Renewable Portfolio Standard (RPS) Technical Assistance
Request for Proposal (RFP) 2087
$1,500,000 Available

Proposals Due: November 4, 2010 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (NYSERDA) currently acts as the central procurement administrator for the implementation of the Renewable Portfolio Standard Program for New York State (RPS). The objective of this solicitation is to select one or more contractors in several support areas that can provide technical and analytical support to NYSERDA during the ongoing implementation of the Main Tier level of the RPS program.

Through this solicitation, NYSERDA expects to select contractors to provide as-needed consulting services in the following support areas:

1. **Central Procurement Design and Implementation**
2. **Energy Analysis**
3. **Financial Analysis**
4. **Energy Information Systems**
5. **Outreach and Education**
6. **Regional and Federal Policy Issues**
7. **Facility Certification and Compliance**
8. **Reliability and Performance Studies**

Proposers may submit a proposal to provide support in one, all or any of the above support areas. NYSERDA anticipates entering into task order agreements, from time-to-time, (as defined in Section VI) with successful proposers for them to provide services within one or more of the broad categories above. The expected start date for work under this program is January 2011.

Proposal Submission: Proposers must submit ten (10) copies of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. Proposals must be clearly labeled and submitted to:

Roseanne Viscusi, RFP 2087
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Michele Goyette at (518) 862-1090, ext.3506 or mg2@nyserda.org. If you have contractual questions concerning this solicitation, contact Nancy Marucci at (518) 862-1090, ext.3335 or nsm@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting Michele Goyette (Designated Contact) at (518) 862-1090, ext. 3506 or mg2@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.

* Proposals must be received by NYSERDA on or before 5:00 p.m. on November 4, 2010. Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist may 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. Introduction

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

In its September 24, 2004, RPS Order,[1] the New York State Public Service Commission (PSC) authorized NYSERDA, in conjunction with the staff of the Department of Public Service (DPS), to implement the RPS Program. In subsequent Orders,[2] the PSC directed the collection of revenues, through a non-bypassable RPS surcharge levied on the delivery portion of electricity bills for New York retail customers, to be administered by NYSERDA for the purpose of providing incentives to increase the percentage of electricity used by retail customers in the State that is derived from renewable resources from the then-current level of 19.3 percent to 30 percent by the year 2015. NYSERDA is to use such funds to procure rights to the environmental attributes associated with renewable energy (commonly referred to as "Renewable Energy Credits, or "RECs") produced in accordance with the provisions and rules of the RPS Program. NYSERDA implements both the Main Tier (large scale facilities) and the Customer Sited Tier (behind the meter systems) programs. This RFP 2087 seeks services with respect to the Main Tier. NYSERDA anticipates entering one or more agreements with selected proposers; work will be assigned through individual task orders.

The PSC orders and related proceeding documents can be accessed at the website, http://documents.dps.state.ny.us/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=03-e-0188. **To become familiar with the RPS program, proposers are encouraged to review these materials.**

II. Program Requirements

A. Support Areas

Proposers are invited to submit, in the format described in Section III, a proposal describing their skills, expertise, qualifications, and personnel rates in any or all of the following areas:

1. **Central Procurement Design and Implementation:** Proposers may be asked to provide services in support of NYSERDA in improving/altering the procurement model currently employed (sealed bid, pay as-bid auction) in order to more effectively implement the program. Specifically, support may be needed to evaluate and develop a standard offer approach or simply improve the current approach. Proposers may be asked to examine past bidding patterns and trends with a particular focus on competitiveness, the impacts of using a maximum acceptable bid price and the use of non-price evaluation criteria such as economic benefits, among other things in an effort to promote fair and efficient bidding behavior and bid selection. Proposers may also be asked to examine various pricing options under which NYSERDA may contract for Renewable Energy Credits (RECs). Options may include REC prices indexed to Locational Based Marginal Prices (LBMPs), Contract for Differences (CFDs), fixed REC prices or any variation of such options.

