



Early Stage Support for Developers of Renewable and Clean Energy Technologies Program Opportunity Notice (PON): 1216

\$5,750,000 Available
PROPOSALS DUE: October 1, 2008
5:00 pm Eastern Time*

The New York State Energy Research and Development Authority (NYSEERDA) Program Opportunity Notice (PON) 1216 seeks proposals to create sustainable support networks and infrastructure for early stage companies. The support targets an emerging market with specific needs – early stage renewable and clean energy technology companies and entrepreneurs -- and provides them with critical opportunities to facilitate partnerships and develop or market products.

Category A: Early Stage Business Support seeks proposals for all forms of support such as: 1) traditional business assistance services including referrals to investors or assistance with business plan development; 2) the facilitation of workshops, webinars and networking opportunities or other events; and, 3) providing early-stage companies with individualized, one-on-one technical, financial and business consulting. *Category B: Early Stage On-Site Business Support* may include any of the activities in Category A. In addition, Category B proposers must also provide on-site resources traditionally available from existing academic or other incubators. *Category C: Analytical Support for the Early Stage Business Assistance Program and Establishment of NYS Clean Energy Alliance* will provide services to NYSEERDA including activities to create a network among New York's renewable energy/clean energy incubators and business assistance companies, third-party program evaluation, tracking of activities, and reports containing recommendations.

NYSEERDA has a total of \$5,750,000 available under this PON and plans to award multiple four-year contracts in the following categories: up to \$750,000 for projects in *Category A: Early Stage Business Support*, up to \$4,500,000 for projects in *Category B: Early Stage On-Site Business Support*, and up to \$500,000 for projects in *Category C: Analytical Support for the Early Stage Business Assistance Program and Establishment of NYS Clean Energy Alliance* however, NYSEERDA reserves the right to adjust these funding allocations depending on the quality and quantity of proposals received.

The maximum award per project will be \$250,000 of NYSEERDA funds for Category A, \$1,500,000 for Category B, and \$500,000 for Category C. Cost-sharing by proposers to Categories A and C is not required. For Category B, cost-sharing is required; at least 25% cost-sharing is desired. Leveraging of other funding for all proposals is strongly encouraged. In-kind cost-sharing is acceptable.

Proposers to Categories A or B must choose to apply to either A or B. Proposers to Category C may also submit a separate proposal to either A or B; however, the Category C awardee must remain an independent third-party evaluator, and therefore may not also receive funds from a Category A or B award. For each proposing team, only one proposal will be accepted in each category. Each category will be ranked separately. One or more contractors may be selected in each category, though it is anticipated that only one awardee will be chosen in Category C. (For more detail, see section II, Program Requirements.)

PROPOSAL SUBMISSION:

Proposers must submit one (1) original and seven (7) copies of the proposal (8 total), with a completed and signed Proposal Checklist attached to the front of each copy, one of which must contain an original signature, clearly labeled and submitted to:

Roseanne Viscusi, PON No. 1216
NYSEERDA
17 Columbia Circle
Albany, NY 12203-6399

If you have **technical questions concerning this solicitation, contact Judy Jarnefeld** at (518) 862-1090, ext.3293 or jj1@nyserda.org. If you have **contractual questions concerning this solicitation, contact Nancy Marucci** at (518) 862-1090, ext. 3335 or nsm@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting Judy Jarnefeld (Designated Contact) at (518) 862-1090, ext. 3293 or jj1@nyserda.org. Contacting anyone other than this Designated Contact (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) in an attempt to influence the procurement: (1) may result in a proposer being deemed a non-responsible offerer, and (2) may result in the proposer not being awarded a contract.

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

I. INTRODUCTION

GOALS AND OBJECTIVES

Strategies are needed to create an entrepreneurial climate for renewable and clean business start-ups that will help them grow quickly, form technology clusters, and locate or remain in New York State. Early stage support to these companies can take many forms. For example, New York is currently home to over 50 incubator facilities that are helping to encourage the development of new businesses and foster local economic development. In addition, the Centers of Excellence at universities across New York support high technology ventures through a collaboration among the State, academia, private venture capital companies, and other private and public sector entities.

The goals of the program are to reduce the barriers to entry for renewable and clean energy technology business start-ups, and to invest in technically talented people, enabling them to build entrepreneurial growth companies. To meet these goals, the New York State Energy Research and Development Authority (NYSERDA) seeks proposals to create sustainable support networks and develop infrastructure for early stage companies.

This PON targets an emerging market with specific needs – early stage renewable and clean energy technology companies and entrepreneurs -- who need more opportunities to facilitate partnerships, develop or market products, and network with others effectively. The support this PON provides will help new entrepreneurs obtain access to nearly all of the resources – capital, technology, mentoring, and customers – needed to build a successful new business.

PROPOSAL CATEGORIES A, B and C

(See list of project activity examples below):

Proposers **must** identify the category to which their proposal belongs; each proposal will only be considered for one category. Proposers to Categories A or B must choose to apply to **either** A or B. Proposers to Category C may also submit a separate proposal to either A or B. Each category will be evaluated separately.

Category A) *Early Stage Business Support*

- May include all forms of business support for developers of renewable and clean technologies.

Category B) *Early Stage On-Site Business Support*

- May include any of the activities described in the Category A project activity examples. In addition, Category B proposers **must** provide on-site resources traditionally available via existing academic or other incubators.

Category C) *Analytical Support for the Early Stage Business Assistance Program and Establishment of NYS Clean Energy Alliance*

- Services to NYSERDA including networking activities to form an alliance among New York's renewable energy/clean energy incubators and business assistance companies, third-party program evaluation, tracking of activities, and preparing reports containing recommendations on program improvement.

EXAMPLES OF PROJECT ACTIVITIES:

Note: The following examples are meant to illustrate possible project topics, and are not intended to be all-inclusive. Please contact Judy Jarnefeld at jj1@nyserda.org, or (518) 862-1090 ext. 3293 if you are unsure whether your concept is eligible for this funding opportunity. Proposers may also wish to explore other NYSERDA funding opportunities. See www.nyserda.org/funding/funding.asp for further information regarding specific requirements and eligibility for NYSERDA's other current and upcoming funding opportunities.

