NEW YORK CITY PRIVATE FLEET PROGRAM

Program Opportunity Notice (PON) No. 1213

PROPOSALS DUE: August 19, 2008 by 5:00 PM*

The New York State Energy Research and Development Authority (NYSERDA), in partnership with the New York City Department of Transportation (NYC DOT), announces the **New York City Private Fleet Program** (the "Program"). This public-private partnership is designed to encourage the use of alternative-fuel vehicles (AFVs) and emission controls by private-sector companies and non-profit entities operating vehicles in New York City.

This PON solicits proposals for projects that maximize the environmental, energy, and economic benefits of accelerating the introduction of AFVs, corresponding infrastructure for AFVs and advanced diesel emission controls into private fleets in New York City. Priority will be given to projects that: result in the greatest emissions reduction per Program dollar; reduce the greatest amount of petroleum fuel per Program dollar; leverage private and public cost-sharing for infrastructure development and vehicle acquisition; represent a planned approach to introduce AFVs and/or emission controls into the proposer's fleet; and offer unique and innovative partnerships and approaches to meet critical needs and priorities.

Approximately **$6 million** is available through this PON to be awarded on a competitive basis.

Category A: NYSERDA will fund up to:

- 50% of the incremental cost[1] of acquiring or converting one or more new, dedicated-compressed natural gas (CNG) or electric light-duty vehicles (gross vehicle weight ≤ 14,000 pounds);
- 80% of the incremental cost for acquiring one or more new, dedicated-CNG, electric, or hybrid-electric, medium- and/or heavy-duty vehicles (gross vehicle weight > 14,000 pounds);
- 80% of the cost of converting one or more medium- and/or heavy-duty vehicles to dedicated-CNG use or to dual-fuel technology optimized to use 80% CNG; and
- 50% of the cost for equipment and installation of CNG refueling equipment or electric vehicle charging equipment up to a maximum of $300,000 per project (Total combined amount awarded under the infrastructure category for all projects awarded funding in this round will not exceed $600,000).

Category B: NYSERDA will fund up to:

- 80% of the cost of purchasing and installing California Air Resource Board (CARB) or Environmental Protection Agency (EPA) verified/certified emission reduction equipment on medium and heavy duty diesel vehicles.

Proposal forms are included in this PON. Ten (10) applications with a completed and signed Proposal Checklist (**Attachment 1**) must be attached to the front of each copy, one of which must contain an original signature, clearly labeled and submitted to:

Roseanne Viscusi, PON No. 1213
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, New York 12203-6399

Program questions can be directed to **Patrick Bolton,** at **(866) - NYSERDA, ext. 3322** or **ppb@nyserda.org.**
Contractual questions may be directed to **Doreen Darling** at **ext. 3216** or **djd@nyserda.org.**

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

No communication intended to influence this procurement is permitted except by contacting Patrick Bolton(Designated Contact) at (518) 862-1090, ext.3322 or ppb@nyserda.org. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

[1]The incremental cost of a vehicle is the additional cost for purchasing an alternative-fuel or electric vehicle compared to the cost of a petroleum-powered vehicle of comparable size and style.

Periodically, the New York State Legislature will provide tax credits for alternative-fueled vehicles. Proposers may want to check the New York State Tax Law Sections 187-b, 210(24), 606(l)(1) and 1115(p) to see if they are available. Federal tax incentives may also apply (see Internal Revenue Code §30 and §179A.)

I. INTRODUCTION

The Program helps private sector companies and non-profit entities operating vehicles within the five boroughs of New York City to acquire alternative fuel vehicles (AFVs) and advanced diesel emission control devices (DECD). NYSERDA, in partnership with the New York City Department of Transportation (NYC DOT), seeks projects that will maximize the environmental, energy, and economic benefits of accelerating the introduction of these vehicles, refueling infrastructure, and emission controls into private fleets in New York City. This public-private partnership is designed to encourage the use of AFVs by private-sector companies and non-profit entities operating vehicles in New York City. The Program is funded utilizing Federal Congestion Mitigation and Air Quality (CMAQ) funds. These funds are awarded to projects by NYSERDA on a competitive basis for up to 50% of the incremental cost of acquiring or converting new light-duty (gross vehicle weight < 14,000 pounds) natural gas or electric vehicles. Light-duty, hybrid-electric vehicles are ineligible. This funding can also be used to pay up to 80% of the incremental cost for new or converted medium and heavy-duty (gross vehicle weight > 14,000 pounds) dedicated CNG, dual-fuel (80% CNG), electric, or hybrid-electric vehicles. Up to 50% of the cost of equipment and installation for CNG refueling or electric vehicle charging stations (**Category A**) and 80% of the cost of purchasing and installing CARB or EPA verified/certified diesel emission reduction equipment on medium and heavy duty diesel vehicles is also eligible for funding (**Category B**).

II. ELIGIBILITY PROPOSERS FOR PROGRAM - BOTH CATEGORY A & B

Proposer must be a private-sector (non-governmental) company/organization or a non-profit entity, owning or leasing a fleet that is primarily operated in New York City. Federal, State, and municipal government agencies are ineligible to apply for funds. Gas corporations, electric corporations, alternative-fuel providers and their affiliates are eligible to apply only for medium and heavy-duty vehicle projects. Ineligible entities cannot apply on behalf of an end-user eligible fleet.