   Proposers may be asked to evaluate the use and effectiveness of RFP/contract design features such as, but not limited to, the use of contract security, production/quantity obligation terms, default and termination provisions, and similar RFP/contract design features.

2. **Energy Analysis:** Proposers may be asked to conduct historical and/or forward-looking analyses of the energy and environmental markets, including analyses of natural gas and electricity prices associated with the electric markets administered by the NYISO, ISO-NE and PJM. Proposers may

[1] Case 03-E-0188 - Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard.
[2] Id.; see Orders issued April 14, 2005, January 8, 2010, and April 2, 2010.

also be asked to develop short term (2-3 years) and/or longer term (10+ years) forward price curves for natural gas and electricity, or other predictive models, as they relate to the revenue potential and outlook for RPS eligible projects. Proposers may be asked to develop forward, all-in costs for renewable technologies, prepare estimates of developable renewable resource potential and construct supply curves for the purposes of predicting program cost/funding requirements.

3. **Financial Analysis:** NYSERDA, in conjunction with the DPS, may be required, on a case by case basis, to evaluate the financial viability of resources with respect to their eligibility under the RPS Maintenance Tier. Proposers may be asked to assist in analyzing the current and historical records of plant operations including payroll, tax liabilities, revenues and proceeds, fuel purchases, and any other relevant financial or business record of the owner/operator of the facility in question as well as of the parent company. Proposers may also be asked to assist in developing a range of RPS subsidies that may be necessary to support continued plant operations under criteria set forth by the DPS and/or NYSERDA.

   Proposers may be asked to assist NYSERDA in various efforts including but not limited to the collection of information, and verification of in-state economic benefits created by RPS contracted facilities. Proposers may also be asked to support the design and implementation of an overall economic benefits verification process; develop criteria to evaluate the actual economic benefits as compared to claimed amounts proposed by RPS contractors in the bid proposal process; and organize and analyze information provided by RPS contractors and/or third parties substantiating the creation of jobs, in-state purchases and consumption of services, property tax payments, land owner lease payments, biomass fuel purchases and similar economic benefits. Proposers may be asked to make recommendations to NYSERDA regarding the level of compliance by a RPS contractor, or recommendations to NYSERDA regarding additional information that may be needed to proceed with verification. Proposers may be required to interact with contractors as needed, as directed by NYSERDA.

4. **Energy Information Systems**: NYSERDA is involved with the DPS and the NYISO in developing an automated generation energy credit tracking system in support of competitive markets and, the New York State Environmental Disclosure Program (EDP). Proposers may be asked to assist NYSERDA, DPS and NYISO in analyzing the requirements and design of such a system, and in developing and administering an RFP to solicit a REC system administrator.

   Proposers may be asked to assess REC accounting and tracking regimes in neighboring wholesale power markets including: the New England Power Pool (NEPOOL); and the Pennsylvania/New Jersey/Maryland Independent System Operator (PJM) in support of the design and implementation of such a system for New York. Specific areas of focus are expected to include advising NYSERDA, DPS and/or NYISO on: business and operating rules, user manuals, regulatory jurisdiction, resource qualification and characterization, interoperability of systems, interstate trading practices and voluntary market development.

5. **Outreach and Education:** Proposers may be asked to assist NYSERDA, in coordination with NYSERDA marketing staff, in various efforts to further inform customers of the RPS program goals, public benefits, accomplishments, and future plans.

   Under this component of the RFP, proposers would assist NYSERDA with the development of technical content on the RPS Program and projects, annual program reports, and website content. Proposers may be asked to assist NYSERDA, DPS and the utilities in educating customers on the RPS program, its goals, relation to voluntary markets and power markets in general, program accomplishments and future plans and other outreach and consumer educational materials.

Throughout the duration of the RPS program, NYSERDA and the DPS may wish to plan, develop, and organize stakeholder workshops to facilitate discussion on elements of the RPS. Support would include organizing locations, managing logistics and invitation efforts as well as assisting with technical content.

