the Contractor shall prepare a written proposed Task Work Order Plan, which shall describe and define, as appropriate, the following:

    1. The project's purpose and goals.
    2. The approach that will be taken which shall include: any data collection methods; the method for calculating energy savings (i.e. computer modeling, spreadsheet, or manual

calculations); and the method to be used for estimating implementation costs.

3. Names of all parties involved.
4. Background information on the customer and the customer's energy systems. This background information will be used to justify the need for the study.
5. Recent energy consumption data, including annual energy expense by source.
6. Defined deliverables including all assumptions, energy calculations, model inputs and outputs, development of a Technology Transfer Summary and completion of a Project Summary Sheet. Appendix A shows samples of these.
7. The project time frame.
8. The names or titles of individuals to work on the project.
9. The total not-to-exceed cost of the project or study, including a breakout by task and by title, hourly rate, hours, and non-labor costs. A cost estimate for each element of the work breakdown structure should be provided, along with an estimate of the overall cost of the task. All project Task Work Order Plans shall be negotiated and written on a time and materials basis with a not-to-exceed cost cap/budget. All rates shall be consistent with those in Attament F of this Agreement. All cost estimates should be reasonable cost estimates and should not include a contingency cost category.

e. NYSERDA shall review the Contractor's proposed Task Work Order Plan and, if acceptable, may issue the Task Work Order and Participation Agreement to the customer for review and approval.

f. Upon written approval of the Task Work Order by the customer, (when NYSERDA receives an original signed Participation Agreement) NYSERDA may issue a Notice to Proceed with a Task Work Order incorporating the terms of the Task Work Order Plan, or if not acceptable, NYSERDA will request that the Contractor make changes to the Task Work Order Plan and resubmit it.

g. If NYSERDA determines that the parties will be unable to reach agreement on the terms of the Task Work Order, NYSERDA may rescind its Task Work Order Plan request at its sole discretion.

h. When NYSERDA finds the terms of the proposed Task Work Order Plan acceptable and has issued a Notice to Proceed on a Task Work Order, the Contractor shall carry out the work pursuant to the requirements of such Task Work Order. The work set forth in the Task Work Order shall, upon its issuance by NYSERDA, constitute Work to be performed by the Contractor under this Agreement.

i. Task Work Orders may be issued at any time during the Project Period.

j. The Contractor shall not commence work prior to issuance by NYSERDA of a Notice to Proceed with a Task Work Order for such work. Any work conducted prior to issuance of a Notice to Proceed will not be reimbursed.

k. If NYSERDA finds that a Task Work Order must be modified, NYSERDA may issue a Task Work Order modification request. The Contractor shall then prepare a modification to the Task Work Order Plan. If the Contractor's modified Task Work Order Plan is acceptable to NYSERDA, then NYSERDA may issue a Task Work Order Modification incorporating the terms of the Contractor's modified Task Work Order Plan.

l. NYSERDA must be kept informed of project milestones, project delays or other occurrences in order to participate in any decision or to initiate any necessary action.

m. NYSERDA will review and approve the finalized project to ensure that all items included in the Task Work Order are satisfactorily completed and within the prescribed time frame. The Contractor shall not be accountable for delays caused by NYSERDA, a NYSERDA customer, or other potential project co-funders such as a utility.

n. The Contractor shall not be responsible for any follow-up activities unless specified in the Task Work Order. Should additional follow-up be required, a separate Task Work Order Plan may be developed to cover these activities.

o. No agreement between the Contractor, NYSERDA, and a NYSERDA customer will obligate NYSERDA to the customer to provide any services other than the services set forth in a Task Work Order. Furthermore, the provision of technical assistance services shall in no way endorse or prevent any subsequent work that may be performed by the Contractor.

