Economic and Environmental Impact Evaluation Contractor
Request for Proposal (RFP) 1810
Up to $2.7 Million Available

Proposals Due: February 8, 2011 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (NYSERDA) requests proposals from organizations or individuals interested in assessing economic and environmental impacts of NYSERDA's programs including but not limited to: electric energy efficiency, natural gas and fuel energy efficiency, research and development (R&D), transportation congestion, alternative fuel vehicles, workforce development, distributed generation, renewable energy, and programs that target carbon reduction and climate change mitigation. The selected contractor(s) will assist in the development and application of protocols in the following areas:

A. Economic Impact analysis, including (1) benefit/cost analysis, (2) job creation/retention, (3) Gross State Product (GSP) impacts, (4) impacts on economic development, growth of clean energy industries, and changes in economic structure, (5) wholesale energy price suppression, (6) incremental costs, and (7) non-energy impacts.

B. Environmental Impact analysis, including calculations of (1) emissions reductions, (2) benefits from environmental protection programs, (3) monetization of environmental impacts, including valuation of reductions in greenhouse gases (GHG), and (4) use of established protocols for estimating public health and ecosystem related benefits.

Proposals could address one or both areas. The initial term of this contract will be for two years with a maximum funding amount of $1.2 million. After the initial two-year term, the contract may be renewed annually, at NYSERDA's option, for an additional three years at approximately $500,000 per year.

Proposal Submission: Proposers must submit two (2) paper copies of the proposal with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature. In addition to the two (2) paper copies, you must submit a digital copy of your proposal on a CD-ROM in a Portable Document Format (PDF) readable on Microsoft Windows XP systems. Proposals must be clearly labeled and submitted to:

Roseanne Viscusi, RFP 1810
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Helen Kim (hk1@nyserda.org) at (518) 862-1090, ext. 3369. If you have contractual questions concerning this solicitation, contact Venice Forbes (vwf@nyserda.org) at (518) 862-1090, ext. 3507.

No communication intended to influence this procurement is permitted except by contacting Helen Kim (Designated Contact) at (518) 862-1090, ext. 3369. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

*Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist 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

Since 1998, NYSERDA has been responsible for conducting evaluation of the System Benefits Charge (SBC) program. Within NYSERDA, the Energy Analysis unit is organizationally separate from other units that perform project and program management functions related to implementation and administration of the programs.

NYSERDA's evaluation activities continue to expand to meet the myriad, yet distinct, reporting requirements for the **New York Energy $mart**[SM] Program, Energy Efficiency Portfolio Standard (EEPS), Renewable Portfolio Standard (RPS), Regional Greenhouse Gas Initiative (RGGI), Statutory Research & Development (R&D), Federal Congestion Mitigation Air Quality (CMAQ) activities and other programs. The current evaluation structure used by Energy Analysis is divided into the following categories: (1) General Assistance, (2) Measurement & Verification, (3) Process Evaluation, (4) Market Characterization and Assessment, (5) Survey Contractor, and (6) Economic and Environmental Impact (the subject of this solicitation). NYSERDA's evaluation structure is shown in Figure 1.

Currently, macroeconomic, benefit/cost, and cost-effectiveness analyses are conducted by Energy Analysis staff with minimal support from external contractors. Macroeconomic analysis is conducted by staff using Policy Insight, a product of Regional Economic Models, Inc. (REMI). NYSERDA also uses Multi Area Production Simulation software for power system modeling. Given the expansion of NYSERDA's activities and a growing emphasis on climate change, NYSERDA requires innovative and advanced methods of assessing economic and environmental impacts. Assistance is also needed to improve current methods for determining costs of energy efficiency measures and economic benefits to support the total resource cost (TRC) test required for EEPS-funded programs. The contractor(s) selected under this solicitation will support the evaluation of economic impacts (including benefit/cost analysis) and environmental impacts across many NYSERDA programs.

For a description of the programs supported by NYSERDA, please refer to the Internet links provided in Table 1.