ELIGIBLE PROJECTS FOR PROGRAM - CATEGORY A

Eligible project activities include purchasing new, light-duty dedicated-CNG or electric vehicles; purchasing new, medium- or heavy-duty electric, hybrid-electric, dedicated-CNG, or dual-fuel vehicles (80% CNG); converting new or currently-owned medium- and/or heavy-duty vehicles to electric, hybrid-electric, dedicated-CNG or dual-fuel technology (80% CNG); and purchasing and installing corresponding fueling or recharging infrastructure. All light-duty vehicles must be new AFVs from original equipment manufacturers (OEMs). All medium- and heavy-duty vehicles must be new AFVs from OEMs, or in the case of conversions, must be less than five years old or have accrued less than 50,000 miles at the time of proposal. Alternative to the age and mileage requirement, the Proposer can provide acceptable proof and written certification that vehicles funded under the Program will remain in service for a period of at least six years with a presumed remaining life of at least ten years. Vehicles meeting the age and milage requirements do not need to provide this information. All conversion technology must have the proper approvals from the U.S. EPA.

All light-duty vehicles, defined as having a gross vehicle weight (GVW) of less than or equal to 14,000 pounds, must be dedicated to run only on electricity or CNG. Medium- and heavy-duty vehicles, defined as having a GVW of greater than 14,000 pounds, may be dedicated-CNG, dual-fuel (using an 80%/20% mix of CNG and diesel), battery-powered electric, or hybrid-electric.[2]

Vehicles must have been manufactured primarily for use on public streets, roads, and highways and must be sold under standard commercial terms. All vehicles must be owned or leased by the Proposer. Leases must be for the useful life of the vehicle or a minimum of seven years for medium or heavy-duty vehicles. Vehicles must be motor vehicles registered with New York State and authorized to operate primarily in New York City. Vehicles may be owned or leased by a private-sector company Proposer that is under an operating agreement with an otherwise ineligible entity (i.e. local school district). Vehicles must be used in the manner and location as stated in the proposal

[2]Eligible hybrid-electric vehicles as defined by Internal Revenue Code §30 and §179A.

for the useful life of the vehicle. Non highway capable vehicles are not eligible for the Program.

At least 75% of the annual miles accrued on the vehicle(s) included in the proposal must be within New York City. Proof that vehicles meet this requirement may be requested by NYSERDA. Preference will be given to those vehicles that are also housed in New York City.

Purchase of vehicles, which is defined as the execution of a purchase order, lease or contract, or conversion of vehicles must take place after August 19, 2008 (Proposal Due Date). Vehicles must be used in the manner and location as stated in the proposal for the useful life of the vehicle or the award may be recaptured, requiring repayment of award funds to NYSERDA. The amount recaptured will be determined by NYSERDA based on the amount of time the vehicle(s) is in service in the manner described in the proposal.

Proposers may apply for funding for up to 50% of the incremental cost of purchasing one or more light-duty vehicles that use a dedicated alternative source of propulsion energy restricted to CNG or battery electric vehicles. NYSERDA may fund up to 80% of the incremental cost of purchasing one or more medium- and/or heavy-duty vehicles or the cost of converting one or more medium- or heavy-duty vehicles to dedicated-CNG, dual-fuel technology (80% CNG), electric, or hybrid-electric.

Eligible projects may also include costs associated with CNG fueling equipment or electric vehicle recharging equipment that will be used to establish a new station, or may be used to add equipment to an existing station. If the equipment is being added to an existing station, there must be a demonstrated need for increasing the fueling or recharging capacity of the station due to an expansion of AFVs in the Proposer's fleet. The Proposer's justification for increasing the fueling capacity of the station should be provided in the proposal. Projects that request funding for compressed natural gas fueling equipment must also apply for natural gas vehicles that are eligible under this Program. Likewise, proposals that request funding for electric vehicle charging equipment must also request funding for Program-eligible electric vehicles. NYSERDA will fund up to 50% of the cost of equipment and installation of compressed natural gas refueling equipment or electric vehicle charging equipment, up to a maximum award of $300,000.

The incremental cost of the vehicle is the additional cost for purchasing an alternative-fuel vehicle compared to the cost of a gasoline or diesel-powered vehicle of comparable size and style. A single proposer can receive a maximum of $1.25 million of the funds available for this round of the Program. A single proposer can receive a maximum award of $300,000 for infrastructure project funding available for this round of the Program. The total combined amount awarded for all infrastructure projects for all Proposers will not exceed $600,000 in this round of the Program. NYSERDA reserves the right to award all or part of the funds requested. Additional funding rounds are expected in the future.

Recipients will be required to provide milestone reports based on the proposed schedule of equipment procurement. Recipients will also be required to provide brief semi-annual reports for three years following the introduction of the funded, equipment. Such reports should include data on the operation of the vehicles including: fuel usage, maintenance events and costs, problems and concerns, and emissions test results (if available).

Funds awarded through the Program should be committed (purchase orders or contracts executed) within nine (9) months of the date of award. Funds not committed by that date may be reallocated to other projects which were not initially awarded funds, or may be added to funds available in subsequent rounds of the Program.