Example Project Activities in Category A, "Early Stage Business Support":

Category A proposals to provide business assistance to early stage renewable and clean energy technology companies may include activities such as:

- Developing criteria and protocols to determine who will be assisted, how due diligence will be performed to verify client claims regarding product performance, how assistance to clients will be prioritized, what tiers of service will be made available, to whom and for what fees (if any), how assistance will be modified as clients progress, and the exit strategy for ending assistance to those who no longer need it;
- Developing a formal process to track and measure success of clients after they no longer need assistance. For example, assistance would end because they have sufficient revenues or jobs, were acquired, or received venture funding;
- Defining client participation requirements. For example, clients may be required to pledge to: 1) meet with the proposer periodically to assess whether milestones are being achieved, 2) attend business courses, 3) maintain open book accounting, or 4) continue to provide updated information after assistance is no longer needed;
- Providing traditional business assistance services such as referrals to investors, manufacturers, mentors, or trade associations, or assistance with business plan development;
- Designing, organizing and managing workshops, webinars and networking opportunities or other events;
- Providing early-stage companies with individualized, one-on-one technical, financial and business consulting;
- Developing activities that will increase project awareness: for example, create promotional or web-based information materials specific to early stage renewable and clean energy product developers;
- Developing and marketing an outreach plan to encourage new companies to locate in New York;

- Developing and implementing strategies to guide companies through NYSERDA’s existing product development funding opportunities;
- Developing and implementing a training plan and/or tools for product developers such as a comprehensive informational guide that includes technical aspects of product development, unique circumstances with renewable and clean energy technologies, how to market their product to prospective clients, etc.;
- Coordinating training sessions with forums that product developers regularly attend;
- Developing and implementing strategies to create a long-term program that is sustainable after the NYSERDA funding for the project ends (e.g. professional development for incubator staff); or,
- Developing and implementing metrics and strategies to measure success of the project (e.g. keeping in touch with former clients and collecting information from them).

Example Project Activities in Category B, “Early Stage On-Site Business Support”:

Category B proposals may include any of the activities in Category A. In addition, Category B proposers **must provide** business assistance to early stage renewable and clean energy technology companies in the form of **on-site resources** traditionally available from existing academic or other incubators, such as:

- Low-cost space for offices, labs, or manufacturing development;
- Administrative support services such as shared office and internet resources;
- Technical, management, marketing, financing, human resources and hiring assistance (including interns), either from on-site staff or off-site consultants such as grant writers, market researchers, accountants, software technicians, engineers or designers;
- A spectrum of technical support from minimal to in-depth, including:
 - intellectual property assessment,
 - design assessment,
 - product concept development,
 - evaluation of promising prototypes,
 - product performance testing,
 - identifying market potential and key customers,
 - developing potential product distribution strategies,
 - evaluating product life-cycle performance;
- Legal and patent support, including regulatory compliance, intellectual property, licensing and copyright advice, and overall deal negotiation and structuring;
- Laboratory testing services, machine shop services, or shared equipment; or,
- Strong links to outside resources such as research laboratories, established manufacturers or universities (e.g. interns, lab technicians, databases, alumni contacts, technology transfer offices).

Example Project Activities in Category C, “Analytical Support for the Early Stage Business Assistance Program and Establishment of NYS Clean Energy Alliance”:

Category C proposals, which are intended to provide services to NYSERDA, may include the following types of activities:

- Tracking and evaluating activities in the program created by NYSERDA projects selected from Categories A and B such as:

- The number of and type new start-up companies at varying stages in the commercialization process that are provided assistance, including those attending workshops or provided individual help;
 - The number of assisted companies that subsequently apply to NYSERDA for product development assistance;
 - The number of jobs created at start-up companies that were provided assistance;
 - The number of products developed, patents filed, grants received, business plans completed, or introductions to potential partners made at start-up companies that were provided assistance;
 - Potential new renewable and clean energy technology companies identified and/or brought to New York;
 - Participation and interest in the program demonstrated by attendance at training opportunities, web usage of resources, etc.;
 - Revenue totals, capital raised, and leveraged funding among companies assisted;
 - The number of companies that became self-sufficient after assistance was received;
 - The “dropout rate” for companies that decided to disband after receiving assistance;
 - Current hurdles faced by companies that received past assistance; and/or,
 - Other indicators of a proposer’s success or failure at meeting the goals and objectives of the program.
- Surveying or otherwise determining effects or trends that may be difficult to quantify and/or attribute directly to this program, but that could indicate success to New York (e.g., growth of technology business clusters or an improved climate for high-tech entrepreneurs);
 - Developing other surveys or mechanisms that may help direct future NYSERDA efforts (e.g., surveys to measure: client satisfaction, time spent assisting individual companies, ratio of clients to staff across NYSERDA projects, etc.);
 - Researching other similar programs nationwide and relate lessons learned from them to this program;
 - Providing a third-party evaluation of program successes and failures (e.g. through interviews with the Category A and B awardees) and communicate the progress of the program to NYSERDA;
 - Providing recommendations on how NYSERDA can optimize and improve this program to better provide assistance to early stage companies as well as integrate with NYSERDA’s other programs;
 - Providing recommendations on how the academic community can better provide assistance to help would-be entrepreneurs develop business skills; or,
 - Establishing a New York State Clean Energy Incubator Alliance to help renewable and clean energy incubators and business assistance companies in New York network and coalesce into a powerful tool to help the industry grow. Model it after the Clean Energy Alliance, a national organization composed of incubators dedicated to support for clean energy businesses described at: <http://www.cleanenergyalliance.com/>