Figure 1. NYSERDA's Evaluation Structure

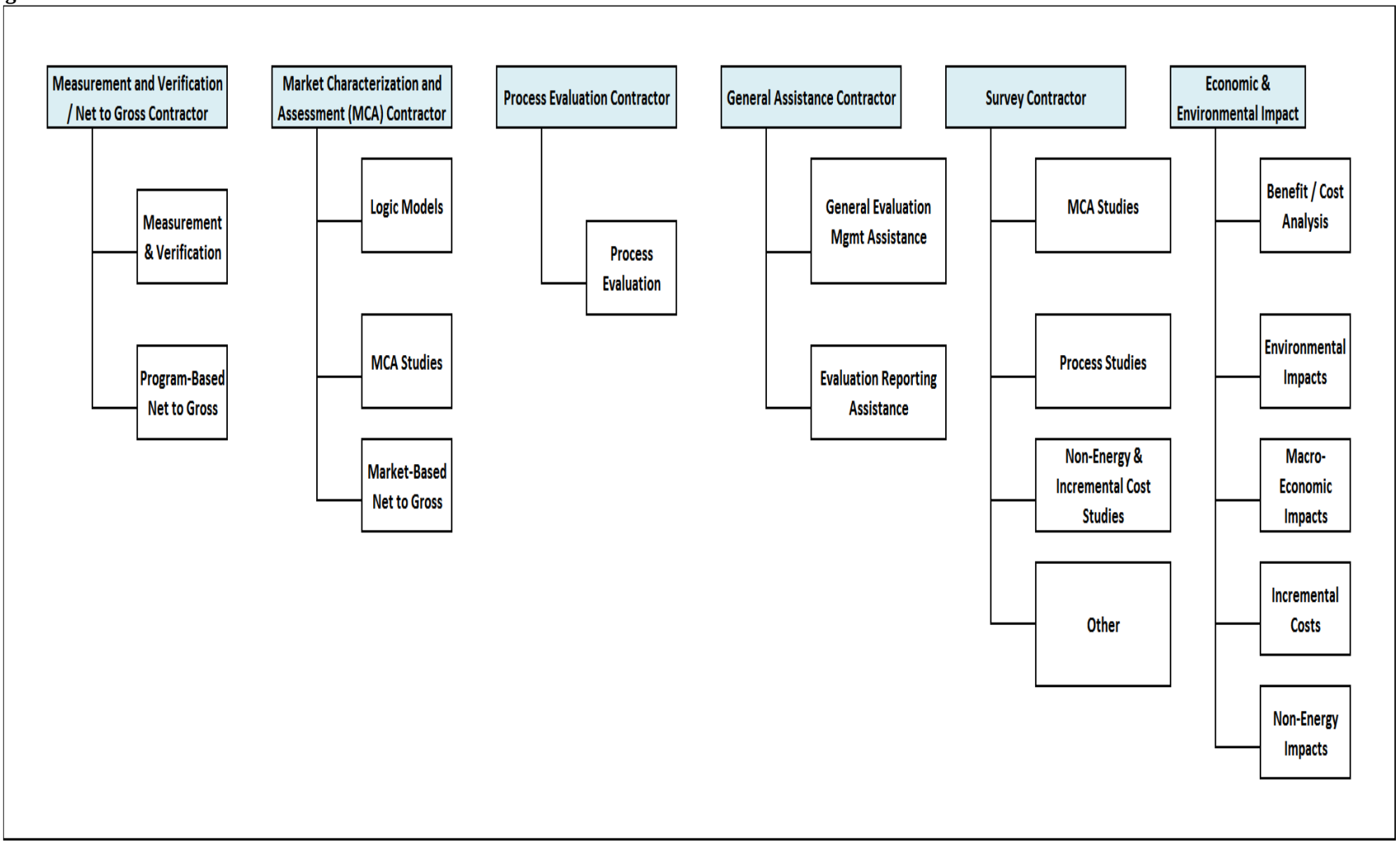

Table 1. Links to Program Descriptions and Evaluation Documents

NYSERDA Evaluation Webpage: www.nyserda.org/Energy_Information/evaluation.asp
System Benefits Charge - 2006 Operating Plan: www.nyserda.org/publications/sbcOperatingPlan2006.pdf - 2009 Supplemental Revision to the SBC Operating Plan: www.nyserda.org/publications/Approval%20of%20Supplemental%20Revision%20to%20SBC%20Operating%20Plan.pdf
Energy Efficiency Portfolio Standard - Background: www3.dps.state.ny.us/W/PSCWeb.nsf/All/06F2FEE55575BD8A852576E4006F9AF7?OpenDocument - Evaluation: www.dps.state.ny.us/EEPS_Evaluation.html
Regional Greenhouse Gas Initiative - Background: www.nyserda.org/RGGI/default.asp - Evaluation and Operating Plan: www.nyserda.org/RGGI/evaluations.asp - New York State Greenhouse Gas Emissions Inventory and Forecast : www.nysenergyplan.com/Supporting_Documents/Greenhouse%20Gas%20Emissions%20Inventory%20&%20Forecasts.pdf
Renewable Portfolio Standard - Background: www.nyserda.org/rps/index.asp - Evaluation and Program Documents: www.nyserda.org/rps/documents.asp
Green Jobs – Green New York - Background: www.nyserda.org/GreenNY/ - Evaluation Plan: www.nyserda.org/GreenNY/default.asp
Congestion Mitigation and Air Quality (CMAQ) Improvement Program - Background: www.fhwa.dot.gov/environment/cmaqpgs/ - New York State Clean Air School Bus Program Solicitation: www.nyserda.org/rps/index.asp
R&D Program - Background: www.nyserda.org/programs/Research_Development/default.asp?i=28