4 CONTRACTOR RESPONSIBILITIES

The Contractor shall:

a. Promote services to various customer groups and organizations.

b. Identify potential FlexTech participants and make referrals to NYSERDA.

c. Conduct a site visit and, if appropriate, invite a NYSERDA FlexTech Project Manager.

d. Prepare each project Task Work Order Plan for review and approval by NYSERDA, according to the level of service being provided. NYSERDA must review the Task Work Order Plan prior to the customer reviewing it.

e. Negotiate the scope and cost of the Task Work Order Plan with NYSERDA, the customer, and any other co-funding entity.

f. Upon agreement by all parties to the Task Work Order Plan and issuance of a Notice to Proceed by NYSERDA, provide the required assistance within the required time frame.

g. Ensure technical accuracy of all projects and use generally accepted current engineering practices.

h. Keep NYSERDA informed of each projects' status and confer with NYSERDA on substantive issues.

i. Provide NYSERDA with building or facility data for each project, which shall include at least one year's cost and consumption of each energy source, when applicable.

j. Make changes requested by NYSERDA.

k. Provide project status and final reports, if required by the Task Work Order.

l. Provide, when requested, on-site follow-up assistance to discuss recommendations, answer questions, and facilitate implementation.

m. Make timely, accurate, and well documented requests for payment. NYSERDA, at its discretion, may approve progress payments during the course of a Contractor completing a Task Work Order Plan. Progress payments may be made on a case-by-case basis at the sole discretion of the NYSERDA Project Manager.

n. Assist NYSERDA with the collection of data for purposes of program evaluation and promotion.

o. Negotiate an agreement with the Customer for the direct payment of the Customer's share of the fees for the work to be performed pursuant to the Task Work Order Plan, if applicable. NYSERDA shall not be responsible for any portion of the customer's share and the agreement between the Contractor and the customer shall not obligate NYSERDA for payment.

p. Provide information to customers on NYSERDA SBC programs that can aid in implementation.

q. Provide a draft case study of the project.

5 NYSERDA RESPONSIBILITIES

NYSERDA will:

a. Promote services to various customer groups and organizations.

b. Identify potential FlexTech participants and make service referrals to contractors.

c. Assist contractors in developing Task Work Order Plans with customers.

d. Provide contractors with administrative procedures.

e. Secure agreements with NYSERDA customers, as necessary. Each customer agreement will contain a Task Work Order, identification of all parties involved in the project, and procedures for third party cost sharing, if applicable.

f. Monitor the progress of each contractor through ongoing telephone contact, review of status reports and field monitoring activities, etc., for the purpose of meeting customer needs, identifying problems and initiating corrective action.

g. Provide technical review of project reports and deliverables to ensure that the deliverables conform to the Task Work Order and Participation Agreement that governed the analysis.

h. Ensure adherence to NYSERDA's established policies and procedures.

i. Provide completed reports to the customer under NYSERDA cover and letterhead.

j. Promote the availability of technical assistance and other services to customers.

k. Maintain databases of customers, technologies, energy and dollar savings resulting from the services, reports, case studies, fact sheets, and newsletter articles.

l. Disseminate technical and financial-related energy-efficiency information to contractors.

m. Process properly documented payment reimbursement requests.

n. Conduct FlexTech program evaluations.

6 DELIVERABLES

The Contractor shall deliver:

a. A specific Task Work Order Plan for each project to be conducted.

b. Project status reports as defined in the Task Work Order. The Task Work Order may require the Contractor to provide NYSERDA with brief periodic progress reports describing the work performed during a specified reporting period. Such reports shall describe any difficulties encountered during the specified reporting period and shall include a statement of the project directives setting forth the costs of the work during the specified reporting period. Such progress reports shall be in a letter format and shall include the following subjects in the order indicated, with appropriate explanation and discussion:

1. Title of project
2. Agreement number
3. Period of this report
4. Progress of report
5. Planned progress in the future
6. Identification of problems
7. Planned solutions
8. Ability to meet schedule, reasons for slippage in schedule
9. Schedule - percentage completed and projected percentage of completion of performance by months - could be a bar chart or milestone chart
10. Analysis of actual cost incurred in relation to the budget

c. Satisfactorily completed projects as defined by an approved Task Work Order Plan as incorporated into a Task Work Order issued by NYSERDA.