II. PROGRAM REQUIREMENTS

WHO MAY PROPOSE

- Proposers are **encouraged to form teams** when appropriate to meet project goals. Teams may consist of experts in management, marketing, finance, human resources, grant writing, accounting, law, engineering, design, renewable or clean energy technologies, data analysis, professional training, or outreach; commercial companies; government organizations; universities; research organizations; industry associations; product or component manufacturers, or other stakeholders.
- **Lead proposers to Category B must** have a physical New York State address and on-site resources for use by New York renewable and clean energy companies. Category B proposers **must** describe in the Executive Summary how those resources are appropriate for incubation purposes (e.g. conference rooms, communication systems, library, flexible leasing arrangements, flexible infrastructure to house varying numbers of clients or diverse technologies.) If the proposal is selected for funding, the lead proposer will enter into an Agreement with NYSERDA as NYSERDA's contractor.
- The **lead proposer for Category A or C proposals could be any** organization responsible for successful completion of the project. If the proposal is selected for funding, the lead proposer will enter into an Agreement with NYSERDA as NYSERDA's contractor.
- Include **letters of commitment** from each team member in an appendix to the proposal.

Proposers must:

- Address **support for early stage** renewable and clean energy technology developers. Support for product development companies should be emphasized, though support for service companies (e.g. traditional wind or solar installation businesses) is allowed.
- **Identify the category** to which their proposal belongs, as follows:
 - Proposers to Categories A or B must choose to apply to **either** A or B.
 - Proposers to Category C may also submit a separate proposal to either A or B; however, the Category C awardee must remain an independent third-party evaluator. Therefore, they may not also receive funds from a Category A or B award.
 - For each proposing team, only one proposal will be accepted in each category.
 - One or more contractors may be selected for award in each category, though it is anticipated that only one awardee will be chosen in Category C.
 - Each category will be evaluated separately, and each proposal will only be considered for one category.

Questions about the Categories?

Q: I am not eligible to submit to B, but I have a team member who is. I am the Lead Proposer. May I submit to B?

A: No. The lead proposer must be eligible to propose to B. You and your team may submit a proposal to A.

Q: I am eligible to submit to B. May I submit to A?

A: Yes. Proposers eligible to propose to B may choose to submit to A instead of to B.

Q: May I submit one proposal to A and another to B? What if the two proposals differ in scope?

A: No. Proposers may submit to A or B but not both. You must choose between A and B.

Q: I'm not sure if my proposal fits best in A or B. Will NYSERDA choose which category is best? Will it be evaluated in both categories?

A: No. Proposers must identify a category. Choose the one that fits best. Each proposal will be evaluated in only one category.

Q: May I submit one proposal to A and another to C?

A: Yes. Likewise, proposers eligible to propose to B may also submit one to B and one to C.

Q: May I submit more than one proposal to A if each proposal has a unique scope?

A: No. Proposers may not submit more than one proposal per category.

Q: May I belong to more than one proposing team?

A: Yes, you may be a subcontractor on the proposing team in as many proposals as you like.

Q: I plan to submit one proposal to A and another to C. If I am selected for an award under both A and C, may I receive two awards?

A: No. If that occurs, you will be notified and given a choice as to which award you prefer to receive. Likewise, proposers selected under both B and C will be given a choice.

Q: I'm interested in proposing to B. What are the major differences in proposal B requirements from A and C?

A: In summary, Category B proposals must have a lead proposer with a physical site based in New York. You must describe how your on-site resources are appropriate for incubation purposes. The tasks in the statement of work must make use of those on-site resources. The proposing team must include a well-qualified incubator director. A Milestone Payment Plan with payments that are based on client success is required. Cost-sharing is required in Category B (25% cost-sharing is preferred). Category B proposers are also encouraged to document their revenue sources.

Proposers must: (continued)

- Include **best practices** benchmark and protocol tasks in the proposal, as applicable. Comprehensive Best Practices guides have been prepared by the National Business Incubation Association and others. The National Business Incubation Association can be found at: http://www.nbia.org/resource_center/best_practices/index.php and their report, "Best Practices in Business Incubation," can be found at: http://www.marylandtedco.org/_media/pdf/tedcoprograms/NBIA_BestPracticesReport.pdf
- Include tasks in the proposal to develop a **marketing plan** to define the clients for the proposed work and how they will be reached and attracted to the services provided. (Category C proposals may define clients as potential members of a New York State Clean Energy Incubator Alliance)
- Include **client selection and assistance** tasks in the proposal that define the criteria and protocol for how clients will be selected or rejected; how due diligence will be performed to verify client claims regarding product performance; how assistance to clients will be prioritized; what tiers of service will be made available to clients with

differing needs, to whom and for what fees (if any); how assistance will be modified as clients progress; and the exit strategy for ending assistance to those who no longer need it. Quantify the number of hours expected to be spent working directly with clients. (Categories A and B only)

- Define specific **deliverables** to be met at the completion of each task.
- Include tasks in the proposal to develop and implement strategies to **measure success** of the project. Specify performance goals.
- Include tasks in the proposal to plan and develop a **New York State Clean Energy Alliance**. (**Category C proposals only**)
- Submit a **per-task cost table**. It is anticipated that projects will be paid on a performance basis as per-task deliverables are met.
- Submit a proposed **Milestone Payment Plan** with performance payments based on client success. (**Category B proposals only**)
- Address a **four year timeline** for the proposed work that includes annual progress reviews. Your proposal may address a longer timeline, as appropriate.
- **Justify capital expenditures**, if any are proposed. Capital expenditures specific to the proposed scope are preferred to more general capital investments such as new office space.
- Include tasks in the proposal to develop and implement strategies to **create a long-term program** that is sustainable after the NYSERDA funding for the project ends. Preference will be given to material and projects that demonstrate their usefulness over the long term. Creative approaches to sustaining the support beyond the timeline of individual project activities are encouraged. The successful proposer(s) will present a convincing plan to establish a program that is capable of becoming self-sustaining without additional NYSERDA support. Sustaining funds could be generated through mechanisms such as Intellectual property broker fees, membership fees, space rental, payment for services, equity in new businesses, endowments, and/or public and private grants.
- Provide **cost sharing as appropriate**:
 - In the form of **cash or in-kind** labor, materials, equipment, facilities, and other resources, subject to reasonable and verifiable valuation. Co-funding may be from the proposer or other private or government sources.
 - Cost-sharing by proposers for Categories A and C projects is not required, however leveraging of other funding is strongly encouraged.
 - Cost-sharing by proposers for Category B projects is required; at least 25% is desired. Leveraging of other funding is strongly encouraged. In-kind cost-sharing is acceptable.
 - NYSERDA's share of funding for Category A projects will be limited to a maximum of **\$250,000** per project.

