Energy Code Training and Support Services
Request for Proposals (RFP) 1621
$2,700,000 in total funding available

Proposals Due: December 7, 2009 by 5:00 PM Eastern Time*

Funding for this program is being provided under the American Recovery and Reinvestment Act (ARRA). If you receive funding under this solicitation you may be subject to special terms and conditions, including but not limited to: detailed reporting requirements; audit of your use of ARRA funds; Buy American and Davis-Bacon prevailing wage requirements for construction activities. You will be required to provide certain information in a timely manner to meet ARRA requirements. See attachments for a complete list of special terms and conditions. Failure to comply may result in the loss of Federal grant funding.

Program Summary:

The New York State Energy Research and Development Authority (NYSERDA) seeks proposals from bidders to provide training and support services to increase compliance with the residential and commercial provisions of the New York State Energy Conservation Code (Energy Code). These services are designed to reach all segments of the design, permitting, and construction marketplace through a variety of strategies. Proposals are sought under the following core service categories: 1) development and delivery of training courses on the Energy Code to a variety of audiences; 2) circuit-rider plan review assistance to architects; 3) plan review assistance services to selected local code officials; 4) pilot efforts to provide community or regional code support assistance to municipalities; 5) field inspection training, services and assistance; 6) online training courses: and 7) optional support services. Proposers may elect to provide one or more of these requested services. Each category will be evaluated separately.

Training and support will be focused on the current Energy Code standards, or if the Energy Code is amended, on the newer standards. Above-code and building science techniques will also be incorporated. The focus of these support efforts will be to build long-term understanding of the code requirements and lasting capabilities of the construction marketplace to meet or exceed all required Energy Code standards in building designs, approved plans and constructed buildings. A significant intent of this support effort is to achieve 90% or better compliance with the Energy Code in order to meet requirements of the American Recovery and Reinvestment Act of 2009 (ARRA). A total of $2,700,000 is available to support these activities until the end of 2012.

Proposal Submission: Proposers must submit ten copies of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to:

Roseanne Viscusi, RFP 1621
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Mark Eggers at (518) 862-1090, ext. 3308 or mse@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 Mark Eggers (Designated Contact) at (518) 862-1090, ext. 3308 or mse@nyserda.org. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

***Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned. Faxed or e-mailed proposals will not be accepted. Proposals will not be accepted at any other NYSERDA location other than the address above. If changes are made to this solicitation, notification will be posted on NYSERDA's web site at www.nyserda.org.**

I. Program Requirements

Services Requested:

NYSERDA seeks proposals from bidders to provide training and support services to increase compliance with the New York State Energy Conservation Code (Energy Code). These services are designed to reach all segments of the design, permitting, and construction marketplace through a variety of strategies. Core services include, at a minimum: 1) development and delivery of training courses on the Energy Code to a variety of audiences; 2) circuit-rider plan review assistance to architects; 3) plan review assistance services to selected local code officials; 4) pilot efforts to provide community or regional code support assistance to municipalities; 5) field inspection training, services and assistance; 6) online training courses; and 7) optional support services. . Proposers may elect to provide one or more of these requested services. Each category will be evaluated separately. Training and support will be focused on the current Energy Code standards, or on newer standards if the Energy Code is amended during the period of the resulting contract. Above-code and building science techniques will also be incorporated. The focus of these support efforts will be to build long-term understanding of the code requirements and lasting capabilities of the construction marketplace to meet or exceed all required Energy Code standards in building designs, approved plans and constructed buildings. A significant intent of this support effort is to achieve 90% or better compliance with the Energy Code in order to meet requirements of the American Recovery and Reinvestment Act of 2009 (ARRA).

Funding for these services will be provided through approved State Energy Plan (SEP) and Energy Efficiency and Conservation Block Grant (EECBG) funds as provided to New York State by the U.S. Department of Energy (DOE) under ARRA. All product developments and deliveries will be closely coordinated between NYSERDA and the New York State Department of State (DOS), the entity responsible for administration of the Energy Code.

Delivery of these services throughout New York State will commence upon contract award and continue for a three-year period ending December 31st, 2012 (unless otherwise noted) or until funds are expended.

Specific objectives of each service category are discussed below.

Category 1: Development and Delivery of Energy Code Training Courses to a Variety of Audiences:

Background: Ongoing training is critical to successfully supporting newer or advanced codes and standards, particularly at the initial point of adoption. Alternative training approaches that extend beyond traditional classroom settings are encouraged. An additional set of training and outreach will be provided to jurisdictions that have adopted or are planning to adopt advanced codes.

Training Task A – Delivery of Residential and Commercial Energy Code Training:

Develop and deliver a series of course modules on the Energy Code to local code officials, builders, designers and engineers. The primary audience for these sessions will be local code enforcement officials, but the courses will be made available to all audiences. Each module will be approximately four hours in length, and will employ adult learning techniques and active participant involvement.

Training segments will include, but are not limited to the following five subject areas:

1. One residential course addressing all compliance paths and methods, including highlights of the latest changes to the existing code and MECCheck. The baseline code for this training will be the 2009 International Energy Code;

2. One commercial envelope course addressing Chapter 8 of the Energy Code and COMcheck-EZ based compliance paths. The baseline code for this training will be the ASHRAE 90.1-2004 Standard;

3. One commercial mechanical course addressing Chapter 8 and COMCheck based on compliance paths. The baseline code for this training will be the ASHRAE 90.1-2004 Standard;

4. One commercial lighting and power course addressing Chapter 8 and COMCheck based on compliance paths. The baseline code for this training will be the ASHRAE 90.1-23004 Standard; and

5. One course on basic building science as it relates to energy efficiency and strategies to enhance energy efficiency and overall residential building performance. This course will address the 2007 technical provisions and how best to achieve these levels with actual field examples and products currently available that will enhance the structure while achieving compliance with the 2007 ECCC.