In cases where one private or non profit entity operates or controls more than one operating subsidiary, each subsidiary is considered a separate Proposer.

Proposers must agree to operate the vehicles on similar routes and within the same geographic area as described in the proposal on which the award was based throughout the useful life of the vehicles.

INELIGIBLE PROJECTS FOR PROGRAM FUNDS

Vehicles fueled by propane, hydrogen, ethanol, methanol, or light-duty hybrid-electric vehicles are ineligible for funding. There is no incremental cost for ethanol vehicles, and methanol vehicles are no longer supplied by OEMs. Propane vehicles are not allowed to operate in New York City.

Projects for fueling or recharging equipment that do not include Program-eligible vehicle conversions or the acquisition of vehicles that would use such equipment are ineligible to apply.

Demonstration, research, and development projects are ineligible for funding through this solicitation.

III. PROPOSAL REQUIREMENTS - CATEGORY A

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

Proposers must submit **ten (10)** copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this Program Opportunity Notice. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned.** Faxed or e-mailed copies will be not be accepted.

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

A completed and signed Proposal Checklist (**Attachment 1**) must be signed by a person authorized to contractually commit the organization and attached to the front of each of the **ten (10)** sets of proposal forms. At least one copy must contain an original signature. All proposals **must** include a completed *Disclosure of Prior Findings of Non-Responsibility* form (**Attachment 2**) (for disclosing whether any New York State agency or authority has made a formal determination that the proposer is non-responsible). See additional information under the General Conditions in Section VI.

Proposals should also include **Attachment 3**: Vehicle Project Information, **Attachment 4**: Infrastructure Project Information (if applicable), and **Attachment 5**: Vehicle Project Narrative. These proposal forms require information and documentation related to each of the selection criteria, however additional documentation to support the proposal is strongly encouraged.

Note: **Attachment 8**, the Sample Agreement does not need to be executed and submitted. It is intended to allow you to review NYSERDA's standard contract terms only. If the Proposer intends to object to any of these terms they should include a separate attachment that lists the objections and provide alternate terms.

COST SHARING

The proposal should show non-NYSERDA funding of at least 20% for medium and heavy-duty vehicles and 50% for light-duty vehicles and infrastructure of the total cost of the project. Cost sharing can be from the Proposer, other team members, and other government or private sources except Federal funds. Contributions of direct labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions. Unpaid labor, indirect labor, or other general overhead may be considered "in-kind" contributions. NYSERDA will not pay for efforts which have already been undertaken. The Proposer or Proposing team cannot claim as cost-share any expenses that have already been incurred. The base costs of vehicles can not be used to meet this minimum cost share. Show the cost-sharing plan in the following format (expand table as needed):

	Cash	In-Kind Contribution	Total
NYSERDA	$	$	$
Proposer	$	$	$
Others (list individually)	$	$	$
Total	$	$	$

IV. SELECTION PROCESS - CATEGORY A

To be considered for an award, each proposal must meet the following minimum qualifications:

- It must be submitted by an eligible entity and be consistent with the eligibility criteria;
- It must provide the required documents, sufficient information and supporting documentation to enable NYSERDA to evaluate the proposal based on the evaluation criteria; and
- The proposed project must, at a minimum, result in a reduction of both petroleum usage and environmental emissions.

Proposals will be reviewed by NYSERDA to determine whether the proposal meets the minimum requirements as set forth in this PON. Proposals that do not meet the minimum requirements will not be considered for funding. Reasons for removing the proposal from consideration for funding shall be provided to the Proposer in writing.

With the assistance of the NYC DOT and a Technical Evaluation Panel (TEP) of internal and external experts, NYSERDA will evaluate all proposals that meet the minimum qualifications described above. A list of Program proposals, beginning with the proposal ranked the highest by the TEP, will be developed. Projects that receive the highest scores and are recommended for funding will be awarded funding. NYSERDA will enter into contracts with each entity awarded funds.

V. EVALUATION CRITERIA - CATEGORY A

Proposals that meet the minimum qualifications will be evaluated based on the following five criteria:

1. Reduction in environmental emissions per Program dollar invested:
   Factors: the annual mileage and duty cycle of vehicles and the amount of criteria pollutants that will be eliminated by proposed vehicles based on the type of fuel and technology that will be used to power the vehicle:

2. Reduction in petroleum usage per Program dollar invested:
   Factors: the type of fuel (unleaded gasoline or diesel) that would be used to power a petroleum-powered vehicle of comparable size and style:

3. Amount of cost-sharing and leveraging of private and public funds for infrastructure development and vehicle acquisition:
   Factors: contribution by Proposer or others beyond the required cost-sharing for the project either in cash or for in-kind services, partnerships which leverage other funding, and other comparable factors:

4. Proposer's past history with AFVs, future plans, and access to fueling:
   Factors: previous financial commitment to AFVs, long-term plans for introducing AFVs into the fleet, availability of fueling facilities in the area:

5. Unique partnerships, including involvement with community groups, innovative use of the technology, and whether project addresses critical needs or priorities:
   Factors: proposer's commitment to improving the emissions profile of the fleet and informing the public of the benefits of the project, advancement of new technologies, potential economic benefits to New York State and

other comparable factors, participation of certified minority- and women-owned business enterprises.