II. Project Requirements

A. Services Requested

Using a teaming arrangement, the selected contractor(s) will work with NYSERDA staff to complete projects on a task work order basis. A separate NYSERDA evaluation contractor will perform the measurement and verification (M&V) work associated with quantifying energy savings from energy efficiency programs. The contractor(s) selected through this RFP 1810 will be assigned the task of evaluating various economic and environmental impacts across NYSERDA's portfolio of programs. These programs include but are not limited to: electric energy efficiency, natural gas and fuel energy efficiency, R&D, transportation congestion, alternative fuel vehicles, workforce development, distributed generation, renewable energy, and programs that target carbon reduction and mitigation.

For economic impact analysis, evaluation activities may include, but are not limited, to the following:

1. Estimating program impacts on job creation/retention, Gross State Product, economic development and growth of clean energy industries, growth in markets for clean energy technologies and products, and changes in economic structure.

2. Suppression of wholesale energy prices.

3. Estimating non-energy impacts that affect life cycle costs (such as changes in operations & maintenance (O&M) costs, water use, waste, and labor costs) that accrue to program participants.

4. Estimating incremental costs for selected prescriptive and custom energy efficiency measures for both normal replacement and early replacement scenarios.

5. Application of the TRC test and development of other cost-effectiveness criteria and tests that capture all associated costs and benefits, including environmental impacts, increased reliability, increased performance, wholesale energy price suppression, and avoided transmission and distribution (T&D) infrastructure costs.

6. Calculating the cost-effectiveness of R&D programs.

7. Assessment of economic impacts on low-income and environmental justice communities.

For environmental impact analysis, evaluation activities may include, but are not limited to the following:

1. Development and use of factors for reporting reductions in greenhouse gas (GHG) emissions and other pollutants resulting from energy efficiency and other NYSERDA programs.

2. Development and use of protocols for estimating net energy and environmental benefits associated with programs that target environmental protection, such as forest management, waste management, water management, carbon sequestration, and programs designed to achieve emissions reductions from industrial processes such as cement production.

3. Development and use of life cycle analysis methodologies, such as well-to-wheels analysis in the case of fuels used for transportation and life cycle fuel carbon intensity for forest management practices.

4. Monetization of environmental impacts, including valuation of carbon reduction.

5. Use of established protocols for monetization of health and ecosystem related benefits related to energy and environmental initiatives.

6. Assessment of environmental impacts on low-income and environmental justice communities.

The proposal could address either the economic impact analysis component, or the environmental impact analysis component, or both. Proposals that address both components could be awarded more points during RFP scoring (see Section V: Proposal Evaluation).

B. General Requirements

The selected contractor shall:

1. Be aware of, or rapidly become familiar with, the broad slate of energy related programs, goals and objectives supported by NYSERDA and gain an understanding for the requirements and timelines for evaluating these programs.

2. Cooperate with NYSERDA's other specialty evaluation contractors and assume responsibility for timely completion of the deliverables listed in the **Services Requested** section of this RFP.

3. Keep NYSERDA informed weekly by telephone, in-person meetings or e-mail on the progress of the evaluation effort. Meetings with NYSERDA staff will be required as needed.

4. Be proactive and flexible in order to meet NYSERDA's changing evaluation needs.

In all circumstances, the selected contractor's contribution to NYSERDA's program evaluation efforts shall be based on the following principles: (1) objectivity, fairness, and balance in terms of the types of data collected, and (2) use of sound methodologies, credible data and analysis, and adherence to the highest professional standards. All work shall be properly documented, maximizing transparency of methods, data manipulations, analyses, assumptions, and data sources.

C. Reporting Requirements

The selected contractor shall provide:

1. Monthly reports of all activities pertaining to the contract. These status reports shall indicate the specific activities underway, progress made on those efforts, and hours expended by each team member for each activity.

2. Monthly budget tracking spreadsheets, including labor hours of each team member, for the period covered in the contractor's invoice submitted to NYSERDA for payment.

3. Comprehensive reports on any research activity as it is completed and as directed by NYSERDA. These reports, if requested, shall provide all supporting information that NYSERDA will need to inform future decision making.

4. Quarterly and annual summaries of activities, analyses, and results to be incorporated into NYSERDA's quarterly and annual evaluation reports and as directed by NYSERDA. The content and structure of this reporting shall be specified in discussions with NYSERDA.