All commercial courses should be readily adaptable to update to the ASHRAE 90.1-2007 Standard, which is currently under consideration for adoption in New York.

Deliverables: Prepare and present a draft and final course syllabus for each of the five courses.

Provide a syllabus for updating the commercial training modules to meet ASHRAE 90.1-2007 Standards. The proposer should plan to coordinate closely with the New York State Building Officials Conference (NYSBOC) and DOS to assure that the course content is accurate and relevant to local code officials.

Market, schedule, and conduct 200 training sessions across New York State in a 30-month period beginning four months from contract award. The delivery of a single course module is considered a training session; often, two sessions are offered in a single day for logistical savings. Successful bidders will be responsible for all logistics, room rentals, food and beverage, course materials, fee collections, evaluation, award of CEC credits and recordkeeping. A nominal fee may be charged to offset delivery costs. An online registration format must be used.

Training Task B – Vendor and Trade Ally Training:

Develop and deliver a two-hour session on residential Energy Code basics to trade allies (such as vendors, retail lumber and home improvement stores, construction trades, etc.). This course will highlight the application of the Energy Code, key features and items that most significantly affect energy performance, and items often overlooked. The course will raise the overall awareness of the importance of code compliance, and identify support services available to help with enforcement efforts and technical questions.

Deliverables: Draft a final course syllabus for the course. Market, schedule and conduct 50 sessions across New York State in a 30-month period beginning four months from contract award. Successful bidders will be responsible for all logistics, room rentals, food and beverage, course materials, fee collections, evaluation, award of CEC credits and recordkeeping. A nominal fee may be charged to offset delivery costs. An online registration format must be used.

Training Task C – Training on Advanced Energy Codes and their Adoption:

Develop and deliver a two-hour course on how local communities may consider adoption of a more stringent Energy Code than the current 2007Code.

Deliverables: Draft and final course syllabus for the course. Market, schedule and conduct 20 sessions across New York State in a 30-month period beginning four months from contract award. Successful bidders will be responsible for all logistics, room rentals, food and beverage, course materials, fee collections, evaluation, award of CEC credits and recordkeeping. A nominal fee may be charged to offset delivery costs. An online registration format must be used.

Training Task D – Training for Architects and Engineers:

Develop and deliver an educational program specifically targeted to architects and engineers. The purpose of the training will be to familiarize the audience with the layout and content of the commercial Energy Code requirements, identify those code items that contribute to the greatest potential for energy savings, identify those sections or portions of the Energy Code that are most often misunderstood, and provide guidance on what information should accompany the submission of plans and specifications for approval (such as LPD calculations, equipment performance specifications, etc). This course will serve to increase overall awareness of the Energy Code requirements, the energy and cost consequences of not meeting compliance in key areas, and the types of additional support and training that are available. The Proposer should plan to work closely with NYS American Institute of Architects (AIA) and Engineering groups, and local AIA and Professional Engineering chapters to set up training venues.

Deliverables: Develop a course syllabus for submission to NYSERDA for approval. Conduct 80 training sessions over the next 30-month period, beginning four months from contract award. Successful bidders will be responsible for all logistics, room rentals, food and beverage, course materials, fee collections, evaluation, award of Continuing Education Credits (CEC's) and recordkeeping. A nominal fee may be charged to offset delivery costs. An online registration format must be used.

Training Task E – Training for Home Builders:

Develop and deliver a training program on the residential requirements of the Energy Code specifically geared to the homebuilder market. The course will highlight key requirements of the Energy Code, prescriptive and performance based compliance paths including ResCheck, discuss the Home Performance with Energy Star Program and requirements, discuss code items often overlooked or misunderstood, and serve to increase the overall awareness of Energy Code requirements. The proposer should plan to work closely with the NYS Builders Association and local Home Builder Associations to set up training venues.

Deliverables: Develop a course syllabus for submission to NYSERDA for approval. Conduct 80 training sessions over the next 30-month period, beginning four months from contract award. Successful bidders will be responsible for all logistics, room rentals, food and beverage, course materials, fee collections, evaluation, award of CEC credits and recordkeeping. A nominal fee may be charged to offset delivery costs. An online registration format must be used.

Proposers may bid on one task, several tasks or all tasks. Proposers must provide a budget for each of the tasks being proposed. A total of $ 950,000 is available to support all tasks in category 1 through the end of 2012.

Category 2: Circuit-Rider Plan Review Assistance to Architects:

Background: Compliance issues with the Energy Code exist among architectural design firms who may be unfamiliar with the specific requirements for commercial buildings or who may be unfamiliar with many of the mechanical (HVAC) requirements and compliance options in the Energy Code. Information on code compliance may be incomplete, incorrect, or missing altogether in submissions to local code officials for review and approval.

NYSERDA will provide for circuit riders, who will be responsible for assisting design teams in the preparation of plans and specifications. Two or more individuals with a comprehensive understanding of the Energy Code will be designated by the proposer as Energy Code circuit riders. ***Only licensed professional architects or engineers are eligible for this position***. Each proposal should include the resumes of the designated circuit riders. These circuit riders will schedule visits with architectural firms to review specific project plans and specifications for Energy Code compliance. This should be done in coordination with the local code official and participating mechanical engineering firm whenever possible.