- NYSERDA's share of funding for Category B projects will be limited to a maximum of **\$1,500,000** per project.
 - NYSERDA's share of funding for the Category C project will be limited to a maximum of **\$500,000** per project.
 - Proposals **must** provide value to NYSERDA commensurate with funding requested. The amount of funding requested will be considered for overall reasonableness with respect to meeting project objectives.
 - The quality of the proposer's co-funding is examined during the proposal evaluation process. Cash, labor, and materials are considered superior to other types of co-funding. The type of co-funding offered should be appropriate for the proposer's financial condition and the stage of development of the proposed work (degree of risk). The level of co-funding will be considered an indicator of the proposer's commitment to the success of the project.
- Work must include coordination with NYSERDA Contractors as directed, or where appropriate, other entities such as New York and out-of state venture capital and angel funding networks or incubators.
 - In addition, proposers are encouraged to identify and emphasize, as appropriate, other innovative and effective approaches, strategies, and tools that support the goals and objectives of this program.

Other Considerations:

- A proposal may be considered **non-responsive** if it fails to comply with the requirements above, the Proposal Format of Section III, or the General Conditions of Section V.
- Before an award is made, potential contractors may be required to demonstrate: access to financial resources sufficient to perform the proposed work, appropriate technical experience and adequate facilities (or the ability to access them), a good performance record, and the ability to qualify for an award under applicable laws and regulations.

III. PROPOSAL REQUIREMENTS

Format - Your goal as a proposer should be to **concisely** present the information needed to fully address the objectives and evaluation criteria (see Section I and IV).

Proposers must submit one original and seven copies (total of 8) of the completed proposal to the attention of Roseanne Viscusi at the address on the front of this Program Opportunity Notice/Request for Proposal. A completed and signed Proposal Checklist must be attached as the front cover of your proposal, one of which must contain an original signature. **Late proposals and proposals lacking the appropriate completed and signed Proposal Checklist will be returned.** Faxed or e-mailed copies will be not be accepted.

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. Double-sided copies fastened with a simple staple are preferred. Each page of the

proposal should state the name of the proposer, the PON number, the Proposal Category (A, B or C) and the page number. The proposal must be in the following format:

Proposal Checklist - Complete and sign the Proposal Checklist attached to this PON, and include it as the front cover of each copy of the proposal. Note the following:

- Indicate whether you accept the Standard Terms and Conditions as contained in the attached Sample Agreement. If you do not accept the Standard Terms and Conditions, be prepared to provide alternative terms with justification based on the risk and benefit to NYSERDA and New York State.
- Be sure the individual signing the Checklist is authorized to commit the proposer's organization to the proposal as submitted.

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.

1. Executive Summary - Briefly summarize your proposal emphasizing the following:

- The problem or opportunity and its significance to New York State.
- Your proposed approach and how it will address the problem or opportunity and the Program Requirements in Section II, any innovative characteristics, and current stage of development.
- Alternative approaches, and why your proposed approach was selected. Include assumptions.
- Benefits if the project is successful. Quantify the benefits to the extent possible.

The executive summary should be no more than two or three pages in length. Please put the bulk of your effort into fully describing each task in the Statement of Work.

2. Statement of Work - Provide the following:

The Statement of Work (SOW) is the primary document that outlines work activities and required performance for payment by NYSERDA. It is an action document that specifically delineates each step or procedure required to accomplish the project objectives. Therefore, each action shall be identified, indicating who will perform it, how it will be performed and its intended result. Be clear and specific; concentrate on "how" and not "why". Include quantifiable milestones as deliverables where possible.

You may use the following Statement of Work outline as the basis for your Statement of Work and expand or modify it as necessary to fit your project and provide additional information.

The Statement of Work must be structured as an ordered set of tasks as follows:

Introduction: Briefly and clearly state the overall technical and performance goals of the project.

TASK 1: PROJECT MANAGEMENT

Subtask 1.1: Project Manager

The Contractor shall assign [insert name] as project manager who will be responsible for communications with NYSERDA and coordination of all project personnel, subcontractors, schedule, budget, and reporting. [Name] shall serve as the coordinator between all project participants, including coordination of written progress reports, conference calls, project review meetings, and other developments.

Subtask 1.2: Project Management Meetings

[At a minimum, plan a kickoff meeting and a wrap-up meeting. Consider annual meetings, as appropriate. Identify parties to participate at each meeting.] The Contractor shall arrange the kickoff meeting with NYSERDA and [name other parties as appropriate] to discuss project scope and objectives, as well as interim goals. The Contractor shall prepare a meeting agenda (in advance), take minutes, and describe key meeting results in the monthly and final reports. The Contractor shall arrange a wrap-up meeting during the last month of the project, and invite all participants and other key individuals who become involved in the project in the interim.

Subtask 1.3: Subcontractor Coordination (If applicable)

The Contractor shall... [State how activities will be coordinated between the proposer and any partners or subcontractors, and NYSERDA. A discussion of subcontracting arrangements should also be included.]