VI. ELIGIBLE PROJECTS FOR PROGRAM - CATEGORY B

This PON solicits proposals for projects that maximize the environmental and economic benefits of introducing diesel emission control devices (DECD) for diesel-fueled vehicles into New York City private fleets and accelerating the introduction of these emission-reducing technologies into the market. Priority will be given to projects which result in the greatest emissions reduction per Program dollar invested; provide the greatest economic benefits for New York State; leverage private and public cost-sharing for equipment acquisition; and are consistent with other clean-fuel vehicle activities and priorities.

The cost of purchasing, including installation of this equipment, is eligible for reimbursement as long as the equipment is not required to be installed on the vehicle by local, State or Federal law or mandate. Equipment must be EPA or CARB certified or verified. Eligible DECD equipment and technologies include, but are not limited to, particulate traps or filters and catalytic converters that decrease the emissions of particulate matter, hydrocarbons, oxides of nitrogen, carbon monoxide, or toxic air pollutants, and are not part of a standard or required engine configuration (i.e., if the equipment is required by law to be installed on the vehicle for the vehicle, then the equipment would not be eligible). Equipment must be sold to the proposer under standard commercial terms from one or more EPA-CARB certified/verified, DECD manufacturers or their authorized vendors.

The websites below show the list of current CARB and EPA DECD technologies and manufacturers.
www.epa.gov/otaq/retrofit/verif-list.htm
www.arb.ca.gov/diesel/verdev/vt/cvt.htm

Payments may be awarded for up to 80% of the equipment and installation costs of the eligible, DECD technology on one or more currently operating diesel-powered on road vehicle. A proposal for a Category B project requires that the diesel-fueled vehicle to be retrofitted, be categorized by type of retrofit technology that will be used to reduce the emissions of the vehicle, and by the vehicle and engine manufacturer and engine model. Proposers awarded Program funds will be reimbursed for eligible costs upon submission and approval of invoices.

Recipients will be required to provide milestone reports based on the proposed schedule of equipment procurement. Recipients will also be required to provide brief annual reports for three years following the introduction of the funded, emission-reducing equipment. Such reports should include data on the operation of the vehicles including: fuel usage, maintenance events and costs, problems and concerns, and emissions test results (if available).

Funds awarded through the Program should be committed (purchase orders or contracts executed) within nine (9) months of the date of award. Funds not committed by that date may be reallocated to other projects which were not initially awarded funds, or may be added to funds available in subsequent rounds of the Program.

In cases where one private or non profit entity operates or controls more than one operating subsidiary, each subsidiary is considered a separate Proposer.

Proposers must agree to operate the vehicles on similar routes and within the same geographic area as described in the proposal on which the award was based, throughout the useful life of the vehicles.

Vehicles that are retrofitted with eligible equipment for which State-assistance payments are awarded, may be operated by another entity through an operating license or operating agreement, provided such agreement is consistent with Federal income tax regulations pertaining to the use of proceeds from tax-exempt bonds (i.e., a school district owns the buses but contracts for the operation of the publicly owned buses).

INELIGIBLE PROJECTS FOR PROGRAM FUNDS

Vehicles owned by public entities such as local, State, or Federal entities are not eligible for Program funds. Off road vehicles and equipment are not eligible. Vehicles must be highway capable and legally registered as a vehicle in New York State. Fuel additives and biofuels are ineligible for Program funds even if they have been verified by CARB or EPA. The Program can only pay for equipment. Demonstration, research, and development projects are ineligible for funding through this solicitation.

VII. PROPOSAL REQUIREMENTS - CATEGORY B

Procurement Lobbying Requirements - State Finance Law sections 139-j and 139-k
Procurement lobbying requirements contained in State Finance Law sections 139-j and 139-k became effective on January 1, 2006. (The 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.

Proposers must submit **ten (10)** copies of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this Program Opportunity Notice. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned.** Faxed or e-mailed copies will be not be accepted.

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

A completed and signed Proposal Checklist (**Attachment 1**) must be signed by a person authorized to contractually commit the organization and attached to the front of each of the **ten (10)** sets of proposal forms. At least one copy must contain an original signature. All proposals **must** include a completed *Disclosure of Prior Findings of Non-Responsibility* form (**Attachment 2**) (for disclosing whether any New York State agency or authority has made a formal determination that the proposer is non-responsible). See additional information under the General Conditions in Section VI.

Proposals should also include **Attachment 6**: Emission Controls Information and **Attachment 7**: Emission Controls Narrative. These proposal forms require information and documentation related to each of the selection criteria, however additional documentation to support the proposal is strongly encouraged.

Note: **Attachment 8**, the Sample Agreement does not need to be executed and submitted. It is intended to allow you to review NYSERDA's standard contract terms only.