Activities that could be considered include organizing and managing educational seminars or workshops and preparation of technical material for printed media (brochures etc.).

6. **Regional and Federal Policy Issues**: Proposers may be called upon to advise NYSERDA on the implications to New York State of draft and enacted or adopted federal legislation and/or regulations on energy and environmental markets and renewable energy standards, suggest appropriate responses to protect New York interests, and to design appropriate compliance mechanisms. Support may also be needed for similar state or regional policies.

   Proposers may be asked to focus on regional resource eligibility, reciprocity in resource acceptance, resource tracking, and the integration of the NY RPS program with neighboring states' RPS programs, as well as how New York's RPS program would integrate with national clean air initiatives with respect to the valuation and treatment of RECs. Proposers may be asked to identify and recommend remedies to impediments or barriers to RPS compliance posed by competing regional policy initiatives. Proposers may also be asked to assess the mechanics of market operations and settlements in neighboring electric systems.

7. **Facility Certification and Compliance**: Contractors may be asked to assist in enhancing the appropriate forms and documents to effectuate facility provisional and operational certification as well as to assist in determinations and ongoing verification of operational compliance with eligibility rules.

   Proposers may be asked to develop criteria, conduct analyses and prepare documentation to certify wind, biomass, hydro-power, landfill, and other RPS-eligible technologies. To ensure that certified facilities continue operating within program guidelines, proposers may be asked to audit generators for continued compliance with eligibility requirements. This may include document reviews and site visits. As part of the verification process, proposers may have to review pre-determined generator and fuel supplier-specific forest and harvest management plans, fuel supply reports and/or other specifications necessary for facility certification. Proposers may be asked to assess new resources (technology/fuel) with respect to RPS eligibility.

   A major focus in this area will be on supporting the management of complex biomass contracts. Proposers will be asked to support the development of baseline consumption and incremental production methodologies and results for facilities that have invested in upgrades or facilities that are partially fueled by RPS-eligible sources (biomass, hydro, etc.). Proposers may be asked to conduct reviews of proximate and ultimate fuel analyses, review, validate and monitor comparative emissions measurement testing protocols, verify stack analyses and check fuel mass flow and heat rate data necessary to certify/verify fuel eligibility and establish baseline and incremental co-firing fractions by facility. Proposers may be asked to make assessments of capital investment and efficiency improvements to certify the eligibility of bid quantities and, upon operation, verify that invoiced RPS bid quantities remain compliant with pre-established baseline and incremental fuel/energy production calculations and methodologies. In some cases, Proposers may be asked to conduct market and project assessments in support of PSC proceedings in regard to fuel/facility eligibility and operation.

8. **Reliability and Performance Studies**: Under this component of the RFP, proposers will be asked to conduct scoping studies to identify critical gaps in information/data relative to long-term reliability of resources, particularly after the expiration of current RPS agreements. Support would include technical analysis and supporting data for conducting regional grid reliability assessments; assessing

locational or site-specific constraints or integration requirements; evaluation of FERC corridor designation; and related transmission and/or grid, or ancillary services infrastructure issues as such impact on the delivery of renewable energy within New York and adjacent control areas.

Proposers may also be asked to evaluate the actual performance of RPS projects compared to the quantities bid into the program and expected performance relative to the actual resource availability during the period of analysis. To accomplish this task the proposer may be asked to conduct qualitative and quantitative analyses of startup issues on project output, the evolution of industry production estimate methods over the past decade, publicly disclosed fleet issues, and site specific operational data including outages, equipment performance, and similar information. These factors would then be considered in establishing a prioritized set of recommendations for in-depth project reviews and/or modifications to contract terms and conditions containing in the RPS standard form contract. This review will focus on the use of plant production data available at NYSERDA (monthly and/or hourly revenue meter results), comparison with the original expected production (contractual commitment to NYSERDA), any available curtailment information if known, and publicly available project information. This review will be focused primarily on RPS projects, with a strong focus on wind facilities. Non-RPS projects may be included to the extent public information is available.