Subtask 1.4: Reporting

Monthly Reporting

The Contractor shall prepare and submit monthly reports describing the progress of the project. Copies of the monthly progress report shall be submitted to NYSERDA's Project Manager. The Monthly Progress Reports shall be in the following letter format:

- *Title of project*
- *Agreement number*
- *Period of this report*
- *Progress during reporting period*
- *Planned progress in the future*
- *Identification of problems*
- *Planned solutions*
- *Ability to meet schedule and reasons for slippage in schedule*
- *Schedule -- percent completed and projected*
- *Analysis of actual costs incurred in relation to the budget.*

It is understood and agreed that NYSERDA and the Contractor are sharing the costs for the project work to be performed [if applicable] and that the cost share identified in the Contractor's proposal and budget shall be readily available as described therein. Any change of cost share by the Contractor shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld. NYSERDA reserves the right to limit the amount of progress payment made in any reporting interval to an amount commensurate to the documented cost share incurred.

Annual Progress Report

The Contractor shall prepare and submit an Annual Progress Report to NYSEERDA's Project Manager that: 1) documents results to date, measured against deliverables and milestones; 2) briefly summarizes activities and best practices that have been used to advance the project; and, 3) details guidance for subsequent years, including refinement of milestones for the remaining years of the project. NYSEERDA's Project Manager will use the results in the Annual Progress Report as a basis for deciding whether to continue each year of the four-year project for another year. [Category B only: The Contractor shall not bill NYSEERDA for more than one-fourth of the project funds annually.]

The Contractor shall be prepared to present the Annual Progress Report at the NYSEERDA Albany offices, if directed to do so by NYSEERDA's Project Manager.

Final Report

The Contractor shall prepare and submit a final report, consistent with Exhibit F of the Sample Agreement, documenting the results of the entire project, including all deliverables identified in the tasks, and a brief description of all methods, analyses, recommendations, and results. (The length of the final report is targeted to be 50 pages or less.)

- 1) At least one outline shall be given to NYSEERDA for review.
- 2) A first draft of the final report shall be given to NYSEERDA for technical review, with at least 30 days allowed for review.
- 3) A second draft of the final report shall be prepared, which conforms with the "Report Format and Style Guide" (the Guide contained in Exhibit C of the Agreement). The second draft shall address or incorporate questions and comments resulting from review of the first draft. The second draft shall be given to NYSEERDA for technical review follow-up and for format review, with at least 30 days allowed for review.
- 4) A copy of the final report, in compliance with Exhibit C, shall be submitted to NYSEERDA's Manager of Technical Communications, which adequately addresses NYSEERDA's comments.

Deliverables:

Monthly and annual progress reports

Meetings: arrangements, agenda, minutes

Final Report: Outline, first draft, second draft

Task 2, 3, 4, etc: Training, Marketing, Surveying, et al Tasks (as appropriate)

Add as many tasks and subtasks as necessary to cover all actions needed to achieve the goals and objectives of your project. Arrange your tasks logically and elaborate on the details of each one. Be specific as to who will perform the work, when, where, and how. Begin each task description with "Task 'X': Title, The Contractor shall.. (do such and such)." Fully detail tasks such as: researching best practices, planning, developing protocols, audience definition, client selection criteria, outreach, monitoring, data collection, analysis, training sessions, marketing plans, rights to data or other materials, obtaining resources to sustain the project beyond the funded timeline, or other tasks necessary as appropriate to fulfill the research design. You **must** include one or more task deliverables for each task. Task deliverables should be specific and designed to be met at task completion. Measure benefits of the project, as appropriate. Identify and quantify **performance targets**. These are the means by which near-term success of the overall project will be measured, evaluated, and verified against the project's goals and objectives. These targets should relate to specific project objectives, tasks, and deliverables, and should be measured by completion of the project.

Task 2, 3, 4, etc. deliverables:

For each task, delineate one or more specific deliverables to be met at task completion. (Required)

3. Proposed Schedule – Provide the following: (one page is suggested)

- Present a realistic schedule, with a starting point and duration for each task and subtask in the Statement of Work, preferably in a bar chart. Identify critical path items and timing of major milestones. At a minimum, the schedule must describe four years of activities.

4. Proposer Qualifications - Identify the following:(*one to five pages is suggested, depending on number of team members*)

- Proposer and any other team members and major subcontractors. Provide a chart showing key roles and responsibilities, and the relationship between team members.
- Project Manager and other key individuals, including Boards of Directors or Advisory Board members, if any.
- Category B proposals **must** identify an incubator director who will be responsible for running the day-to-day operations of the incubator. Previous director experience running business incubators and working with business start-ups, formal business training, a personal entrepreneurial background involving business start-ups, and experience teaching business skills to others are highly desired.
- Qualifications of all businesses, organizations, and individuals named above, including relevant experience and references. Provide actual examples of team members' relevant past work or entrepreneurial background. A demonstrated track record of working successfully with entrepreneurs, inventors, investors, funding agencies, and/or regional development agencies is highly desired. To the extent possible, provide historical data on the success/failure rate of companies assisted in the past. Describe the team's track record for staff retention.
- NYSERDA contracts awarded in the past five years, if any.

5. Budget - Provide the following:

- **Contract Pricing Proposal Form (CPPF) - [The CPPF, with associated instructions, is provided as an attachment to this PON. Each proposal must include a completed CPPF. Additional CPPF formats are available at: <http://www.nyserda.org/Funding/stdforms.asp>]**

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

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

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

- **Per-Task Cost Table (required)** Proposers **must** submit one table indicating both:
 - 1) the total expenditures for each task in the Statement of Work, and
 - 2) the percent of total effort for each task.
 It is anticipated that projects will be paid on a performance basis as per-task deliverables and overall performance targets are met.

- **(Category B only) Milestone Payment Plan [required]** Category B proposers **must** propose a milestone payment plan. While it is expected a certain amount of funding may need to be allocated in year one to design and implement the program (e.g. capital expenditures), Category B proposers are encouraged to structure the milestone payment plan such that the majority of budgeted funds are allocated to performance milestones based on client success, rather than milestones based on per-task expenditures. Therefore, it is expected the timing and amount of each payment in the proposed Milestone Payment Plan will not match the timing and amount of the anticipated expenditures outlined in the Per-Task Cost Table.