5. Other reports as requested by NYSERDA.

D. Deliverables

Key deliverables to be completed by the selected contractor may include, but not be limited to:

- Monthly status reports.
- Monthly budget spreadsheets.
- Quarterly and annual summaries of activities, analyses, and results.
- Work scopes, schedules, and budgets developed in response to task work orders issued by NYSERDA during the agreement period.
- Draft and final work plans.
- Draft and final data collection instruments and analytical approaches, where applicable.
- Memos and analyses designed to inform NYSERDA staff on the progress of contractor activities.
- Draft and final reports.

E. Available Funds and Contract Period

The initial term of this contract will be for two years with a funding amount of $1,200,000, or $600,000 per year. It is anticipated that approximately 2/3 of this funding amount will be allocated to analysis of economic impacts and 1/3 will be allocated to analysis of environmental impacts. The proportional allocation of funding between economic and environmental impact analyses may change in the future,

depending on NYSERDA's evolving needs, and the selected contractor(s) must be willing to accommodate any such reallocation. After the initial two-year term, the contract(s) may be renewed annually, at NYSERDA's option, for an additional three years at approximately $500,000 per year (total).

F. NYSERDA's Responsibility

The NYSERDA Project Manager will be responsible for overseeing and managing all tasks undertaken by the selected contractor(s), including but not limited to: issuing task work orders; reviewing, commenting and approving work scopes and subsequent deliverables; coordinating with program staff and interested external stakeholders; promoting coordination between the selected contractor and NYSERDA's other evaluation contractors; approving invoices promptly; and reviewing and preparing work products for inclusion in NYSERDA's program evaluation and status reports.

III. Proposer Qualifications

A. Economic Impacts

For economic impact analysis, the proposer must demonstrate capabilities in the following areas:

1. Benefit/Cost Analysis: benefit/cost analysis of public benefits programs, defining baseline conditions, use of appropriate discount rates and time horizons, life cycle analysis, and methods described in the California Standard Practices Manual and the Environmental Protection Agency (EPA) Guidelines for Preparing Economic Analysis.

2. Macroeconomic Impacts: evaluating the state-level economic impacts of various types of programs, including clean energy, product development, workforce development, market development, and manufacturing assistance; experience with input-output models; determining job creation/retention and impact on GSP; calculating wholesale energy price suppression due to reduced demand for energy; and calculating impact of lower energy bills on the GSP.

3. Industrial growth impacts: evaluating the impacts of R&D and other program activities on the development and growth of targeted clean energy industries, growth of markets for clean energy technologies and products, and changes in economic structure.

4. Non-Energy Impacts: estimating changes in O&M costs, water use, waste, labor costs, and similar impacts from energy efficiency programs.

5. Incremental Costs: using secondary and primary data to develop protocols for estimating incremental cost of prescriptive and custom energy efficiency measures for both normal replacement and early replacement scenarios.

6. Low-income Sector: determining the impact of efficiency programs on the low-income sector.

B. Environmental Impacts

For environmental impact analysis, the proposer will need to demonstrate capabilities in the following areas:

1. Emissions Factors: developing factors or other approaches to estimate net (*i.e.*, taking into account baseline assumptions) avoided emissions from electricity and fossil fuel savings, alternative fuel vehicles, carbon sequestration, distributed generation, alternative industrial processes, and renewable energy generation (including anaerobic digester gas).

2. Total Life Cycle Analysis: developing protocols to estimate life cycle economic and environmental impacts (*e.g.*, well-to-wheel analysis in the case of fuels for transportation) that can feed into benefit/cost analysis of energy efficiency and other programs.
3. Monetization: developing factors for monetizing environmental impacts, including valuation of reductions in GHGs, NOx, SO2, mercury, and particulate matter, and associated health and societal benefits using established protocols.
4. Environmental Justice: developing evaluation techniques for measuring program impacts on environmental justice communities.

C. Contract Management

The proposer shall:

1. Demonstrate that it has a team that is directly applicable to and consistent with the evaluation needs of this RFP. The primary contractor shall have full responsibility for maintaining necessary communication with NYSERDA and for ensuring that all deliverables applicable to the contract meet quality standards and are provided to NYSERDA according to an approved time-line.

2. Demonstrate capability to work within a teaming environment with other evaluation contractors, thereby leveraging data collection and avoiding duplication of effort. Past experience demonstrating the knowledge and organizational skills needed to conduct such coordination shall be included and summarized in the proposal.

D. Technical Requirements

1. MS Office, MS Access.

2. Statistical software expertise with SPSS, STATA, or SAS. Must be able to demonstrate expertise in appropriate statistical analyses and interpretation of various statistical tests associated with survey data.

3. For economic impact analysis, demonstrate expertise in macroeconomic software such as Policy Insight.

4. Ability to effectively communicate technical information concisely and accurately, taking into account uncertainty/limitations surrounding data sources and analytical methodologies.