Circuit riders will serve as part-time and short-term energy specialists that will review project drawings, plans, and specifications on-site with architects and engineers. The purpose of the on-site review will be to identify the code requirements and compliance issues of a specific project, to identify proper methods of interpreting Energy Code requirements, and to make necessary corrections to the construction documents prior to submission for local approval. Circuit riders will be expected to keep track of the barriers to implementation, costs of compliance, weak links in the compliance process, training needs, and energy savings impacts.

Deliverables: Develop a plan for NYSERDA and DOS approval. Once approval is received, conduct visits directly with 200 architectural or engineering firms at their offices to review specific project plans. Provide for geographic diversity. Regional visits should be combined to provide travel and logistic savings. Plan reviews should be comprehensive and structured in a manner that is educational, hands-on and delivered to as wide an audience as possible at each respective location.

Provide a budget for services proposed. Provide a fixed fee to conduct a review session. The fixed fee may or may not be inclusive of any travel costs, and may vary based upon geographic coverage, building complexity and other readily identifiable variables. For purposes of developing the fixed fee, fee rates during travel time are expected to be lower than those for actual plan review services.

A total of $320,000 is available to support these activities through the end of 2012.

Category 3: Plan review assistance services to selected local communities:

Background: NYSERDA and DOS will work with a select group of local communities to implement a pilot program where a fee-based plan review of commercial building plans is implemented. The concept of a pay-for-service plan review (with expenses paid by the building owner or developer) will be demonstrated in order to provide a better understanding of how communities are able to deal with both minimum and advanced code requirements.

Ultimately, the expectation is that a more sophisticated and thorough level of local plan review will result in higher levels of compliance. In the initial pilot effort, the plan reviewers will provide feedback to building designers and code officials responsible for each respective project. Some of the information will be used to corroborate findings for the code compliance studies. If successful, this concept could provide a format for other communities to use to facilitate plan reviews that would achieve higher levels of compliance, without adding a burden to already limited community resources.

NYSERDA and DOS will identify a select group of communities in which to conduct the pilot service. Fees for reviews will be established by the municipalities in cooperation with NYSERDA. Plan reviewers will review plans

in the municipal offices and work closely with local code officials to coordinate the review, any required changes to the plans or specifications and follow-up. The plan review will serve to both facilitate the review and approval of project plans and to educate building officials on Energy Code requirements.

Deliverables: Two or more individuals with a comprehensive understanding of the Energy Code and its application must be identified in the proposal, and will be designated to provide commercial building plan review services for Energy Code compliance. Proposals should include resumes for the designated individuals. NYSERDA and DOS will designate the municipalities in which these reviews will be conducted. Plan reviewers will be responsible for scheduling meetings, making necessary travel and logistic arrangements, conducting reviews of plans in the local offices, and providing follow-up services where needed in-person or by phone/email (when feasible). At least 200 plan reviews will be conducted in a similar number of selected municipalities.

The proposer's budget should indentify the costs of providing plan review sessions at various geographic locations around the state, with the understanding that costs may vary depending upon the proximity to the designated plan reviewer, complexity of the project, size and scope of the building, level of understanding by the design professional and code official, etc. If it is feasible to provide more than one plan review in a day, the proposed budget should reflect any potential cost savings. Proposers are also encouraged to develop a proposed plan review fee schedule that will be used by the municipality and initially covered by NYSERDA during the pilot program.

A total of $430,000 is available to support these activities through the end of 2012.

Category 4: Pilot Efforts to Provide Regional Energy Code Advisors to Support a Number of Local Municipalities:

Background: Many smaller communities don't have the building volume to support a full-time code official, and so Energy Code compliance and inspection may not be well achieved. Pooling resources on a county or regional basis may satisfy these local needs and provide enough work volume to support and necessitate a full-time (or near-full-time) code official who is knowledgeable of current code requirements. This concept will be developed on a pilot basis. NYSERDA will fund the services of Regional Energy Code Advisors to work with a localized set of communities to assist with Energy Code reviews, inspections, education, reporting, and any other energy assistance that may be beneficial.

A significant area of focus will be to conduct compliance assessments to determine the level (percentage) of code compliance and long-term improvements in code understanding among the local building community. If the locally designated area is already served in a limited manner by local code officials, the Regional Energy Code Advisor may be used to augment local services, assist on plan reviews and inspections, educate local code reviewers on compliance, help organize local review and inspection procedures, work with local builders and vendors and provide overall Energy Code support to the regional area.

An increasing number of towns and communities in New York have adopted more stringent energy codes than the current 2007 Energy Code, as encouraged under Article 11 of the New York Energy Law. The Regional Energy Code Advisor will provide technical assistance in reviewing code options, conducting "charrettes" and providing facilitation services. Working with towns and villages will provide insight on the efficacy of using HERS-as-codes and ENERGY STAR® as the "stretch code", which will be valuable in informing the use of these standards Statewide.

Deliverables: Proposers will identify and select four individuals who will function as Regional Energy Code Advisors. Resumes and qualifications must be provided in the proposal. NYSERDA has identified four geographic areas in which to pilot these services: the North Country Region (the Lake Placid/Saranac Region); the Western New York Region (rural areas around the Buffalo/Rochester corridor and south); the Central New York Region (south of the Syracuse area and Thruway); and the Southern New York Region (rural areas along the Route 17 corridor).

Proposers are invited to designate other regional areas that they feel would benefit from a Regional Codes Advisor. Approved Regional Energy Code Advisors will be hired, on a contract basis, and funded through this solicitation on a six-month trial and additional six-month extension basis. The Proposer will be responsible for coordinating the provisions of these services, developing a regional work plan and schedule, and reporting to NYSERDA as required. Proposers may bid on one or more of the regional areas. The proposal should include a proposed budget for each of the designated Regional Energy Code Advisors for each six-month period.