- **Cost Sharing Table** - Cost-sharing by proposers for Categories A and C projects is not required. **Cost-sharing by Category B proposers of at least 25% is desired. Leveraging of other funding is strongly encouraged. In-kind cost-sharing is acceptable. Cost sharing can be from the proposer, other team members, and other government or private sources.** 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 that 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):

Source	Cash	In-Kind Contributions	Total
NYSERDA	\$	\$	\$
Proposer			
Others (list individually)			
Total	\$	\$	\$

6. Appendix

- **Letters of Commitment or Support** - If you are relying on any other organization or business to do some of the work, provide services or equipment, or share in any non-NYSERDA cost, include a letter from that organization or business describing its commitment. Also include letters of commitment or support from businesses or organizations critical to the future commercialization, demonstration, or implementation of the project. **Absence of letters of commitment or support will be interpreted as the proposer not having commitment or support from those parties.**

Category B projects are encouraged to obtain a letter of commitment that documents their access to on-site resources.

Proposers are encouraged to obtain letters of support that document accessibility and strong links to entrepreneurs, researchers, the investment community, community resources in the surrounding geographical region (landlords, law firms, accountants, bankers, boards of directors...) or other external resources such as research laboratories,

established manufacturers or universities (e.g. interns, lab technicians, databases, alumni contacts, technology transfer offices). Evidence of an existing referral database useful to clients is also encouraged.

- Category B projects are encouraged to document the number and diversity of their revenue sources.
- **Exceptions to the Terms and Conditions** - If you do not accept the standard terms and conditions (including the recoupment provisions) as contained in the attached Sample Agreement, provide alternate terms with justification based on the risk and benefit to NYSERDA and New York State.

IV. PROPOSAL EVALUATION

Proposals will be reviewed by a Technical Evaluation Panel (TEP) and will be scored and ranked according to the following criteria. Each category will be evaluated separately.

EVALUATION CRITERIA FOR ALL CATEGORIES

- **Requirements - A negative response** to any one of the questions identified below by a check mark (✓) **may eliminate** the proposal from further consideration. **Does the proposal:**
 - ✓ Address the Program Requirements in Section II?
 - ✓ Include the required Per-Task Cost Table?
 - ✓ Include a Cost-Sharing Table with supporting documentation (required for Category B only)?
- **Overall**
 - What is the likelihood of the proposal achieving its stated goals?
 - Have the risks been identified and addressed?
 - How well does the proposer understand the project?
 - Is the proposed project likely to be the best approach to exploit the opportunity?
 - Is the proposed work technically feasible, innovative, and superior to alternatives?
 - How well did the proposer address best practices?
 - Does the proposal present a convincing plan to create a successful long-term program after NYSERDA funding ends?
- **Proposer or Proposing Team**
 - Is the project's organizational structure appropriate and does it include a single lead proposer responsible for managing all aspects of the project and ensuring project success?
 - **(Category B proposals only)** Does the lead proposer have the required physical New York State address and on-site resources for use by New York renewable and clean energy companies? Does the proposal adequately describe how those resources are appropriate for incubation purposes (e.g. conference rooms, communication systems, library, flexible leasing arrangements, flexible infrastructure to house varying numbers of clients or diverse technologies.)?

- Are roles of responsibility for individual project personnel defined and is their experience appropriate for their responsibilities?
 - How qualified is the proposer or team to perform the proposed work, based on the evidence provided?
 - Does the proposer or team show a balance of expertise appropriate for the work (technical, business, educational, training, analytical, technical communication, marketing, administrative expertise, etc. as needed)?
 - Does the team include one or more key individuals with an entrepreneurial background?
 - **(Category B proposals only)** Is an incubator director identified? Does the director have previous experience running business incubators and working with business start-ups, formal business training, a personal entrepreneurial background involving business start-ups, and/or experience teaching business skills to others?
 - Does the proposing team have a demonstrated track record of working successfully with entrepreneurs, inventors, investors, funding agencies, and/or regional development agencies?
 - Is there evidence of a good performance record on other relevant projects?
 - Does the work include appropriate coordination with NYSERDA, NYSERDA Contractors (if directed), or where appropriate, other entities such as New York and out-of state venture capital and angel funding networks or incubators?
 - How firm are the commitments from essential team participants?
 - Do the letters of support reflect strong links to the community and external resources?
- **Statement of Work (SOW) and Schedule**
- Is the SOW well-organized, clear, and complete?
 - Is the level of detail provided sufficient to adequately describe the work to be accomplished?
 - Is the SOW likely to achieve the goals of the project?
 - Has the proposer developed effective mechanisms to market their concepts to prospective clients?
 - **(Category A and B proposals only)** Are the criteria and protocol to select and assist clients appropriate? Is the amount of time to be spent directly with clients sufficient?
 - Will the project measure quantifiable benefits in a well-conceived manner?
 - Is the schedule provided in adequate detail? Does it cover four or more years of assistance? Are annual progress review reports and meetings planned?
 - Are significant, appropriate, and quantifiable milestones and delivery of reports identified?
 - Does each task list one or more specific and appropriate deliverable(s)?
 - Did the proposer identify an effective strategy to measure project success? Did the proposer specify appropriate performance goals? How likely is the project to meet the significant milestones?
 - **(Category C proposals only)** Did the proposer include tasks in the proposal to plan and develop a New York State Clean Energy Alliance?

■ Cost

- Is the overall project cost justified based on the proposed work and expected benefits?
- Is the amount of funding allocated for specific tasks reasonable and sufficient?
- How appropriate are the proposer's cofunding contributions (sources and amounts) with respect to the degree of risk, potential to benefit from the work, and financial status of the organization?
- **(Category B only)** Is the preferred 25% costsharing provided?
- **(Category B only)** Are the revenue sources supporting the work appropriately numerous and diverse?
- **(Category B only)** Is a Milestone Payment Plan proposed? Are the majority of the budgeted funds allocated based on performance milestones?
- Are capital expenditures justified? Are they specific to the scope or are they general capital investments?