COST SHARING

The proposal should show non-NYSERDA funding of at least 20% of the cost of the equipment including installation. Cost sharing can be from the proposer, other team members, and other government or private sources except Federal funds. Contributions of direct installation labor (for which the laborer is paid as an employee) and purchased materials may be considered "cash" contributions. Unpaid labor, indirect labor, or other general overhead may be considered "in-kind" contributions. NYSERDA will not pay for efforts which have already been undertaken. The Proposer or proposing team cannot claim as cost-share any expenses that have already been incurred. Show the cost-sharing plan in the following format (expand table as needed):

	Cash	In-Kind Contribution	Total
NYSERDA	$	$	$
Proposer	$	$	$
Others (list individually)	$	$	$
Total	$	$	$

VIII. SELECTION PROCESS - CATEGORY B

In order to be considered for an award, each proposal must meet the following minimum qualifications:

-- The proposal must be submitted by an eligible entity and be consistent with the eligibility criteria and Special Provisions described in this PON.
-- The proposal must provide required documents, sufficient information and supporting documentation to enable NYSERDA and the TEP to evaluate the proposal based on the selection criteria.
-- The Project must result in a reduction of environmental emissions.

Proposals will be reviewed by NYSERDA to determine whether the proposal meets the Program's minimum qualifications. Proposals that do not meet these qualifications will not be considered for funding. Reasons for removing the proposal from consideration for funding shall be provided to the proposer in writing.

NYSERDA and a TEP will evaluate all proposals which meet the qualifications, based on the selection criteria described in Section IX. A list of retrofit Projects will be developed beginning with the proposal ranked the highest by NYSERDA and the TEP. Projects which receive the highest scores and are recommended for program funding will be awarded Program funds until the funds available for the current round are exhausted. NYSERDA will enter into contracts with each entity awarded Program funds.

IX. EVALUATION CRITERIA - CATEGORY B

Proposals that meet the minimum qualifications will be evaluated based on the following four criteria:

1. Amount of environmental emissions reduced per New York City Private Fleet Program dollar requested:
   Factors: expected emissions reduction from proposed technology as compared to baseline emissions certification of the diesel vehicles; emissions reduction over the life of the project including oxides of nitrogen and particulate matter; duty cycle (i.e., urban, rural, suburban); annual mileage; and Program dollars requested.

2. Amount of cost-sharing by Proposer or other public and private partners:
   Factors: previous financial commitment to the introduction of emission reduction technology; contribution by the Proposer or others to offset a portion of equipment costs; unique partnerships which leverage other funding; and other comparable factors. Providing cost share above the 20% minimum required.

3. Proposers commitment to diesel emission reduction projects:
   Factors: Proposer's previous commitment to diesel emission reduction projects; long term plans for adopting more diesel emission reduction projects; and Proposers evidence of organizational resources and expertise to accomplish these tasks.

4. Significant partnering and project impact:
   Factors: partnerships involved in the project including community groups; innovative approach and technologies; plans to introduce emission reduction technology and improve the emissions profile of the fleet and to inform the public of the benefits of the project; Proposer a certified minority- or women-owned business enterprise; and cost-effective approach. Special consideration is given to Proposers who incorporate the installation of closed crank-case ventilation filters in combination with tailpipe emission reducing devices.

X. GENERAL CONDITIONS

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

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

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

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

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

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

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

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

Contract Award - NYSERDA anticipates making multiple awards under this solicitation. It may award a contract based on initial applications without discussion, or following limited discussion or negotiations. Each offer should be submitted using the most favorable cost and technical terms. NYSERDA may request additional data or material to support applications. NYSERDA will use the Sample Agreement to contract successful proposals. NYSERDA expects to notify proposers in approximately 10 weeks from the proposal due date whether your proposal has been selected to receive an award.

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

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

****

XI. Attachments:

Attachments

Attachment 1 - Proposal Checklist
Attachment 2 - Disclosure of Prior Findings of Non-Responsibility Form
Attachment 3 - Vehicle Project Information
Attachment 4 - Infrastructure Project Information
Attachment 5 - Vehicle Project Narrative
Attachment 6 - Emission Controls Information
Attachment 7 - Emission Controls Narrative
Attachment 8 - Sample Agreement

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

ATTACHMENT 1 - PON No. 1213 PROPOSAL CHECKLIST (MANDATORY)

CIRCLE CATEGORY A CATEGORY B	Due Date: **August 19, 2008**	
Proposal Title:		
Primary Contact (Prime Contractor)	Title:	
Company:	E-mail:	
Address:	Phone:	Fax:
City:	State or Province:	Zip:
Secondary Contact:	Title:	
Company:	E-mail:	
Address:	Phone:	Fax:
City:	State or Province:	Zip:

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

Do you accept all Terms & Conditions in the Sample Agreement? (if no, explain on separate pg)	__ Yes __ No
Have you been indicted/convicted for a felony within the past 5 years? (if yes, explain on separate pg)	__ Yes __ No
Are you a Minority or Women-Owned Business Enterprise?	__ Yes __ No
Does your proposal contain Minority or Women-Owned Business enterprises as subcontractors?	__ Yes __ No
Are you submitting the required number of copies? (See proposal instructions.)	__ Yes __ No
Is other public funding pending/awarded on this and/or very similar topic (prior and/or competing proposals)? (if yes, explain on separate page)	__ Yes __ No