IV. Proposal Requirements

A. Submission

Proposers must submit two (2) copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this RFP. In addition to the two (2) hard copies, you must submit a digital copy of your proposal on a CD-ROM in a Portable Document Format (PDF) readable on Microsoft Windows XP systems. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist may be returned.** Faxed or e-mailed copies will not be accepted.

The Intent to Propose form (Attachment C of this RFP) may be submitted, but is not required.

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

Unnecessary attachments beyond those sufficient to present a complete, comprehensive and effective response will not influence the evaluation of the proposal. Proposers will not be reimbursed by NYSERDA for any costs associated with preparation of their proposals. Each page of the proposal should state the name of the proposer, the RFP number, the page number, and formatted with 1-inch margins (top, bottom, left and right) and 11-point font. The proposal must be in the following format:

Proposal Checklist (Attachment A)
Section 1: Introduction and General Information
Section 2: Statement of Work/Approach
Section 3: Management Structure
Section 4: Qualifications, Experience, and References to Similar Projects
Section 5: Potential Conflict of Interest
Section 6: Project Personnel and Rate Form (Attachment D)
Appendices

B. Proposal Explanation

Section 1: Introduction and General Information

(Maximum of 3 pages if proposing for economic impact only or environmental impact only; 6 page limit if proposing for both.)

Proposers shall:

- Clearly indicate whether the proposal submission is for economic impact, environmental impact, or both.
- Identify key information about its organization and other organizations that are part of the proposer's team.
- Summarize its understanding of the objectives and requirements of this RFP and explain how it is uniquely qualified to perform each activity as specified in Section III: Proposer Qualification of this RFP.

Section 2: Statement of Work/Approach

The selected contractor will be working on a task work order basis. Each project will be developed with input from NYSERDA staff. Given the uncertainty in the specifics of the projects, bidders are asked to provide a proposed approach for evaluating certain hypothetical projects described below. If the proposal is for economic impacts, Scenarios 1 and 2 must be addressed. If the proposal is for environmental impacts, Scenario 3 must be addressed. If the proposal is for both impacts, all three scenarios must be

addressed in the proposal. For **each** scenario addressed in the proposal, the proposer must fill out the Contract Pricing and Proposal Form (CPPF) (Attachment E).

Project Scenario # 1: Economic Impacts. Describe the approach the proposer would use to develop protocols for estimating the economic impacts, including GSP and job impacts, of the Green Jobs –Green New York (GJGNY) Program, including the Workforce Development component. Information about the GJGNY program can be found at www.nyserda.org/GreenNY. This website contains operating plans for various GJGNY activities. (Maximum length 6 pages, excluding the CPPF.)

Project Scenario # 2: Non-Energy Impacts. Describe the approach the proposer would use to develop protocols for estimating the non-energy impacts of NYSERDA's C/I Green Buildings Services. Identify a list of potential impacts that accrue to the site owner and site occupants. For each non-energy impact, provide a description, method of measuring or quantifying, and method of developing a monetized value. Details of the Green Buildings Services can be found at www.nyserda.org/Programs/Green_Buildings/Default.asp. (Maximum length 6 pages, excluding the CPPF.)

Project Scenario #3: Environmental Impacts. Describe the approach the proposer would use to estimate reductions in GHG emissions and criteria pollutants (designated in the Clean Air Act) from a Combined Heat and Power program under which funding is provided for systems using a variety of fuel inputs (*e.g*., natural gas, digester gas, landfill gas, and wood) to generate electricity and heat. For each GHG and criteria pollutant, provide an approach for calculating the reductions and approach for developing a monetized value. Examples of projects funded by NYSERDA can be found at http://chp.nyserda.org. (Maximum length 6 pages, excluding the CPPF.)

Section 3: Management Structure

(Maximum of 3 pages, if the proposal is for economic impact only or for environmental impact only; 6 page limit if the proposal is for both.)

Proposers shall:

- Identify all team members, including the Principal or Lead contact, who will be responsible for ensuring that projects are completed on time and of good quality.
- Provide the names and addresses of subcontractors and names of individuals associated with the subcontractor.
- Provide a clear description of the roles, responsibilities, and availability of each key person and include an organization chart illustrating these roles and responsibilities.
- Designate one team member who will serve as the day-to-day contact with the NYSERDA Project Manager.
- Discuss how the proposer will manage and maintain flexibility to accommodate potentially short notification times and tight deadlines.
- Describe how the proposer will coordinate the work of the economic impact team with that of the environmental impact team.

Section 4: Qualifications/Experience/References to Similar Projects

(Maximum of 3 pages if the proposal is for economic impact only or for environmental impact only; 6 page limit if the proposal is for both.)