OTHER CONSIDERATIONS

Proposals will be reviewed to determine if they reflect NYSERDA's overall objectives, including: the availability and quality of public data that will come out of the project, the balance among NYSERDA projects of long-term and short-term benefits, risk/reward relationships, similar ongoing or completed projects, the general distribution of NYSERDA projects among industries and other organizations, and the distribution of projects within New York State.

V. 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(d)(2) 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/killin/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/killin/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 eight weeks from the proposal due date whether a given 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 that may apply in the particular circumstances. Proposers must also disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

VI. ATTACHMENTS

Attachment A - Proposal Checklist

Attachment B - Disclosure of Prior Findings of Non-responsibility

Attachment C - Contract Pricing Proposal Form (CPPF) and Instructions (This is the budget form.)

Attachment D - Sample Agreement

(If you are selected, the Sample Agreement will form the basis of the contract you would sign with NYSERDA. Do not use Exhibits E or F of the Sample Agreement to format the proposal you are submitting now. Those are intended for the Final Report you would submit upon completion of the project.)

ATTACHMENT A - PON No. 1216 PROPOSAL CHECKLIST (MANDATORY)

Proposal Title		Due Date: October 1, 2008	
Primary Contact (Prime Contractor) name and e-mail		Title	
Company		Phone	Fax
Address	City	State or Province	Zip
Secondary Contact name and e-mail		Title	
Company		Phone	Fax
Address	City	State or Province	Zip

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

Do you accept all Terms & Conditions in the Sample Agreement? (if no, explain on separate pg) __ Yes __ No

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

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

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

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

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

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

<p>Executive Summary _____</p> <p>Statement of Work _____</p> <p>Schedule _____</p> <p>Proposer Qualifications _____</p> <p>Completed and Signed Contract Pricing Proposal Form _____</p> <p>Per-task Cost Table _____</p> <p>Cost-Sharing Table _____</p> <p>Milestone Payment Plan (Category B only) _____</p> <p>Letters of commitment from all participating organizations _____</p> <p>Exceptions to Terms & Conditions (if applicable) _____</p> <p>Indictment/Conviction of Felony (if applicable) _____</p> <p>NYSERDA Contracts Awarded (if applicable) _____</p> <p>Prior and/or Competing Proposals (if applicable) _____</p> <p>Disclosure of Prior Findings of Non-responsibility Form _____</p>	<p>To which category are you proposing? (check one).</p> <p>Proposers may choose either A or B but not both.</p> <p><input type="checkbox"/> A Early Stage Support for Developers of Renewable and Clean Products</p> <p><input type="checkbox"/> B Early Stage On-Site Support for Developers of Renewable and Clean Products</p> <p>Proposers to Category C may also submit a separate proposal to either A or B.</p> <p><input type="checkbox"/> C Analytical Support for the Early Stage Business Assistance Program</p>
---	--

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 Part I and Part II of 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 B
Disclosure of Prior Findings of Non-responsibility Form
PON 1216
(Mandatory)

Name of Individual or Entity seeking to enter the procurement contract:		
Address:		
Date:		
Solicitation or Agreement Number: PON 1216		
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 ?		Yes
		No

(Please indicate with an "X")
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: _____



NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
Contract Pricing Proposal Form

New York State Energy Research and Development Authority Contract Pricing Proposal Form - Attachment C			Solicitation/Contract No. PON 1216	Page	
Contractor:			Name of Proposed Project:		
Address:					
Location (where work is to be performed):			NYSERDA funding:		
			Total Project Cost:		
Cost Element			Total Project Cost	Funding & Co-funding via NYSERDA	Cost-sharing & Other Co-funding
1. Direct Materials					
a. Purchased Parts					
b. Other					
Total Direct Materials					
2. Materials Overhead			Rate:		
3. Direct Labor (specify names/titles)			Hours	Rate/hr	
Total Direct Labor					
4. Labor Overhead			Rate %	\$ Base	
Total Labor Overhead					
5. Outside Special Testing					
6. Equipment					
7. Travel					
8. Other Direct Costs					
9. Subcontractors/Consultants					
Total Subcontractors/Consultants					
10. General & Administrative Expense			Rate %	Element(s)	
11. Fee or Profit (If allowable) Rate:					
12. Total Estimated Project Cost					
This proposal reflects our best estimates as of this date, in accordance with the instructions to proposers.					
Typed Name and Title:			Signature:		Date:

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

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

INSTRUCTIONS FOR PREPARATION OF COST ESTIMATE

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

A. GENERAL

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

B. INSTRUCTIONS AND DESCRIPTION OF REQUIRED SUPPORT DETAIL

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

1a. DIRECT MATERIALS - PURCHASED PARTS

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

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

1b. OTHER DIRECT MATERIALS

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

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

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

3. DIRECT LABOR

- a. Commercial Enterprises

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

b. Educational Institutions

Provide the following for each calendar year of the contract:

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

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

5. OUTSIDE SPECIAL TESTING

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

6. EQUIPMENT

Capability to perform the work with existing facilities and equipment is assumed. It is NYSERDA's policy not to compensate for general purpose facilities or equipment. If some special purpose items are needed solely for this contract and are not available by other means (contractor assets, lease, etc.), then provide the following information for each item of required equipment.

- o vendor
- o model number
- o quantity
- o competitive selection process
- o unit cost and source of cost/price (i.e., quote, catalog, purchase history)
- o description of the use or application (NYSERDA dedicated, contract dedicated, other)

7. TRAVEL

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

8. OTHER DIRECT COSTS

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

9. SUBCONTRACTORS/CONSULTANTS

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

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

11. FEE OR PROFIT

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

ATTACHMENT D - SAMPLE AGREEMENT

**New York State Energy Research and Development Authority
AGREEMENT**

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

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions;
- Exhibit D, Prompt Payment Policy Statement; and
- Exhibit E, Guidelines for NYSERDA Print Deliverables.