A total of $400,000 is available to support these services for the initial six-month trial period and six-month renewal period (total of 12 months).

Category 5: Field Inspection Training Services and Assistance:

Background: Field inspection requirements and their nature vary from community to community; some are based upon the time available for inspections, the skill sets of the inspector, or the type of building under inspection. Field inspections provide assurance that code requirements are met in the actual construction of a building, and are invaluable in verifying the levels of compliance that are obtained. Field inspections services may include the ability to go on-site with several code officials to train in the field.

Proposers must submit a plan to develop a three to four hour field inspection course for residential construction and a similar three to four hour course for commercial construction. The course should be formatted as a live presentation in a classroom setting. Including videos of actual construction sites in the presentation materials is highly encouraged. NYSERDA and DOS plan to develop a cooperative training arrangement with several technical colleges such as Hudson Valley Community College. Course development should build upon components that are derived from this cooperative training program.

Deliverables: Provide a concise summary of currently available field inspection materials that may be helpful in the development of these courses. If there are already accessible (approved for use, purchasing or licensing) and existing materials that the proposer feels would be beneficial to meeting NYSERDA's training objectives, the proposer may elect to use such materials in part or in whole. Proposals should include a "draft" syllabus for the residential field inspection course and the commercial field inspection course.

The winning proposer shall market, schedule, and conduct 120 sessions across New York State in an 18-month period beginning four months from contract award. Successful bidders will be responsible for all logistics, room rentals, food and beverage, course materials, fee collections, evaluation, award of CEC credits and recordkeeping. A nominal fee may be charged to offset delivery costs. An online registration format must be used.

A total of $300,000 is available to support these services through the end of 2012.

Category 6: Develop and Provide an Online Energy Code Training Program:

Background: Traditionally, online training courses have not been widely available or used by code enforcement officials, mostly because this form of training has not been acceptable for required learning unit credits. This restriction has loosened somewhat, and NYSERDA and DOS plan to develop an online version of the live training courses as outlined in Category 1 of this solicitation. NYSERDA and DOS will consider proposals to develop and deliver online training of segments on a) the 2007 Energy Code; b) the 2009 IECC; and c) ASHRAE 90.1- 2004 and 2007 provisions.

Existing online courses that meet these objectives may be used. If existing courses are included, the proposer should clearly identify the terms, conditions, and costs of use in New York State. The proposer will be responsible for hosting and delivering the courses online. NYSERDA will not pay for costs already incurred.

The proposer shall host the on-line training site independent of NYSERDA, and shall be responsible for all costs and maintenance of the site. Links to this independent site may be posted on both the NYSERDA and DOS websites.

Deliverables: Submit a proposal to provide online Energy Code training courses as described. Develop online course content and structure. Obtain required licenses and approvals for all materials. Develop website hosting and delivery capabilities. Maintain the website and keep records of all participants. Furnish learning unit or continuing education credits (as appropriate). Accept online registration and handle all fees, logistics, materials, hosting, etc. associated with making these courses available online. Provide an estimated cost for each participant who would take the on-line course. Provide a timeline for development and delivery.

A total of $300,000 is available to support these services through the end of 2012.

Category 7:) Optional support services

Background: NYSERDA and DOS have identified the key services they feel necessary to achieve high levels of compliance with the Energy Code, based upon feedback from a variety of sources. Proposers, however, are invited to propose any additional support services not already requested through Categories 1-6, that would further achieve the overall goal of high levels of compliance with the Energy Code.

Deliverables: Provide a detailed description of the optional services. Explain how these services would help to further achieve high levels of compliance, and the expected outcomes. Provide a detailed budget and schedule.

II. Proposal Requirements

Each proposal MUST contain two (2) signed and notarized Agreements (Attachment D, including Exhibits B, C & D). If your proposal is selected for funding, NYSERDA will work with the proposer to develop a Statement of Work which will be appended to Attachment D as Exhibit A and constitute the final Agreement. Once agreement on the Statement of Work has been reached, NYSERDA will append it to Attachment D, countersign the Agreement, and return one fully-executed copy of the Agreement. This process is intended to facilitate the approval of projects and the expenditure of ARRA funds as quickly as possible.

Proposers must submit 12 (twelve) 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 not be accepted.

Proposals should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, the RFP number, and the page number. The proposal must be in the following format:

Proposer Information (limit 2 pages)
Name of Business Entity
Location of firm and locations where work will be performed
History of Firm
Internet website if applicable
Proposal contact person – address, telephone fax and internet information

Identify the Categor(ies) you are proposing for
Provide a Summary Budget Table

Statement of Work and Deliverables (limit 6 pages for each Task A-E, or no more than 8 pages per Category 2-7)
Proposals must describe in detail how all aspects of the work described in this solicitation will be conducted. The proposal should demonstrate how that project objectives will be met and deliverables provided, and not be a simple repeat of the content in this solicitation. The approach should be clear, well organized, cost-effectively conceived and manageable. If there are plans to significantly vary the project approach from that outlined in the solicitation if the proposer feels this variation will accomplish the stated objectives faster, easier or in a less-expensive manner, these plans should be detailed and fully explained.
Provide a description of all deliverables that will be provided. Proposals must demonstrate that all required deliverables will be provided within the schedule. Capabilities to conduct the required tasks, either with current staff, new staff or teaming/consultant relationships must be shown.

Project Management Plan (limit 2 pages)

Describe how the project will be managed, especially if there are subcontractors or consultants involved. Provide a description of the roles of each business entity named in the proposal. Explain how progress will be tracked and how it will be reported to NYSERDA. Describe tracking procedures to be used to maintain the project schedule. In the case of training activities, explain actions to improve the course content and acceptance on an ongoing, real-time basis as subsequent courses are scheduled and delivered.