d. If required by the Task Work Order, the Contractor shall prepare a detailed final report covering all the work performed (the "Final Report"). The Final Report shall comply with the requirements set forth in the Task Work Order. Appropriate layout drawings, graphs, tabulations of data, calculations and assumptions, and references shall be included. One copy of a draft Final Report shall be submitted to the NYSERDA project manager not later than the date specified in the Task Work Order. NYSERDA will provide its comments therein to the Contractor within 30 working days after the receipt of such draft. The Contractor shall prepare the Final Report in the final form satisfactory to NYSERDA reflecting therein NYSERDA's comments and submit it to the NYSERDA project manager. If the number of copies is not specified in the Task Work Order, the Contractor shall submit four copies. NYSERDA may require that the Final Report be prepared in conformance with the NYSERDA Report Format and Style Guide, Exhibit D. The Final Report shall also include a completed Project Summary Sheet and Technology Transfer Summary.

e. NYSERDA may, at its discretion, use a NYSERDA approved technical reviewer to assist in the technical review of a detailed final report. Specifically, studies involving combined heat and power, distributed generation, and renewable generation may be subject to review by a NYSERDA technical reviewer.

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: The Agreement and Exhibits A, B, C, D, E, and F hereto, all of which are made a part hereof as though herein set forth in full.

Budget: The Budget set forth in individual Task Orders consistent with the rates 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 2 of page one of the Agreement.

Effective Date: The effective date of this Agreement shall be the date appearing in Item 4 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 its 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, including Work defined in individual Task Orders.

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.

Task Order: A written Task Order issued by NYSERDA pursuant to Exhibit A of this Agreement, specifically an approved work scope and budget.

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.

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

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.

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 3 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. NYSERDA shall be notified in writing of any change of Project Director by the Contractor.

Article III

Deliverables

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

Article IV

Payment

Section 4.01. 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 individual Task Order Budgets up to a maximum amount set forth in Item 7 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) Compensation. Compensation will be based on the Contractor's Rate Schedule for NYSERDA set forth in Exhibit F. Contractor fees for a Task Order assignment must be fully set forth in each Task Order budget and must be approved by NYSERDA. The Task Order budget must state a not-to-exceed cost cap or ceiling amount for each Task Order assignment. The Contractor shall not accrue billable costs beyond the not-to-exceed cost cap in the Task Order without approval in writing by NYSERDA.

Section 4.02. Progress Payments. The Contractor may submit invoices for progress payment no more than once each month or no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable". Such invoices shall make reference to the Agreement number shown in Item 1 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 Task Order Budget. Invoices shall provide reasonable documentation for the above to provide evidence of costs incurred.

The Contractor shall be notified by NYSERDA in accordance with Section 5.04.4 (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 to the Contractor, within the prescribed time after receipt of an invoice for a progress payment, the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement or the Budget.

Section 4.03. Title to Equipment. Title shall vest in NYSERDA to all equipment purchased hereunder.

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of the Final Report and all other deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. 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 7 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 7 of page one 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 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 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. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling under $25,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit 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.

Article VII

Force Majeure

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

Article VIII

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 the 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. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to 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

(b) Commercial automobile liability insurance in respect of motor vehicles owned, licensed or hired by the Contractor and the Subcontractors for bodily injury liability, including death and property damage, incurred in connection with the performance of this Agreement, with minimum limits of $500,000 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 $500,000 in respect of claims arising out of property damage in any one accident or disaster.

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 therefore).

(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 to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Contractor, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

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

Article XV

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA's Director of Technical 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 Technical 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®**, and any related logo, without NYSERDA’s prior written consent.

Section 15.02. Notices. 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 deemed to have been sufficiently given for all purposes hereunder when delivered or mailed by registered or certified mail, postage

prepaid, return receipt requested, (I) if to NYSERDA, at 17 Columbia Circle, Albany, New York 12203-6399 or at such other address as NYSERDA shall have furnished to the Contractor in writing, and (ii) if to the Contractor, at _____, or such other address as the Contractor shall have furnished to NYSERDA in writing.

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, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

EXHIBIT C

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 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.

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.