9. ACCEPTANCE

[CONTRACTOR]

**NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY**

By _____

By _____

Name _____

Jeffrey J. Pitkin
Treasurer

Title _____

STATE OF)
) SS.:
COUNTY OF)

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

Notary Public

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

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

Agreement: The Agreement and Exhibits A, B, C, D and E 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.

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. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA.

Article III

Deliverables

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

Article IV

Compensation

Section 4.01. Payments. The Contractor will be paid, upon submission of proper invoices, the prices stipulated herein for Work delivered or rendered and accepted, less deductions, if any as herein provided. The total price which NYSERDA will pay to the Contractor represents the price of the Work. Subject to the limiting provisions of Article XII hereof, as NYSERDA's price of the Work, NYSERDA will pay to the Contractor the total price set forth in Item 7 on page one of this Agreement, payment of which will be made according to the Schedule of Payments contained in Section 4.02 hereof.

Section 4.02. Schedule of Payments. At the completion of each Milestone Billing Event so identified, the Contractor may submit invoices requesting payment by NYSERDA of the amounts corresponding to the amounts indicated below. NYSERDA shall make payment to the Contractor in accordance with and subject to its Prompt Payment Policy Statement attached hereto as Exhibit D. The Contractor shall be notified by NYSERDA in accordance with Section 504.4 (b)(2) of such Exhibit D, of any information or documentation which the Contractor did not include with such invoice.

<u>Milestone Event</u>	<u>Price</u>
<i>[to be developed]</i>	

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

Section 4.04. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in 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. NYSERDA shall have the right from time to time and at all reasonable times during the term of the Agreement and such period thereafter to inspect and audit any and all books, accounts and records at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.06 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

Article V

Assignments, Subcontracts and Purchase Orders

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

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling under \$25,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection

must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit B to the extent required by law, and all other provisions now or hereafter required by law to be contained therein.

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

Article VI

Schedule

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

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

Article VII

Force Majeure

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

Article VIII

Technical Data

Section 8.01. Rights in Technical Data.

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

(1) NYSERDA shall have:

- (i) Unlimited Rights in Contract Data except as otherwise provided below with respect to Proprietary Data; and
- (ii) no rights under this Agreement in any Technical Data which are not Contract Data.

(2) The Contractor shall have:

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

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

Article IX

Warranties and Guarantees

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

- (a) it is financially and technically qualified to perform the Work;
- (b) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any that may in any way affect the performance of this Agreement;
- (c) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted construction and design standards and best engineering practices;
- (d) all materials, equipment and workmanship furnished by it and by Subcontractors in performance of the Work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted construction and design standards and best engineering practices;
- (e) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a

basis for any claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

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

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

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

Article X

Indemnification

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

Article XI

Insurance

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

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

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

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

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

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

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

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

Article XII

Stop Work Order; Termination

Section 12.01. Stop Work Order.

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

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or
- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

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

- (i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Agreement, and
- (ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

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

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

Section 12.02. Termination.

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

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

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

Article XIII

Independent Contractor

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

Article XIV

Compliance with Certain Laws

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

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

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

Article XV

Publicity, Notices, Entire Agreement, Amendment

Section 15.01. Publicity.

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

(b) The Contractor shall not use NYSERDA's corporate name, logo, identity, any affiliation, or the service mark **New York Energy SmartSM**, 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 B, the terms of this Exhibit B shall control.

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

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

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

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

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

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

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

- a. Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b. Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c. Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.
- d. Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.
- e. NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

EXHIBIT D

PART 504

PROMPT PAYMENT POLICY STATEMENT

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

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

(1) under the Eminent Domain Procedure Law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 504.4 Payment procedures.

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

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

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; and
- (3) suspected improprieties of any kind.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 504.11 Court action or other legal processes.

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

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

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

EXHIBIT E

GUIDELINES FOR NYSERDA PRINT DELIVERABLES

PURPOSE

This document briefly describes editorial and production procedures and gives electronic data-transfer information. NYSERDA's contractors prepare the reports describing NYSERDA research and development projects that NYSERDA publishes. Please direct questions about format and style to Diane Welch of NYSERDA's Technical Communications unit: (518) 862-1090, ext. 3276; fax (518) 862-1091; e-mail dlw@nyserda.org

COPYRIGHTS

All material borrowed or adapted from other sources should be properly identified (i.e., document, source, date, and page). The contractor must obtain and submit to NYSERDA the copyright owner's written permission to use copyrighted illustrations, tables, or substantial amounts of text from another publication.

GENERAL INFORMATION

The first reference to NYSERDA should read "the New York State Energy Research and Development Authority (NYSERDA)." Subsequent references should read simply "NYSERDA." When it is clear that you are referring to New York State, use State; otherwise, use New York State or the State of New York.

- Material borrowed or adapted from external sources must be identified (i.e., document, source, date, and page). Written permission to use copyrighted illustrations, tables, or text taken from another publication must be submitted with the report.
- Avoid half-page and one-sentence paragraphs.
- Do not use contractions.
- Acronyms must be spelled out the first time used, followed by the acronym in parentheses.

ELECTRONIC REQUIREMENTS

- Material must be submitted in any of the following formats:
 - Compact disc
 - Iomega 100 PC-Zip disk
 - IBM personal computer-compatible 3.5-inch, double-sided (DS), high-density (HD) diskette
- Textual material should be created in a format compatible with WordPerfect 9. While other word-processing programs may be able to be converted, results may vary. Characteristics such as underlining, bold, italics, and special characters that often appear in equations may be lost if WordPerfect 9 is not used.

If you are unable to meet these electronic transfer requirements, before submitting material, please contact Diane Welch of NYSERDA's Technical Communications unit at (518) 862-1090, ext. 33276; fax (518) 862-1091; e-mail dlw@nyserda.org

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