Identify, where possible, specific individuals who are currently on staff, or who will be hired if the proposal is accepted. Proposals that do not provide these specifics will be considered to be less responsive

Identify the Project Manager and the relationships to the project team and oversight of the project by qualified Principals in the lead firm.

Qualifications/Experience (limit 4 pages)

Provide a listing of qualifications to complete the work requested, and describe previous work experience in the subject areas. Demonstrate an ability to conduct all required tasks competently and comprehensively

Staffing Plan/ Consultants (limit 4 pages)

Provide a listing of all personnel assigned to this project, with their job titles and areas of responsibility. Provide short-form resumes (2 pages maximum) for all personnel in an Appendix.

Listing of three similar projects (limit 6 pages)
Provide a description of three similar projects completed by the proposing team(s) within the past six years. Describe the work, deliverables and outcomes of the work. Provide contact/reference information for each project (name, address, phone).

Budget

Provide a proposed budget to accomplish the work, outlined in your proposal for each Task and associated deliverable The budget proposal should be broken out in relevant subcategories where appropriate (such as development, training delivery, etc.) Fee-for-service proposals should list the costs included in the fixed fee, and those excluded, if applicable. Sub-contractor arrangements will be solely the responsibility of the Proposer. The Cost Proposal should including supporting information to verify overhead rate(s) and multipliers. If there are escalation fees for services in the out-years of the contract, these fees should be identified.

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.

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

V. Proposal Evaluation

All proposals received by the due date and meeting the requirements established in this RFP will be reviewed and ranked by a Technical Evaluation Panel consisting of NYSERDA staff and selected outside reviewers.

Final rankings and the contract award will be based on the following criteria:

- Qualifications of the firm and key personnel – Quality and depth of the firm's expertise, and prior capability of providing similar services. Are key individuals qualified for the tasks they will be assigned. Is the proportion of time allocated to management vs. service delivery reasonable?
- Experience with similar projects and References- Experience in general in the subject areas, and in the particular areas for which they are responding. The firm should have demonstrated experience and success. References should be current and relevant.
- Knowledge of residential and commercial buildings – Demonstrated knowledge of these building sectors, methods of construction and the market actors involved in each sector
- Experience in training, education and adult learning – Experience in providing training and education courses in a formal setting, or in a one-to-one environment. Demonstrated understanding of adult learning techniques and methods to provide information in a lively, engaging format
- Expert knowledge of the Energy Code and New York State construction marketplace – Strong working application of the Energy Code in commercial and residential settings. Understanding of the various construction markets in New York and in New York City, and their differences.

- Cost of the proposal and value of services to be provided - Anticipated costs of services and the value of each service as compared to the cost. Willingness to work with NYSERDA to minimize costs.
- Management capabilities, especially in teaming arrangements – Demonstrated ability to manage staff and contractors in fulfillment of tasks. Ability to effectively manage individuals who may be working out of regional offices or formats away from central control.
- Schedule and Timeliness – Ability to develop and deliver services quickly and to maintain schedule. Provide examples of work delivered under tight timeframes.
- Overall quality and clarity of the proposal – General organization and flow of the proposal. Factors include clarity, conciseness and readability.
- Quality of proposed optional services- Are the proposed optional services different from the requested services and do they offer another strategy to achieve higher levels of compliance.

VI. GENERAL CONDITIONS

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

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

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

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

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

Empire State Development
Minority and Women's Business Development Division

30 South Pearl Street
Albany, NY 12245

State Finance Law sections 139-j and 139-k - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html
The attached Proposal Checklist calls for a signature certifying that the proposer will comply with State Finance Law sections 139-j and 139-k and the Disclosure of Prior Findings of Non-responsibility form includes a disclosure statement regarding whether the proposer has been found non-responsible under section 139-j of the State Finance Law within the previous four years.

Tax Law Section 5-a - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of $100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. *See,* ST-220-TD (available at http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td_606_fill_in.pdf). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a prospective contractor prior to contacting and filed with NYSERDA. *See,* ST-220-CA (available at http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf). The Department has developed guidance for contractors which is available at http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf.

Contract Award - NYSERDA anticipates making one award per category under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations pertaining to the Statement of Work. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA reserves the right to limit any negotiations to exceptions to standard terms and conditions in the Sample Agreement to those specifically identified in the submitted proposal. NYSERDA expects to notify proposers in approximately six weeks from the proposal due date whether your proposal has been selected.

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

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

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VII. Attachments:

Attachment A – Proposal Checklist Form

Attachment B – Disclosure of Prior Findings of Non-Responsibility Form
Attachment C – Intent to Propose Form
Attachment D – Contract Pricing Proposal Form
Attachment E – Project Personnel and Rate Form
Attachment F – Sample Agreement

Attachment A

RFP 1621 -PROPOSAL CHECKLIST (MANDATORY)

American Recovery and Reinvestment Act (ARRA)

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

Proposal Title: Proposal Category:		Due Date	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
		e-mail	
Federal Tax Identification #/Social Security			
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:

Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg) __ Yes __

Are you a Minority or Women-Owned Business Enterprise? __ Yes __

Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors? __ Yes __

Are you submitting the required number of copies? (See proposal instructions.) __ Yes __

Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? __ Yes __

(if yes, explain on separate page)

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

[Please attach a list of items consistent with the PON Requirements section of the solicitation and list the page on your Proposal that each item can be found.]	Indictment/Conviction of Felony (if applicable) NYSERDA Contracts Awarded (if applicable) Prior and/or Competing Proposals (if applicable) Signed and notarized agreement, including attachments Disclosure of Prior Findings of Non-responsibility Form

For any member of the Proposing team, have you received, or do you expect to receive, over $500,000 of Federal awards for any of the fiscal years during the term of our agreement? Yes ☐ No ☐

If yes, you are required to obtain an independent audit pursuant to the Federal Office of Management and Budget, OMB circular A-133, and provide a copy to NYSERDA throughout the term of this Agreement.