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

CATEGORY A		CATEGORY B	
Proposal Checklist	____	Proposal Checklist	____
Disclosure of Prior Findings of Non-responsibility Form	____	Disclosure of Prior Findings of Non-responsibility Form	____
Vehicle Project Information	____	Emission Controls Information	____
Infrastructure Project Information (if applicable)	____	Emission Controls Narrative	____
Vehicle Project Narrative	____	Cost-Sharing Chart	____
Cost-Sharing Chart	____		

AUTHORIZED SIGNATURE & CERTIFICATION

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

Signature	Name
Title	Organization
Phone	Date

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

ATTACHMENT 2

Disclosure of Prior Findings of Non-responsibility Form
(Mandatory)

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

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

Has any Government al Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information ? (Please indicate with an “X”) (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 3

NEW YORK CITY PRIVATE FLEET PROGRAM
PROPOSAL FORM
(CATEGORY A)

ALTERNATIVE-FUEL VEHICLE PROJECT INFORMATION

Specify the number of alternative-fuel/electric vehicles for which funding is requested by completing a separate Attachment 3 for each combination of fuel technology (CNG, CNG-diesel dual-fuel, electric, diesel hybrid-electric), and vehicle size (light-, medium-, or heavy-duty). For example, a separate Attachment 3 should be submitted for each of the following: all CNG light-duty vehicles, all electric light-duty vehicles, all CNG medium-duty vehicles, all dual-fuel CNG heavy-duty vehicles. Make additional copies of Attachment 3 as needed.

Section A. General Information	
Number of AFVs represented on this Attachment 3	
Fuel technology of vehicles represented on this Attachment 3 (include whether dedicated, or dual-fuel)	

Section B. Specifications for AFV(s) Note: Proposals for light-duty vehicles answer number 1 only. Proposals for medium- and heavy-duty vehicles answer questions 1 - 6.	
1) Vehicle make, model, and model year:	
2) Gross vehicle weight:	
3) Engine (manufacturer and model)*:	
4) Fuel capacity (equiv. diesel gallons):	
5) Transmission:	
6) Motor/Drive (HEV and Electric):	

Section C. Budget Information
Fill in the following budget information for the vehicles represented on this form. Attach supporting documentation.

Base cost (each vehicle)	Incremental vehicle cost (each vehicle)	Proposer cost-share of incremental vehicle cost (each vehicle)	Program funds requested (each vehicle)**
$	$	$	$
Total base cost (all vehicles)	**Total incremental vehicle cost (all vehicles)**	**Total proposer cost-share (all vehicles)**	**Total program funds requested (all vehicles)**
$	$	$	$

* Calculation of emissions reduction for the New York City Private Fleet AFV program is based, in part, on U.S. EPA and California Air Resources Board (CARB) certification levels for clean-fueled engines. Where such certification has not been issued, as with hybrid-electric technology, or where other aspects/features of the drive train improve vehicle emissions, applicants must submit emissions data in grams/mile for those vehicles for which funding is requested. Data must be supported with results from manufacturer's emissions testing and verification.

** Request cannot exceed 50% of the incremental cost for light-duty vehicles (GVW $\leq$ 14000 lbs) or 80% for medium-, and heavy-duty vehicles (GVW > 14,000 lbs).

Section D. Schedule Provide approximate dates for the following milestones:	
Issuance of Purchase Orders/Contracts (must be after August 19, 2008)	Date:
Delivery of vehicle(s)	Date:

Section E. Description of Typical Use for AFV(s) Duplicate this form if there are more than two typical uses for AFVs.	
Typical Use — 1	
Is vehicle used for a delivery or fixed route? ☐ Yes ☐ No	
If yes, what is typical route length (miles)?	
If this is a fixed route, please describe the areas where the vehicles will be used when in service.	
Annual mileage for single vehicle:	Useful vehicle life in this fleet:
Annual fuel consumption (gallons of petroleum fuel) of a single typical vehicle:	

Section F: Location of Project	
Address where vehicle will be garaged:	
Indicate percent of time vehicle(s) typically operate in the following locations:	
Manhattan	
Bronx	
Brooklyn	
Queens	
Staten Island	
Outside New York City	

ATTACHMENT 4

(CATEGORY A)

INFRASTRUCTURE PROJECT INFORMATION

Proposers applying for funds for *both* an AFV Private Fleet Project and an infrastructure Project must complete Attachment 4. [Note that proposers requesting funds for an Infrastructure Project also must request funds for an AFV Project.] Proposers who are applying for an AFV Project should only complete Attachment 3 and Attachment 5.

A. Project Description. Attach a brief description of the Private Fleet Infrastructure Project. Provide information to address the following items:

- Site of infrastructure project
- Type of fueling facility
- Why project is needed and how it is associated with the AFV Private Fleet Project
- Describe whether this is a new facility or an expansion of existing facility
- Storage capacity (e.g. gallon equivalents, cubic feet)
- Pump and/or compressor capacity (e.g. gallon equivalents or cubic feet/minute)
- Number of vehicles expected to refuel/recharge
- Annual mileage of the vehicles to be served
- Whether this facility will be open to more than one fleet, or the public
  If so, estimate the annual alternative-fuel gallon equivalents the station will provide
- Whether project includes facility/garage modifications*
- Ownership, operation, and maintenance of the facility
- Role of fuel suppliers or others in development, installation, and operation of facility

  * Garage/facility modifications should be limited to the HVAC, electrical, and lighting systems, and must be necessary for introduction or expanded use of AFV. If such modifications are included as part of project, provide a description of the modification, and support information.