B. Funding and Schedule

Up to $1,500,000 may be spent over approximately five years for services provided through Task Order Agreements (see Attachment D) resulting from this RFP (initial term to be three years; subject to extension at NYSERDA discretion). Additional funds could be added should NYSERDA's responsibilities in implementing the RPS change. Task Order Agreements will be negotiated soon after the notification of selection is delivered to successful proposers.

C. Services Requested

As a result of this RFP, NYSERDA expects to retain multiple qualified contractors to provide a variety of services in the areas outlined in Section II of this RFP. The number and type of services requested from the selected contractors will depend on the nature and complexity of the project, the contractor's expertise, the volume and frequency of the services requested by NYSERDA, and performance.

Proposers are permitted, but not required, to team with partners (subcontractors) they consider would offer complementary expertise in the support areas identified in Section II.

D. Task Order Agreements

One or more contractors will be selected through this RFP. NYSERDA will enter into a general Task Order Agreement with each contractor selected, with the flexibility to request services for a variety of activities. A Task Order Agreement is used because no estimate can be made in advance as to the type, amount, and complexity of the work each contractor will be required to perform.

The Task Order Agreements will not guarantee any specific amount of work, but may contain a maximum dollar amount. The amount of work assigned to each contractor will depend on their particular expertise, the amount of work requested in the contractor's technical area, past performance, current workload, deadline requirements, and the ability of the contractor to provide high quality, cost-effective, and timely services. NYSERDA reserves the right to negotiate among finalists to ensure access to specific expertise. If multiple contractors are selected with overlapping areas of expertise, NYSERDA may also ask selected contractors for proposals and bids on specific assignments.

Once a contractor(s) enters into a Task Order Agreement through this RFP, upon a request from NYSERDA on one or more of the support areas, contractor will prepare, and projects will be assigned and initiated through a written Task Order Plan, which will become a binding agreement for all parties. The Task Order Plan will be prepared by the contractor in cooperation with NYSERDA.

Task Order Plans shall include:

- The goals and objectives of the project
- The approach that will be taken outlined by tasks
- Any relevant background information
- Defined deliverables
- The project time frame
- The names and titles of individuals to work on the project
- The total not-to-exceed cost of the project, including a breakout by task and by title, hourly rate, hours, and non-labor costs
- The identification of measures and ability to track project success

The details of any Task Order Plan will be consistent with the level of complexity of the proposed project or activity. Hourly rates shall be those in the general Task Order Agreement. The Task Order Plan for projects is expected to be 1-5 pages depending on the complexity of each project. NYSERDA must review and approve all Task Order Plans before projects are implemented.

E. Contractor Responsibilities

NYSERDA expects to issue, to selected Contractors, requests for services in one or more of the support areas. For each such request, the selected contractor shall be required to:

- Prepare a Task Work Order Plan, with budget, for each project for review and approval by NYSERDA
- Negotiate the scope and cost of the technical assistance with NYSERDA;
- Upon agreement by all parties to the Task Work Order Plan, provide the required assistance within the required time frame;
- Submit any deliverables to NYSERDA for review and approval; NYSERDA's review will ensure that the deliverable conforms to the Task Work Order and;
- Provide required documentation of expenditures by task, based on the Task Work Order Plan, when seeking reimbursement from NYSERDA.

F. Compensation

Compensation will be based on the contractor's direct and indirect personal services costs (included in the proposal) plus allowable expenses. Fees will be based on the contractor's hourly rates for the appropriate level of staff. NYSERDA will negotiate each task order on the basis of demonstrated competence and qualifications, at fair and reasonable fees. Fee schedules shall be included in each proposal that identify rates for each member of the team by title. Proposers are asked to consider the length of the Agreement (three years) in proposing their fee schedules, which will be fixed for the duration of the three-year contract period. Should the Agreement be extended after the three-year contract period, rates may not escalate by more than 3% in each additional year.