Exhibit E
FlexTech Final Report Requirements

Executive Summary - Concisely summarize the FlexTech project's intent, findings, recommendations, and economics of the recommendations in narrative format.

Background - Provide information about the applicant and the project, such as type of business or organization, average number of employees per location, annual energy costs by fuel type, electric and gas suppliers, and rate tariff.

Project Description - Include a description of the project intent, approach, and tasks performed as defined in the project scope.

Project Results/Recommendations - Describe the project findings here. Include reasons for recommendations on cost-effective, energy efficiency measures and capital improvements. At a minimum, the recommendations and related economics must be presented. Life-cycle cost or other analyses may also be included, if desired. Final reports should include information on additional potential project benefits, such as increased productivity, job creation or retention, and environmental benefits. Include a qualitative description of other project benefits, such as increased knowledge or information base, comfort, competitiveness, product quality, or energy affordability. Describe the role of NYSERDA funding in making this project possible.

For projects where computer modeling is used, reports must also include: 1) a brief presentation of the manipulations which the program performed; 2) input data for the building and for each Energy Conservation Measure (ECM) should be 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.

Appendices - This section will include supporting documentation for all recommendations not included in the previous section, along with historical energy costs, sample calculations for all ECM's reviewed, assumptions, conversion factors, items included in project implementation costs, and sources of cost estimates, etc.

Project Summary Sheet - This one page summary outline is required for all projects. An example is available online at http://www.nyserda.org/programs/Technical_Assistance/default.asp. It provides a simple matrix of the project by summarizing the payback, costs and savings in dollars, therms, MMBtu's, and kWh and kW where appropriate.

Case Study - This one-page case study should follow the format of the case study which will be attached to the Purchase Order. Other examples are available online at: http://www.nyserda.org/programs/Technical_Assistance/tasuccess.asp. It must include photos and a brief description of the customer, project background, results, and benefits. Photos must be provided in digital and hard copy forms. Digital copies must be high resolution photo suitable for publication (300 dpi at 4"x6" max.). NYSERDA may use the case study and the Final Report to promote successes of this FlexTech Program for replication throughout New York State.

NYSERDA RCx Deficiency Worksheet - This additional worksheet is required for all retro-commissioning projects. One worksheet must be completed for each deficiency found and must provide an energy cost/savings associated with the deficiency. These values must be supported in the report by appropriate engineering calculations. Each deficiency must also be included on the required Project Summary Sheet. A sample RCx Deficiency Worksheet is available upon request.

EXHIBIT F

PROJECT PERSONNEL & RATES

DIRECT PERSONNEL COSTS:

Title Classification	Not to Exceed Hourly Rate Range	
	Year 1	
	Minimum	Maximum

MULTIPLIER (Including Profit/Fixed Fee):

Profit / Fixed Fee: _____%

Multiplier _____

DIRECT NON-PERSONAL SERVICE COSTS:

Direct non-personal service costs will be allowed and reimbursed at cost for project related expenses. Items not listed but necessary to complete the work must be pre-approved by NYSERDA:

Travel,
Supplies,
Subcontracts,
Test Equipment Rentals,
Postage, Computer Services, Laboratory Tests, Overnight Mail, Report Reproduction/Outside Printing

Attachment I

Contractor's Designated Contact(s)
Executive Order 127

This form is provided to allow Proposer/Contractor to identify any person or persons that it has retained, employed or designated to attempt to influence the procurement process.

Solicitation or Contract Number:		
Name of Proposer or Contractor:		
Address:		
Name and Title of Person Submitting this Form:		
Is this an initial filing in accordance with Section II, paragraph 1 of EO 127 or an updated filing in accordance with Section II, paragraph 2 of EO 127? (Please indicate with an "X")		Initial Filing
		Updated Filing
Date submitting this form:		
The following person or organization was retained, employed or designated by or on behalf of the Proposer or Contractor to attempt to influence the procurement process:		
Name:		
Address:		
Telephone Number:		
Place of Principal Employment:		
Occupation:		
Does the above named person or organization have a financial interest in the procurement? (Please indicate with an "X")		Yes
		No

-Attach additional forms as necessary-