Proposers shall:

- Describe specific experience related to the activities described in Section III (Proposer Qualification) of this RFP.
- List and briefly describe relevant projects that have been completed by the proposer/proposing team. Indicate which team members were responsible for each project described. Resumes of all team members must be provided in an appendix.
- Indicate the name and telephone number of at least three references for whom your organization has completed similar projects.

Section 5: Potential Conflict of Interest

Identify the nature of any potential conflicts of interest among team members in providing services to NYSERDA under this RFP. Fully discuss possible conflicts of interest, actual and perceived, which could arise in connection with performance by team members of the proposed contract. Describe how your firm would resolve conflicts of interest.

In the event NYSERDA determines that a team member may have a conflict of interest or the appearance of a conflict of interest, NYSERDA may: (1) take this into consideration in evaluating the proposal; (2) exclude the proposer from consideration for an award; (3) adjust the scope of work to avoid the conflict or appearance of conflict; or (4) negotiate other appropriate actions with the team member to avoid the conflict or appearance of conflict.

Section 6: Cost Proposal

Using Attachment D, Project Personnel and Rate Form, please identify all individuals who will perform work under the **Services Requested** section under an agreement with NYSERDA (including all subcontractor personnel).

Attach documentation to support the indirect multiplier(s) included in the personnel rates as follows:

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

The indirect rate must include all costs associated with providing the requested services with the exception of travel expenses which will be cost reimbursable. 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.

Appendices

Materials to be submitted include:

1. Resumes of key personnel that will complete the tasks described in the Statement of Work, detailing education, publications, positions held and time in position (maximum of 2 pages per resume).
2. Letters of commitment from subcontractors.
3. Documentation of indirect multipliers for personnel rates.

4. Disclosure of Prior Findings of Non-responsibility (Attachment B of this RFP).
5. NYSERDA Contracts Awarded (if applicable).
6. Prior and/or Competing Proposals (if applicable).
7. Exceptions to Terms & Conditions (if applicable).
8. Indictment/Conviction of Felony (if applicable).

V. Proposal Evaluation

All proposals received by the due date and meeting the requirements established in this RFP will be reviewed and ranked by a Technical Evaluation Panel (TEP) consisting of NYSERDA staff and selected outside reviewers. Final rankings and the contract award will be based on the following criteria and weighting factors:

<u>1. Responsiveness to the Work Scope of the RFP (25%)</u>

- Does the proposer present a sound approach for accomplishing the objectives of this proposal?
- Has the proposer demonstrated a clear understanding of the goals and objectives of this RFP?
- Are the responses to the project scenarios thorough, specific, and consistent with the stated objectives?
- Is the proposal well-organized and easy to understand?

<u>2. Relevant Experience and Qualifications (25%)</u>

- Are the education and experience of key personnel relevant to the needs of the RFP?
- Does the proposing team have experience in conducting work outlined in the RFP?
- What is the quality of the project staff's performance on past projects related to the proposed work?

<u>3. Management Plan (20%)</u>

- Does the proposal address both the economic and environmental components?
- Does the proposer demonstrate the ability to complete assigned project in a timely manner?
- Are appropriate management and coordination strategies articulated?
- Is the management structure, including the staffing plan, clear and well-defined?
- Is there one team member designated as the day-to-day NYSERDA contact?
- Does the proposer appear to have the flexibility to accommodate potentially short notification times and tight deadlines, as well as evolving needs under the task work order arrangement?
- Do appendices include resumes and letters of commitment?

<u>4. Cost (20%)</u>

- Are hourly rates, overhead rates, and total hours reasonable and appropriate?
- Are the proposer's costs competitive compared to other proposals?

<u>5. Other (10%)</u>

- Is the proposal well organized, well written and complete?
- Does the proposal offer economic benefits in New York State? *E.g.*, an office in New York, hiring of New York employees, *etc.*

VI. General Conditions

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public

access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 www.nyserda.org/about/nyserda.regulations.pdf. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

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

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

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

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

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

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

Tax Law Section 5-a - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of $100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. *See,* ST-220-TD (available at http://www.tax.state.ny.us/pdf/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.

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

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

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

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VII. Attachments

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

ATTACHMENT A - RFP No. 1810 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) __ Yes __ No
(NYSERDA anticipates considering only specifically listed exceptions in negotiations.)