Budgets for all work conducted will be included in the Task Work Order Plan and approved by NYSERDA. The Task Work Order Plan will also place a ceiling or not-to-exceed amount for each project. Contractors who accrue billable hours beyond the ceiling in the Task Work Order Plan, without approval in writing by NYSERDA, will do so at their own risk. **Contractors will not be compensated for time spent in the preparation of any Task Work Order Plan.** Preparation of the Task Work Order Plan is considered to be covered by the contractor's overhead expense.

III. Proposal Requirements

Proposers are invited to submit a proposal for one, all or any of the support areas.

A. Submittal

To be eligible for selection under this RFP, Proposers must submit a complete bid package and agree to the terms and requirements of this RFP. Proposers must submit **ten (10) 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. Proposals must be received by NYSERDA on or before 5:00 pm on November 4, 2010. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist may be returned.** Faxed or e-mailed copies will not be accepted.

B. 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 texts 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.

C. 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, RFP 2087, and the page number.

D. All responses submitted as part of this RFP solicitation process become the property of NYSERDA. Proposers will not be reimbursed by NYSERDA for any costs associated with the preparation of their proposals. Proposals may be either single- or double-sided, but a page is considered one side of an 8-1/2" x 11" piece of paper. The font size shall not be smaller than 11 point.

E. Proposal Format

Each proposal shall contain, at a minimum**, the following:**

1. **<u>Cover Letter</u>** (1 page suggested)

   Proposers shall submit a cover letter on company letterhead that:

   (a) references RFP 2087
   (b) specifies each specific support area, by name and number, where services are being offered
   (c) summarizes the proposer's ability to perform such services
   (d) is signed by a person with authority to enter into a contract with NYSERDA

   Letters from subcontractors included in the proposal must be attached to the proposal and include the same information included in the proposer's cover letter.

2. **<u>Table of Contents (1 page)</u>**

   Proposers should present a comprehensive table of contents that outlines the page number and section where each support area proposal can be found. Proposals will be evaluated independently for each support area. Proposals must be organized providing a <u>separate section for each support area where services are being offered, even if information is provided for another section/support area.</u>

Each support area being offered must include the items listed below, ***<u>regardless</u>*** if they have been

presented in another section:

(a) Overall experience and capabilities
(b) Personnel Qualifications
(c) Fee Schedule

3. **Overall Experience and Capabilities (2-3 pages**)
Proposers must describe their expertise and ability as a team/firm to deliver services in the proposed support area. This should include the aggregate number of years working in this area and a brief summary of at least one and no more than three similar projects. The project descriptions should specify the level of involvement of the proposing firm and subcontractors and the results/deliverables of the project. For at least one of the projects mentioned, proposers must include customer contact names and phone numbers.

4. **Personnel and Qualifications (1-2 pages, plus one-page résumés)**
Proposers must identify and describe the company or organization that will be the prime contractor under this RFP and describe any personnel, teams, and subcontractors. Describe past relationships with team members and subcontractors. Include an organizational chart, if necessary. Describe the accomplishments, experiences, and expertise of the individuals comprising the proposing team relevant to this RFP.

Proposers must identify the project manager who will serve as the single point of contact as well as all personnel that may be involved with providing services under this RFP.

In this section include one-page résumés that highlight recent experiences of all individuals who will be directly involved in providing services.

5. **Fee Schedule**
Proposers must include a fee schedule for the services proposed under this RFP. Fee schedules for proposers and all subcontractors shall include: direct labor costs presented by job title, and a range for each job title's hourly rate; travel and per diem costs; overhead rates (basis rate and items included in overhead rate); general and administrative costs and basis for application; and other costs. If a proposer is not located in New York State, describe how travel costs will be minimized.

F. Indirect Cost

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.

IV. Proposal Evaluation

Proposers will be awarded contracts based on: experience; ability; qualifications to perform services in one or more of the areas targeted in this RFP; the ability to complete tasks on schedule; and cost.