Did your organization receive: (1) more than 80% of its annual gross revenues in Federal awards, (2) $25 million or more in annual gross revenues from Federal awards, and (3) the public does not have access to information about the compensation of the senior executives under filing requirements of the Security Exchange Act of 1934 or 780(d) or section 6104 of the Internal Revenue Code? Yes ☐ No ☐

If no, provide the names and compensation of the five most highly compensated officers.

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	

NYSERDA NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

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

RFP 1621 (Mandatory)

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

Basis of Finding of Non-responsibility: (Add additional pages as necessary)

Has any Government al Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information ? (Please indicate with an “X”) (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:_____		

NYSERDA

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

ATTACHMENT C -**INTENT TO PROPOSE**

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

Roseanne Viscusi - RFP No. 1621
New York State Energy Research and Development Authority
17 Columbia Circle, Albany, NY 12203-6399
fax (518) 862-1091 e-mail rdv@nyserda.org

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

Please check all that apply:

__ We **do** intend to submit a proposal.
__ We **do not** intend to submit a proposal because:_____
_____
__ I did not receive a notice in the mail. Please **add** me to NYSERDA's database.
__ Please **delete** me from NYSERDA's database.

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

__ announcement notice in mail
__ notice in NYS Contract Reporter
__ notice in other media (please list):
__ NYSERDA's website
__ word-of-mouth
__ NYSERDA staff/booth at meeting (please specify):

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

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Contract Pricing Proposal Form- Attachment D

New York State Energy Research and Development Authority Contract Pricing Proposal Form	Solicitation/Contract No.	Page
Contractor:	Name of Proposed Project:	
Address:		
Location (where work is to be performed):	NYSERDA funding:	
	Total Project Cost:	

Cost Element			Total Project Cost	Funding & Co-funding via NYSERDA	Cost-sharing & Other Co-funding
1. Direct Materials					
a. Purchased Parts					
b. Other					
Total Direct Materials					
2. Materials Overhead	Rate:				
3. Direct Labor (specify names/titles)	Hours	Rate/hr			
Total Direct Labor					
4. Labor Overhead	Rate %	$ Base			
Total Labor Overhead					
5. Outside Special Testing					
6. Equipment					
7. Travel					
8. Other Direct Costs					
9. Subcontractors/Consultants					
Total Subcontractors/Consultants					
10. General & Administrative Expense	Rate %	Element(s)			
11. Fee or Profit (If allowable) Rate:					
12. Total Estimated Project Cost					

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

Typed Name and Title:	Signature:	Date:

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

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

INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE

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

A. GENERAL

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

B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL

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

1a. DIRECT MATERIALS - PURCHASED PARTS

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

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

1b. OTHER DIRECT MATERIALS

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

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

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

3. DIRECT LABOR

a. Commercial Enterprises

(1) Attach supporting schedules showing:
- o Each category or type of labor being estimated
- o Applicable labor rates per hour (straight-time)

(2) Explain the method used for computing the rates (i.e., actual of an individual, actual average of a category or other grouping, etc.) Also identify any proposed labor escalation and the bases for it.

b. Educational Institutions

Provide the following for each calendar year of the contract:

(1) For individuals not on an "actual hours worked" basis:
- o individual's name
- o annual salary and the period for which the salary is applicable (preferably in weeks)
- o the proportionate time to be charged to this effort.

(2) For individuals who maintain time records as the basis for charging costs, supply the detail as requested in Instructions 3(a)(1)

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

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

6. EQUIPMENT

   Capability to perform the work with existing facilities and equipment is assumed. It is NYSERDA's policy not to compensate for general purpose facilities or equipment. If some special purpose items are needed solely for this contract and are not available by other means (contractor assets, lease, etc.), then provide the following information for each item of required equipment.
   - o vendor
   - o model number
   - o quantity
   - o competitive selection process
   - o unit cost and source of cost/price (i.e., quote, catalog, purchase history)
   - o description of the use or application (NYSERDA dedicated, contract dedicated, other)

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

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

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

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

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

ATTACHMENT E

PROJECT PERSONNEL & RATES

1. DIRECT PERSONNEL COSTS:

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

2. MULTIPLIER (Including Profit/Fixed Fee):

   a. Profit / Fixed Fee: _____%

   b. Multiplier _____

3. 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 F -RFP – 1621 Agreement
New York State Energy Research and Development Authority

STATE ENERGY PROGRAM AGREEMENT ("Agreement")

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

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

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

All Work on public buildings or that constitutes a public work are subject to "Buy American Requirements."

Funds must be obligated by NYSERDA within eighteen (18) months of October 17, 2010. Projects must be complete and all funds expended by NYSERDA by April 30, 2012. To ensure compliance, Contractors shall be required to complete Projects prior to such date, as specified in the solicitation.

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

Contractors are encouraged to periodically log on to www.recovery.gov for updated information.

To Be Completed by Contractor:

1. Contractor:
2. Contact:
3. Project Period:
4. Federal ID:
5. DUNS Number:
9. Commitment Terms and Conditions

To Be Completed by NYSERDA:

6. Agreement Number:
7. Award Date:
8. Total Amount of Award: $

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

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

Addenda to include additional Federal or State requirements.