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

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

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

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

Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? __ Yes __ No
(if yes, explain on separate page)

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

Introduction Statement of Work/Approach Management Structure Qualifications, Experience and References to Similar Projects Potential Conflict of Interest Cost Proposal Appendices: Resumes of Key Personnel Summaries of Relevant Work Products Letters of Commitment	Indictment/Conviction of Felony (if applicable) NYSERDA Contracts Awarded (if applicable) Prior and/or Competing Proposals (if applicable) Exceptions to Terms & Conditions (if applicable) Completed and Signed Contract Pricing Proposal Form(s) Disclosure of Prior Findings of Non-responsibility Form

AUTHORIZED SIGNATURE & CERTIFICATION

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

Signature	Name
Title	Organization
Phone	

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

Attachment B: RFP 1810
Disclosure of Prior Findings of Non-responsibility Form

(Mandatory)

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

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

If you answered yes, please provide details below.

Government Agency or Authority:

Date of Termination or Withholding of Contract:

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

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

By:_____ Date:_____
Signature

Name:_____ Title:_____

Attachment C: RFP 1810

INTENT TO PROPOSE

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

Roseanne Viscusi - RFP No.1810
New York State Energy Research and Development Authority
17 Columbia Circle, Albany, NY 12203-6399
fax (518) 862-1091 e-mail rdv@nyserda.org

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

Please check all that apply:

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

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

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

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

ATTACHMENT D

PROJECT PERSONNEL & RATES

! DIRECT PERSONNEL COSTS:

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

! MULTIPLIER (Including Profit/Fixed Fee):

! Profit / Fixed Fee: _____%

! Multiplier _____

! DIRECT NON-PERSONAL SERVICE COSTS:

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

Travel

ATTACHMENT E

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

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

This proposal reflects our best estimates as of this date, in accordance with the instructions to proposers.		
Typed Name and Title:	Signature:	Date:
Has any executive agency of the U.S. government performed any review of your records in connection with any prime contract or subcontract within the past twelve months? ____ Yes ____ No If yes, identify:		

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

INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE

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

A. GENERAL

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

B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL

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

1a. DIRECT MATERIALS - PURCHASED PARTS

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

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

1b. OTHER DIRECT MATERIALS

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

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

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

3. DIRECT LABOR
   a. Commercial Enterprises
      (1) Attach supporting schedules showing:
         - Each category or type of labor being estimated
         - Applicable labor rates per hour (straight-time)
      (2) Explain the method used for computing the rates (i.e., actual of an individual, actual average of a category or other grouping, etc.) Also identify any proposed labor escalation and the bases for it.

   b. Educational Institutions
      Provide the following for each calendar year of the contract:
      (1) For individuals not on an "actual hours worked" basis:
         - individual's name
         - annual salary and the period for which the salary is applicable (preferably in weeks)
         - the proportionate time to be charged to this effort.
      (2) For individuals who maintain time records as the basis for charging costs, supply the detail as requested in Instructions 3(a)(1)

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

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

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

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

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

9. SUBCONTRACTORS/CONSULTANTS

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

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

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

ATTACHMENT F

RFP1810 – SAMPLE AGREEMENT

New York State Energy Research and Development Authority

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

This Agreement consists of this form plus the following documents:

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

9. ACCEPTANCE

By _____

Name _____

Title

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By_____

Jeffrey J. Pitkin

Treasurer

STATE OF)
) SS.:
COUNTY OF)

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

Notary Public

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

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

Budget: The Budget set forth in individual Task Orders consistent with the rates set forth in Exhibit A hereto.

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

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

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

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

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

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

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

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

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

Statement of Work: The Statement of Work attached hereto as Exhibit A, including Work defined in individual Task Orders.

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

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

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

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

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

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

Article II

Performance of Work

Section 2.01. Manner of Performance. Subject to the provisions of Article XII hereof, the Contractor shall perform all of the Work described in the Statement of Work, or cause such

Work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Contractor shall perform the Work in accordance with the current professional standards and with the diligence and skill expected for the performance of work of the type described in the Statement of Work. The Contractor shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the Work in accordance with this Agreement.

Section 2.02. Project Personnel. It is understood and agreed that the "Contact Person" identified in Item 3 of page one of the Agreement shall serve as Project Director and as such shall have the responsibility of the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. NYSERDA shall be notified in writing of any change of Project Director by the Contractor.

Article III

Deliverables

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

Article IV

Payment

Section 4.01. Compensation. In consideration for this Agreement and as full compensation for the costs for the performance of all Work and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor the actual cost incurred as set forth in individual Task Order Budgets up to a maximum amount set forth in Item 7 of page one of the Agreement subject to the provisions and restrictions contained herein. Such amount shall be paid only to the extent that costs are incurred by the Contractor in performance of the Work in accordance with the provisions of this Agreement, the Budget and the following:

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

Section 4.02. Progress Payments. The Contractor may submit invoices for progress payment no more than once each month or no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts

Payable". Such invoices shall make reference to the Agreement number shown in Item 1 of page one of the Agreement. Invoices shall set forth total project costs incurred. They shall be in a format consistent with the cost categories set forth in the Task Order Budget. Invoices shall provide reasonable documentation for the above to provide evidence of costs incurred.