Proposals that meet Proposal requirements will be reviewed by a Technical Evaluation Panel (TEP) consisting of NYSERDA staff and selected outside reviewers. Responses to this RFP will be reviewed and assigned scores based on the criteria highlighted below.

The following factors will also be considered during the evaluation:

- Response to NYSERDA's request as specified in this RFP.
- Adequacy/depth of corporate resources to provide requested services
- Qualifications and expertise of the personnel/team in relevant areas (listed in the Section II).
- Clear identification of staff that will be assigned to various project types.
- Previous experience in the conduct and delivery of similar or related services.
- Reasonableness of labor rates, associated fees, and overhead.
- Demonstrated ability to complete projects on schedule.
- Quality and relevance of previous work as evidenced by sample projects.
- Information provided by references.
- Other programmatic and management factors deemed appropriate by NYSERDA.

Further, as part of the evaluation process, proposers may be required to have appropriate representatives attend an interview in Albany, NY prior to final selection.

The number of proposers selected for contracting will be determined by the number of firms required to efficiently and effectively provide comprehensive services under this program. This number cannot be determined until all proposals are received and reviewed.

Conflicts: The firm, its principals, subcontractors, and any personnel of the firm must be free from any financial or similar interest in any product or service which may conflict with or appear to conflict with the objectivity of the services provided to NYSERDA. Please describe all of your product, manufacturer or service-related affiliations. If any affiliations exist, you must provide a statement verifying these affiliations do not conflict with or appear to conflict with the objectivity of providing services to NYSERDA and its customers. Non-disclosure of any affiliation can result in the termination of a contract, if awarded.

V. GENERAL CONDITIONS

A. **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/about/nyserda.regulations.pdf. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

B. **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

C. **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.

D. **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/2007/fillin/st/st220td_507_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.pdf.

E. **Contract Award** - NYSERDA anticipates making one or more awards under this solicitation. 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 eight weeks from the proposal due date whether your proposal has been selected to receive an award.

F. **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.

G. **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.

VI. Attachments:

Attachment A: Proposal Checklist
Attachment B: Disclosure of Prior Findings of Non-responsibility
Attachment C: Project Personnel and Rates
Attachment D: Sample Task Order Agreement

ATTACHMENT A - RFP No. 2087 PROPOSAL CHECKLIST (MANDATORY)

Proposal Title		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:

Do you accept all Terms & Conditions in the Sample Agreement? (if no, explain on separate pg)
(NYSERDA anticipates considering only specifically listed exceptions in negotiations.)

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

Are you a Minority or Women-Owned Business Enterprise?

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

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

Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)?
(if yes, explain on separate page)

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

	Proposal Checklist
	Disclosure of Prior Findings of Non-responsibility Form
	Project Personnel and Rates
	Indirect Rate Documentation
	Indictment/Conviction of Felony (if applicable)

AUTHORIZED SIGNATURE & CERTIFICATION

I certify that the above information, and all information submitted in connection with State Finance Law §139-j and §139-k, is complete, true, and accurate, and that the proposal requirements noted have been completed and are enclosed. I affirm that I understand and will comply with NYSERDA's procedures under §139-j(3) and §139-j(6)(b) of the State Finance Law. I understand that this proposal may be disqualified if the solicitation requirements are not met. I the undersigned am authorized to commit my organization to this proposal.