SPECIAL TERMS AND PROVISIONS APPLICABLE TO RECEIPT OF RECOVERY ACT FUNDS

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

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

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

I. Reporting Requirements

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

1. Monthly reports setting forth the percentage of the Project having been completed.

2. Monthly reports providing a description of the employment impact of Recovery Act funded work. The report should include:

(i) a brief description of the types of jobs created and jobs retained;
(ii) an estimate of the number of jobs created and jobs retained; and
(iiii) an estimate of the number of hours worked in the jobs created and retained.

3. Contractor's nine digit Data Universal Numbering System (DUNS) number and Central Contractor Registration plus four extended DUNS number.

4. Amount awarded to Contractor.

5. Amount received by Contractor.

6. Contractor type.

7. Date of award.

8. Projected period of performance.

9. Place of performance and area of benefit.

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

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

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

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

II. Buy American

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

Authority and the Contractor agree that DOE and the State are third party beneficiaries and may enforce the requirements of this Agreement.

A waiver may be provided, if an appropriate Federal agency determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel and manufactured goods produced in the United States will increase the cost of the overall Work by more than 25 percent. The Contractor must obtain any waiver(s) directly. All requests for waivers shall be provided to the Authority for review prior to submission. Copies of any waivers granted to the Contractor must be provided to the Authority. Additional guidance on the Buy American Requirements and waiver process can be found on www.recovery.gov.

III. Wage Rate Requirements

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

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

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

(ii)(A) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with

the wage determination. An additional classification and wage rate and fringe benefits therefore will be approved only when the following criteria have been met:

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

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

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

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

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

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

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

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

(2) *Withholding*. The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered

necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work, all or part of the wages required by the contract, the Authority may, after written notice to the Contractor, sponsor, applicant, and owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

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

(1) That the payroll for the payroll period contains the information described under § **5.5**

(a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § **5.5** (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code and other New York State statutes, rules and regulations.

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

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

journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

(7) *Contract termination: debarment*. A breach of this section may be grounds for

termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12 and in this Agreement.

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

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

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

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

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

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

IV. New York State Requirements

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

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

Option 1:
The **preferred** approach is for the company to initially register through the New York State Department of Labor's Job Exchange http://www.labor.state.ny.us website for an employer account. This service allows the employer to directly manage its job orders status throughout the recruitment process. Approval for access is received within 3 business days which allows the employer to then list its job orders. The job orders are open to the public on this website and the job orders also roll over into the Department of Labor's One Stop Operating System (OSOS) for local One-Stop service.

Option 2:
The employer can complete a job order form and fax it to either of the following as appropriate. For jobs that are located in New York City, the employer can use the NYC Fast Fax form http://www.labor.state.ny.us/formsdocs/does/ES515_584.pdf and fax it to (718) 780-9458. Regarding

jobs that are located outside of New York City, the employer can use the NYS Fast Fax Form http://www.labor.state.ny.us/formsdocs/does/es515.pdf and fax it to (518) 485-1333.

Option 3:
The employer can e-mail specifics of its job orders by using a fillable NYS Job Order Form http://www.labor.state.ny.us/businessservices/PDFs/FastFax%20Electronic.rtf. If the jobs are located in New York City, the employer would send the completed form to the DoES_LO584@labor.state.ny.us address. If the jobs are located outside of New York City, the employer would send the completed form to the nysjobbank.does@labor.state.ny.us address.

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

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

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

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

5. Agreement Funding

a. State General Fund Dollars _____
b. Federal Fund Dollars _____
c. ARRA Stimulus Dollars _____
d. Other Fund Dollars _____

Agreement Total _____

V. Additional Covenants

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

2. The Contractor acknowledges, and agrees to comply with the "whistleblower" protections set forth in Section 1553 of the Recovery Act related to disclosure of mismanagement of contracts, waste of funds, health and safety dangers, abuse of authority, or any violation of laws, rules or regulations related

to the use of funds provided under this Agreement. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of: gross mismanagement of an agency contract or grant relating to covered funds; a gross waste of covered funds; a substantial and specific danger to public health or safety related to the implementation or use of covered funds; an abuse of authority related to the implementation or use of covered funds; or as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds. Contractor shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the Recovery Act, see www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.)

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

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

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

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

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

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

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

8. The Contractor acknowledges and agrees that the Work is subject to the Federal audit requirements of the Single Audit Act of 1984, and that it will comply with the requirements of the Single Audit Act of 1984 (31 USC 7501 et seq.) and all laws and regulations implementing same including without limitation 40 CFR Part 31, all as amended from time to time (collectively, the

"Single Audit Act"). This shall include, without limitation, having either a single audit or a program-specific audit for any of the Contractor's fiscal years in which it expends a total amount of Federal financial assistance equal to or in excess of $500,000.

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

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

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

Contractor	**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**
By:_____	**By:**_____
Name:_____	**Jeffrey J. Pitkin** **Treasurer**
Title:_____	

STATE OF)
) SS.:
COUNTY OF)

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

_____
Notary Public

Exhibit A
Statement of Work

[To be provided in final form Agreement]

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

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

Budget: The Budget set forth in Exhibit A hereto.

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

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

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

Effective Date: The effective date of this Agreement shall be the date appearing in Item 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 their confidentiality; and

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

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

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

Subcontractor: A person who performs Work directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor) but not including any employees of the Contractor or the Subcontractors.

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

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

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

Article II

Performance of Work

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

and other items as may reasonably be necessary or appropriate to perform the Work in accordance with this Agreement.

Section 2.02. Project Personnel. It is understood and agreed that the "Contact Person" identified in Item 2 of page one of the Agreement shall serve as Project Director and as such shall have the responsibility of the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA.