The Contractor shall be notified by NYSERDA in accordance with Section 5.04.4 (b)(2) of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, of any such information or documentation which the Contractor did not include with such invoice.

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

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

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of the Final Report and all other deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Item 7 of page one of the Agreement.

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

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

Section 4.07. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor hereunder is the amount shown in Item 7 of page one the Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.08. Audit Adjustment. 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 or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling under $25,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action which would impair its rights thereunder. The Contractor shall not assign, cancel or terminate any Subcontract without prior written notification to the Contract Administrator as long as this Agreement remains in effect.

Article VI

Schedule

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

Section 6.02. Acceptance of Work. The completion of the Work shall be subject to acceptance by NYSERDA in writing of all deliverables as defined in Exhibit A, Statement of Work.

Article VII

Force Majeure

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

Article VIII

Technical Data

Section 8.01. Rights in Technical Data

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

(1) NYSERDA shall have:

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

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

(2) The Contractor shall have:

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

(ii) the right to use for its private purposes subject to patent, or other provisions of this Agreement, Contract Data it first produces in the performance of this

Agreement provided the data requirements of this Agreement have been met as of the date of the private use of such data.

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

Article IX

Warranties and Guarantees

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

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

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

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

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

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

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

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

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

Article X

Indemnification

Section 10.01. Indemnification. The Contractor shall protect, indemnify and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to the performance of this Agreement. The obligations of the Contractor under this Article shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

Article XI

Insurance

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

(a) name or be endorsed to cover NYSERDA, the State of New York and the Contractor as additional insureds;

(b) provide that such policy may not be cancelled or modified until at least 30 days after receipt by NYSERDA of written notice thereof; and

(c) be reasonably satisfactory to NYSERDA in all other respects.

Section 11.02. Type of Insurance. The type and amount of insurance required to be maintained under this Article are as follows:

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 Policy; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Article and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event any

policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

Article XII

Stop Work Order; Termination

Section 12.01. Stop Work Order.

(a) NYSERDA may at any time, by written Order to the Contractor, require the Contractor to stop all, or any part of, the Work called for by this Agreement for a period of up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an Order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the order during the period of work stoppage consistent with public health and safety. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

(i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or

(ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

(b) If a Stop Work Order issued under this Section is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume Work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

(i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Agreement, and

(ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the

facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

(c) If a Stop Work Order is not cancelled and the Work covered by such order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

(d) Notwithstanding the provisions of this Section 12.01, the maximum amount payable by NYSERDA to the Contractor pursuant to this Section 12.01 shall not be increased or deemed to be increased except by specific written amendment hereto.

Section 12.02. Termination.

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon 30 days prior written notice to the Contractor. In such event, compensation shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Payment and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor).

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

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

Article XIII

Independent Contractor

Section 13.01. Independent Contractor. The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers,

employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

Article XIV

Compliance with Certain Laws

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

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

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

Article XV

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

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

(b) The Contractor shall not use NYSERDA's corporate name, logo, identity, any affiliation, or the service mark **New York Energy $mart℠** , and any related logo, without NYSERDA's prior written consent.

Section 15.02. Notices.

(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 C

REVISED 9/06

STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

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

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

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

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

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

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

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

6. CONFLICTING TERMS. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit B, the terms of this Exhibit B shall control.

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

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

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

NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

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

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

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

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

EXHIBIT D

PART 504

PROMPT PAYMENT POLICY STATEMENT

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

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

(1) under the Eminent Domain Procedure Law;

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

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

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

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

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

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

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

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

(1) selling materials, equipment or supplies or leasing property or equipment

to the Authority pursuant to a contract;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 504.4 Payment procedures.

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

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

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

(2) any defects in the invoice; and

(3) suspected improprieties of any kind.

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

(d) If the Authority fails to notify a contractor of a defect or impropriety within the fifteen calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the contractor. If the Authority

fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the payment due date shall be calculated using the original date of receipt of an invoice.

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

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

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

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

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

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

Section 504.6 Interest eligibility and computation. If the Authority fails to make prompt payment, the Authority shall pay interest to a contractor on the payment when such interest

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

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

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

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

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

Section 504.11 Court action or other legal processes.

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

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by the Authority after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be

determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

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

EXHIBIT E

PROJECT PERSONNEL & RATES

! DIRECT PERSONNEL COSTS:

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

! MULTIPLIER (Including Profit/Fixed Fee):

! Profit / Fixed Fee: _____%

! Multiplier _____

DIRECT NON-PERSONAL SERVICE COSTS:

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

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