Signature	Name
Title	Organization
Phone	

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

Disclosure of Prior Findings of Non-responsibility Form

(Mandatory)

Name of Individual or Entity seeking to enter the procurement contract:
Address:
Date:
Solicitation or Agreement Number: **RFP 2087 RPS Technical Assistance** 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?
Was the basis for the finding of non-responsibility due to a violation of §139-j of the State Finance Law?
Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.
Government Agency or Authority:
Date of Finding of Non-responsibility:
Basis of Finding of Non-responsibility: (Add additional pages as necessary)

Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information?
If you answered yes, please provide details below.
Government Agency or Authority:
Date of Termination or Withholding of Contract:
Basis of Termination or Withholding: (Add additional pages as necessary)

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

By:_____ Date:_____
Signature

Name:_____ Title:_____

Attachment C

PROJECT PERSONNEL & RATES

1. DIRECT PERSONNEL COSTS:

Title Classification	*Not to Exceed Hourly Rate Range*		*Not to Exceed Hourly Rate Range*		*Not to Exceed Hourly Rate Range*	
	Year 1		**Year 2**		**Year 3**	
	Minimum	*Maximum*	*Minimum*	*Maximum*	*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	Computer Services
Rentals	Subcontracts	Postage
Report Reproduction/Outside Printing		

ATTACHMENT D

New York State Energy Research and Development Authority
SAMPLE TASK WORK ORDER AGREEMENT

1. Agreement Number:
2. Contractor:
3. Contact:
4. Effective Date:
5. Project Period:
6. Federal ID:
7. Total Amount of Award:
8. Commitment Terms and Conditions

8. Commitment Terms and Conditions:

This Agreement consists of this form plus the following documents which are incorporated herein:

- Exhibit A, Task Work Order Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions for all NYSERDA Agreements;
- Exhibit D, Prompt Payment Policy Statement; and
- Exhibit E, Fee Schedule

9. ACCEPTANCE

[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 developed for each Task Work Order.]

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.

(a) General Definitions:

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

Budget: The Budget set forth in individual Task Work Orders.

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

Contractor: The Contractor identified in Item 2 of page one of the Agreement.

Effective Date: The effective date of this Agreement shall be the date appearing in Item 4 of page one of the Agreement.

Person: An individual, a corporation, an association or partnership, an organization, a business or a government or political subdivision thereof or any governmental agency or instrumentality.

Statement of Work: The Statement of Work attached as Exhibit A to a Task Work Order.

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

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

Task Work Order: A Task Work Order issued by NYSERDA authorizing the Contractor to perform certain Work.

Work: The Work described in the 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.

(b) Data Rights Definitions:

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.

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

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

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

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

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.

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 Task Work Orders, 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 Task Work Order. 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" identified in Item 3 of page one of the Agreement shall serve as Project Director and as such shall have the responsibility of the overall supervision and conduct of the Work on behalf of the Contractor. NYSERDA shall be notified in writing of any change of Project Director by the Contractor.

Article III

Deliverables

Section 3.01. Deliverables. All deliverables shall be provided in accordance with the Exhibit A Statement of Work and the Task Work Orders issued pursuant to this Agreement.

Article IV

Payment

Section 4.01. Compensation.

(a) Staff Charges. The Contractor shall be compensated for the services performed by its employees under the terms of this Agreement at the employees' actual wage rate set forth in each Task Work Order and in accordance with the Fee Schedule set forth in Exhibit E.

(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 Task Work Order 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 and other indirect costs as set forth in Exhibit E.

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 No. 1 of page one of the Agreement and shall reference the relevant Task Work Order number. Invoices shall set forth total project costs incurred. They shall be in a format consistent with the cost categories set forth in the Task Work Order Budget. 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, rate and labor extension; and

(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.

The Contractor shall be notified by NYSERDA in accordance with 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, 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 Task Work Order Budget, NYSERDA shall pay to the Contractor, within the prescribed time after receipt of an invoice for a progress payment, the amount so requested, until NYSERDA's total commitment pursuant to the Task Work Order has been paid.

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

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in the Task Work Order pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Task Work Order. 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 the Task Work Order, less all progress payments previously made to the Contractor with respect thereto.

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

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

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is the amount shown in Item 7 of page one 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 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 hereunder shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Purchase Orders

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

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a Subcontractor specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any Subcontract totaling under $50,000, the Contractor shall select all Subcontractors through a process of competitive bidding or multi-source price review. A team arrangement is one where a Subcontractor 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 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. 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, and those set forth in Exhibit C 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 the Task Work Order.