Article III

Deliverables

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

Article IV

Payment

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

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

(b) Direct Charges: The Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (e.g., equipment, supplies, travel and other costs directly associated with the performance of the Agreement) to the extent required in the performance of the Work in accordance with the provisions of the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs should generally not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate.

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

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

Section 4.02. Progress Payments. The Contractor may submit invoices for progress 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 6 of page one of the Agreement. Invoices shall set forth total project costs incurred. They shall be in a format consistent with the cost categories set forth in the Budget and any prevailing wage requirements. Invoices shall provide reasonable documentation for the above to provide evidence of costs incurred, including:

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

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

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

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

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

Section 4.03. Title to Equipment. Except as specifically set forth in the Statement of Work, title shall vest in NYSERDA to all equipment purchased hereunder, until such time as the equipment is permanently attached and becomes a fixture.

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, and any required measurement and verification, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Item 8 of page one of the Agreement.

Section 4.05. Release by the Contractor. The acceptance by the Contractor of final payment shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

Section 4.06. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to the performance of the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of such performance.

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is the amount shown in Item 8 of page one of the Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.08. Audit Adjustment. NYSERDA, the State and involved Federal agencies shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.06 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA, the State or a Federal agency on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Purchase Orders

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

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. 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 and this Agreement.

Article VII

Force Majeure

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

Article VIII

Technical Data

Section 8.01. Rights in Technical Data.

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

(1) NYSERDA shall have:

(i) Unlimited Rights in Contract Data except as otherwise provided below with respect to Proprietary Data; and

(ii) no rights under this Agreement in any Technical Data which are not Contract Data.

(2) The Contractor shall have:

(i) the right to withhold Proprietary Data in accordance with the provisions of this clause; and

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

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

Article IX

Warranties and Guarantees

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

(a) it is financially and technically qualified to perform the Work;

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

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

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

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

(f) there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or NYSERDA's rights hereunder;

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

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

Article X

Indemnification

Section 10.01. Indemnification. 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 therefor).

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

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

Article XIII

Independent Contractor

Section 13.01. Independent Contractor. The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

Article XIV

Compliance with Certain Laws

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

Section 14.02. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by the laws of the State of New York or the Recovery Act or a Federal rule or regulation or directive, interpretation or guidance to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Contractor, promptly be amended through Addenda or other written communication from the Authority so as to comply strictly with the laws of the State of New York or the United States and to comply with such directive, interpretation or guidance with respect to the inclusion in this Agreement of all such provisions.

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

Article XV

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

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

(b) The Contractor shall not use NYSERDA's corporate name, logo, identity, any affiliation, or the service mark **New York Energy $mart** ^{sm}, 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 to comply with future Federal or State requirements relating to the Recovery Act, which shall be effective in accordance with its terms or as directly by the Authority, this Agreement may not be further changed, waived, discharged or terminated except by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

EXHIBIT C

REVISED 9/06

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

1. NON-DISCRIMINATION REQUIREMENTS. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds $5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

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

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

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

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

9. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by

the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

a. Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).

b. Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).

c. Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

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

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

EXHIBIT D

PART 504

PROMPT PAYMENT POLICY STATEMENT

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

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

(1) under the Eminent Domain Procedure Law;

(2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;

(3) to the Federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;

(4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or

(5) if other State or Federal law or rule or regulation specifically requires otherwise.

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

(a) "Authority" means the New York State Energy Research and Development Authority.

(b) "Contract" means an enforceable agreement entered into between the Authority and a contractor.

(c) "Contractor" means any person, partnership, private corporation, or association:

(1) selling materials, equipment or supplies or leasing property or equipment to the Authority pursuant to a contract;

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

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

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

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

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

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

(h) "Payment due date" means the date by which the date of payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Part, in order for the Authority not to be liable for interest pursuant to Section 5.06.

(i) "Proper invoice" means a written request for a contract payment that is submitted by a contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as the Authority may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to the Authority's Controller, marked "Attention: Accounts Payable," at the designated payment office.

(j)(1) "Receipt of an invoice" means:

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

(a) the date on which a proper invoice is actually received in the designated payment office during normal business hours; or

(b) the date by which, during normal business hours, the Authority has actually received all the purchased goods, property or services covered by a proper invoice previously received in the designated payment office.

(ii) if a contract provides that a payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day,

excluding legal holidays, before the date so specified or predetermined.

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

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

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

Section 504.4 Payment procedures.

(a) Unless otherwise specified by a contract provision, a proper invoice submitted by the contractor to the designated payment office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the designated payment office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by the Authority.

(b) The Authority shall notify the contractor within 15 calendar days after receipt of an invoice of:

(1) any defects in the delivered goods, property or services;

(2) any defects in the invoice; and

(3) suspected improprieties of any kind.

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

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

invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, the Authority shall make payment, consistent with any such correction or resolution and the provisions of this Part.

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

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

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

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

(d) If appropriated funds from which payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to the Authority, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when such funds are made available to the Authority.

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. Interest shall be computed and accrue at the daily rate in effect on the date of payment, as set by the New York State Tax

Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a payment shall be computed for the period beginning on the day after the payment due date and ending on the date of payment.

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

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

Section 504.9 Notice of objection. Unless a different procedure is specifically prescribed in a contract, a contractor may object to any action taken by the Authority pursuant to this Part which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to the Authority. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the address set forth in Section 504.2(e). The Vice President of the Authority, or his or her designee, shall review the objection for purposes of affirming or modifying the Authority's action. Within 15 working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the contractor either that the Authority's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed 30 working days.

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

Section 504.11 Court action or other legal processes.

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

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

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