B. Specifications. Attach a list and description of equipment (compressors, dispensers, pumps, etc.) that would be specified for the AFV Private Fleet Infrastructure Project. Describe any site development, installation, and other services included in the project.

C. Budget Information. Attach supplier documentation for cost items, such as bids or preliminary engineering cost estimates.

Source(s) of Cost-share contribution(s):

Project Costs			
	Total Equipment/ Installation Costs	**50% Proposer Cost-share**	**NYSERDA requested funds**
Equipment Costs			
Installation Costs			
Total Project Costs			

** Maximum award per station is $300,000. The maximum funding for infrastructure projects through this PON is $600,000.

D. Schedule. Provide a list of project milestones (issuance of bids and specifications, award of contracts, site design and development, equipment installation, start-up) and anticipated completion dates.

ATTACHMENT 5

(CATEGORY A)

NEW YORK CITY PRIVATE FLEET ALTERNATIVE-FUEL VEHICLE PROJECT NARRATIVE

Proposers must provide a brief narrative response to the following questions.

1. Briefly describe the proposer's business type and its fleet and vehicle use, including any previous experience with AFVs.

2. Describe how the AFVs in the proposal will be used and the expected advantage to the fleet.

3. Describe where the vehicles will be fueled and the proximity of the fueling station to the vehicle garage or route.

4. If the project includes funding for infrastructure, describe the advantage of having the fueling/ recharging station installed/expanded. If applicable, provide a brief justification for the need to expand the existing station's fueling/recharging capacity.

5. Describe any unique partnerships that have been developed to support this project, innovative approaches, or critical priorities that are addressed by the project.

6. Describe proposer's long-term plans to introduce AFVs and improve the emissions profile and fuel economy of the fleet.

7. Provide project schedule with milestones.

8. Provide quotes and cost justifications for project expenses.

9. Describe any prior NYSERDA contracts and awards.

10. Provide letter(s) of commitment from the proposer and all project partners.

11. Provide a list of any certified minority- and women-owned business enterprises involved in the project. Detail their involvement and what financial commitment they have in the project.

ATTACHMENT 6

(CATEGORY B)

EMISSION CONTROLS PROJECT INFORMATION

Attachment 6 pertains to all currently owned and operated diesel-fueled vehicles that will be retrofitted with emission-reduction technology equipment.

Indicate the number of vehicles that will be retrofitted for which funding is requested. Categorize the vehicles by type of emission-reducing technology that will be used (particulate traps, particulate filters, catalytic converters, etc.), and by the vehicle manufacturer and engine manufacturer.

Complete a separate Attachment 6 for each combination.

For example, a separate Attachment 6 should be submitted for each of the following: all International trucks with International T444E engines to be retrofitted with oxidation catalysts, all International trucks with International T444E engines to be retrofitted with diesel particulate filters, and all Mack trucks with Cummins engines to be retrofitted with oxidation catalysts. Make additional copies of Attachment 6 as needed.

Section A. Emission Controls Retrofit Project Information	
Number of vehicles represented on this Attachment 6:	
Emission-reducing technology that will be retrofitted to vehicles in this Attachment 6:	
Emission-reducing technology manufacturer:	
Vehicle manufacturer:	
Model years of vehicles:	
Engine manufacturer/model:	

Section B. General Vehicle Information Provide the following information for the vehicles that will be retrofitted with the emission-reducing technology			
Indicate the duty cycle that most closely approximates the routes of the vehicles to be retrofitted:			
☐ Heavy Urban	☐ Inter-city/ Suburban	☐ Urban/Central Business District	☐ Other (Describe)
Average route length (miles):		Average speed:	
Average number of stops:		Average ridership (if applicable per route):	
Vehicle size/style:		Number of seats (if applicable):	
Number of trips each vehicle makes per year on its daily route:		County(ies) of operation:	
Average fuel usage of one vehicle in the fleet:			

Section C. Schedule Provide approximate dates for the following milestones	
1. Date of issuance of Purchase Orders/Contracts for the emission-reducing technology.	Date:
2. Installation of emission-reducing technology on vehicles.	Start Date:
	Completion Date:

Section D. Budget Information
Fill in the following budget information for the all the vehicles to be retrofitted that are represented in this application. Attach supporting documentation.

(A) Type of Emission-Reducing Technology	(B) Number of vehicles that will use the technology in column A	(C) Quoted Price of emission-reducing technoloy including installation (per vehicle)	New York City Private Fleet Program funds requested (= B x C x 0.80)
		$	$
		$	$
		$	$
		$	$
			Total New York City Private Fleet Program funds requested (all vehicles)
			$

Is the applicant providing additional cost-sharing for the project beyond the required 20% minimum?
(20% Cost-share is required.)