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 the Task Work Order.

Article VII

Force Majeure

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

Article VIII

Technical Data

(1) NYSERDA shall have:

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

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

(2) The Contractor shall have:

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

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

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

Article IX

Warranties and Guarantees

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

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

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

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

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

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

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

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

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

Article X

Indemnification

Section 10.01. Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or

incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to the performance of this Agreement. The obligations of the Contractor under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

Article XI

Insurance

Section 11.01. Maintenance of Insurance; Policy Provisions. The Contractor, at no additional cost to NYSERDA, shall maintain or cause to be maintained throughout the term of this Agreement, insurance of the types and in the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

(a) name or be endorsed to cover NYSERDA, the State of New York and the Contractor as insureds, as their respective interests may appear;

(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 include 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.

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 New York State Executive Order Number 127, signed by Governor Pataki on June 16, 2003, was intentionally false or intentionally incomplete. Upon such finding, NYSERDA may exercise its termination right by providing written notification to the Contractor as set forth in Article XV of this Agreement.

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

Article XIII

Independent Contractor

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

Article XIV

Compliance with Certain Laws

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

Section 14.02. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Contractor, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

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

Article XV

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA's Director of 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) It is recognized that during the course of the Work under this Agreement, the Contractor or its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Contractor shall credit NYSERDA's funding participation in the Project, and shall state that "NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York." Notwithstanding anything to the contrary contained herein, the

Contractor shall have the right to use and freely disseminate project results for educational purposes, if applicable, consistent with the Contractor's policies.

(c) The Contractor shall not use NYSERDA's corporate name, logo, identity, any affiliation, or the service mark **New York Energy $mart℠**, and any related logo, for any marketing, advertising or solicitation for participation in the Work, or for any other purpose, without NYSERDA's prior written consent.

Section 15.02. Section 15.01. Notices.

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:

(i) via certified or registered United States mail, return receipt requested;
(ii) by facsimile transmission;
(iii) by personal delivery;
(iv) by expedited delivery service; or
(v) by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

NYSERDA
Name: Cheryl L. Earley
Title: Director of Contract Management
Address: 17 Columbia Circle, Albany, New York 12203
Facsimile Number: 862-1090
E-Mail Address: cle@nyserda.org
Personal Delivery: Reception desk at the above address

[Contractor Name]
Name:
Title:
Address:
Facsimile Number:
E-Mail Address:

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Section 15.03. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be

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

EXHIBIT B

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

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

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

9. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

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

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

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

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

EXHIBIT D

PART 504

PROMPT PAYMENT POLICY STATEMENT

Section 504.1 Purpose and applicability.

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

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

(1) under the Eminent Domain Procedure Law;

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

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

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

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

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

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

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

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

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

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

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

(d) "Date of payment" means the date on which the Authority requisitions a check from its statutory

fiscal agent, the Department of Taxation and Finance, to make a payment.

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

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

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

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

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

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

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

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

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

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

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

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

Section 504.3 Prompt payment schedule. Except as otherwise provided by law or regulation or in Sections

504.4 and 504.5 of this Part, the date of payment by the Authority of an amount properly due and owing under a contract shall be no later than 30 calendar days, excluding legal holidays, after such receipt.

Section 504.4 Payment procedures.

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

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

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

(2) any defects in the invoice; and

(3) suspected improprieties of any kind.

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

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

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

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

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

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

documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

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

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

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. Interest shall be computed and accrue at the daily rate in effect on the date of payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a payment shall be computed for the period beginning on the day after the payment due date and ending on the date of payment.

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

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

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

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

Section 504.11 Court action or other legal processes.

(a) Notwithstanding any other law to the contrary, the liability of the Authority to make an interest

payment to a contractor pursuant to this Part shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

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

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

EXHIBIT E

FEE SCHEDULE

[To be provided by the Contractor.]