_____

_____

_____

_____

ATTACHMENT 7

(CATEGORY B)

EMISSION CONTROLS NARRATIVE INFORMATION AND SUPPORTING DOCUMENTATION

Applicants should provide a narrative response describing the project, and include the following information (narrative does not need to be more than one page):

- Give a brief description of the project.
- Describe the type of service the vehicles operate in.
- Describe any previous commitments to improving the environmental quality of the area; and
- Describe how the public and other fleets will be informed of the health benefits and the environmental benefits of this project.

Questions about the information requested above should be directed to:

Patrick Bolton, Senior Project Manager
17 Columbia Circle
Albany, New York 12203-6399
(518) 862-1090, ext. 3322
fax: (518) 862-1091
e-mail: ppb@nyserda.org

Attachment 8
Sample Agreement

New York State Energy Research and Development Authority
AGREEMENT

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

This Agreement is made pursuant to PON No. 1213. The 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; and
- Exhibit D, Prompt Payment Policy Statement.

9. ACCEPTANCE

[CONTRACTOR]

By _____

Name _____

Title _____

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By _____
Jeffrey J. Pitkin
Treasurer

STATE OF)
) SS.:
COUNTY OF)

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

_____
Notary Public

EXHIBIT A

STATEMENT OF WORK

[To be developed by the Contractor.]

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 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.

Subject Invention: Any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this Agreement, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented, under the Patent Laws of the United States of America or any foreign country.

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

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

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

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

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

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

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. Cost-Sharing. It is understood and agreed that NYSERDA and the Contractor are sharing the costs for the Work. In consideration for this Agreement and as full compensation for NYSERDA's share of 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 a maximum award not to exceed the amount set forth in Item 7, of page one of the Agreement, "Total Amount of Contract," subject to the provisions and restrictions contained herein.

Section 4.02. Payments. The Contractor may submit invoices for payment as described in the Exhibit A Statement of Work. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable." Such invoices shall make reference to the Agreement number shown in Item 1 on page one of the Agreement. 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 the Contractor 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 of the Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.08. Audit Adjustment. 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 types and in the amounts specified in the Section hereof entitled Types of Insurance. All such insurance shall be evidenced by insurance policies, each of which shall:

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

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

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

Section 11.02. Types of Insurance. The types and amounts of insurance required to be maintained under this Article are as follows:

(a) Commercial general liability insurance for bodily injury liability, including death, and property damage liability, incurred in connection with the performance of this Agreement, with minimum limits of $1,000,000 in respect of claims arising out of personal injury or sickness or death of any one person, $1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and $1,000,000 in respect of claims arising out of property damage in any one accident or disaster; and

(b) Commercial automobile liability insurance in respect of motor vehicles owned, licensed or hired by the Contractor and the Subcontractors for bodily injury liability, including death and property damage, incurred in connection with the performance of this Agreement, with minimum limits of $500,000 in respect of claims arising out of personal injury, or sickness or death of any one person, $1,000,000 in respect of claims arising out of personal injury, sickness or death in any one accident or disaster, and $500,000 in respect of claims arising out of property damage in any one accident or disaster.

Section 11.03. Delivery of Policies; Insurance Certificates. Prior to commencing the Work, the Contractor shall deliver to NYSERDA certificates of insurance issued by the respective insurers, indicating the Agreement number thereon, evidencing the insurance required by this Article and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to NYSERDA. In the event any policy furnished or carried pursuant to this Article will expire on a date prior to acceptance of the Work by NYSERDA pursuant to the section hereof entitled Acceptance of Work, the Contractor, not less than 15 days prior to such expiration date, shall deliver to NYSERDA certificates of insurance evidencing the renewal of such policies, and the Contractor shall promptly pay all premiums thereon due. In the event of threatened legal action, claims, encumbrances, or liabilities that may affect NYSERDA hereunder, or if deemed necessary by NYSERDA due to events rendering a review necessary, upon request the Contractor shall deliver to NYSERDA a certified copy of each policy.

Article XII

Stop Work Order; Termination

Section 12.01. Stop Work Order.

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

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

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

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

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

(ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

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

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

Section 12.02. Termination.

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

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

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

Article XIII

Independent Contractor

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

Article XIV

Compliance with Certain Laws

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

Section 14.02. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by federal laws and 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 federal laws and the laws of the State of New York in this Article, in Exhibit C and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

Article XV

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

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

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

Section 15.02. Notices. All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be deemed to have been sufficiently given for all purposes hereunder when delivered or mailed by registered or certified mail, postage prepaid, return receipt requested, (I) if to NYSERDA, at 17 Columbia Circle, Albany, New York 12203-6399 or at such other address as NYSERDA shall have furnished to the Contractor in writing, and (ii) if to the Contractor, at _____, or such other address as the Contractor shall have furnished to NYSERDA in writing.

Section 15.03. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

EXHIBIT C

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 C, the terms of this Exhibit C shall control.

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

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

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

made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

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

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

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

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

EXHIBIT D

PART 504

PROMPT PAYMENT POLICY STATEMENT

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

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

(1) under the Eminent Domain Procedure Law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 504.4 Payment procedures.

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

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

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

(2) any defects in the invoice; and

(3) suspected improprieties of any kind.

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

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

sole effect shall be that the payment due date shall be calculated using the original date of receipt of an invoice.

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

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

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

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

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

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

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

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

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

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

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

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

Section 504.11 Court action or other legal processes.

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

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

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

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