Quotations Due: September 18, 2008 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (NYSERDA) is seeking quotations for **all or part of** NYSERDA's required printing services, including, pre-press, printing, photocopying, mailing services and large format items. Materials printed for NYSERDA may include, but are not limited to, perfect- or spiral-bound technical reports, manuals, booklets, folders, brochures, business reply mail pieces, postcards, business cards, letterhead, envelopes, labels, posters, presentation checks, display boards, and other printed materials.

The contract term will be three years, with the possibility for a one-year extension. Proposers must be responsive to Governor David Paterson's Executive Order No. 4 (Attachment D).

Multiple firms will be selected to provide the required printing services, should NYSERDA determine that such action is in its best interest. **Samples and references required**.

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

Roseanne Viscusi, RFQ 1225
NYS Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Diane Welch at (518) 862-1090, ext. 3276 or dlw@nyserda.org. If you have contractual questions concerning this solicitation, contact Doreen Darling at (518) 862-1090, ext. 3216 or djd@nyserda.org.

No communication intended to influence this procurement is permitted except by contacting Diane Welch at (518) 862-1090, ext.3276 or dlw@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

The New York State Energy Research and Development Authority (NYSERDA) is seeking quotations for **all or part of** NYSERDA's required printing services, including, pre-press, printing, photocopying, mailing services and large format items. Materials printed for NYSERDA may include, but are not limited to, perfect- or spiral-bound technical reports, manuals, booklets, folders, brochures, business reply mail pieces, postcards, business cards, letterhead, envelopes, labels, posters, presentation checks, display boards, and other printed materials.

Upon selection, a meeting with NYSERDA's Director of Marketing and Economic Development may be scheduled to meet staff with whom the contractor will be working.

II. Quotation Requirements

SCOPE OF WORK

Printing will be determined on a per-job basis in conjunction with NYSERDA's Marketing Department. Primary and secondary contractors will be selected for some categories of printing, including: letterhead, business cards, stationary, reports, large format items, and mailing services. A pool of contractors will be selected for other categories of printing: folders, brochures, fact sheets, postcards, and other print materials. Each contractor in the pool will be included on a mini-bid list. A bid request will be sent to all printers on the list for each printing job. Each printer will have a specified time to respond to the request; one contractor will be chosen based on the results. The award will be specific to that job and any reprints.

Proposers must demonstrate the ability to provide materials compliant with New York State Governor David Paterson's Executive Order No.4 (Attachment D), and an ability to provide same-day or rush turnaround. Immediate pick up and delivery are often required.

Each printing job will be pre-authorized in writing by NYSERDA on an as-needed basis. The contract term will be three years, with the possibility of a one-year extension.

Quotation Criteria

Quotations shall be submitted in two parts: Part I: Technical Quotation; and Part II: Cost Quotaton. A completed Quotation checklist, included as Attachment B to this RFQ, must be attached to the front of all copies. Proposers must submit ten (10) copies each of Part I and Part II. The two Parts must be in the following format:

<u>Part 1. TECHNICAL QUOTATION</u>
To meet the evaluation criteria of this solicitation for printing services, each proposer shall address in narrative form how it will satisfy the requirements discussed within this RFP. The narrative must provide adequate information to demonstrate effectively the proposer's capability to perform all the work and services required, including the following:

1. Indicate how long your firm has been in continuous operation and its lines of business and growth within the past five years.

2. Include a list of ongoing projects and projects completed within the last five years comparable to the types of printing projects listed in Section I. Proposers must include returnable samples of printing work they have done, as applicable to their proposal, including:

    - Saddle-stitch, perfect-bound, multifold samples, folder(s)
    - Brochures: one-color, two-color, four-color; single and multiple pages; a variety of folds
    - Technical and annual report
    - Postcard sample
    - Business card, letterhead, and envelopes (#10 and 9 x 12)

The proposer must note the extent of its contribution to the final product, along with a name, title, company name, address, and phone/fax numbers for contacts at the organizations for whom these services were performed. NYSERDA reserves the right to request information from any source so named.

3. List a sampling of prior/existing or proposed contracts or other forms of relationships with the State of New York, any of its other operating agencies including public authorities, and any local government.

4. List all environmental and union certifications that your firm has attained, and show any print-eligible logos, symbols, or marks affiliated with those certifications.

5. Indicate how your firm is prepared to accommodate New York State Governor David Paterson's Executive Order No. 4 (Attachment D), stipulating the use of post-consumer waste in all paper goods purchased. Please supply samples of any papers you would be likely to recommend in your bid.

6. Indicate your current workload and your ability to provide printing services in a timely manner. Proposers must be available for often same-day or rush turnaround. Immediate pick up and delivery are often required.

7. Please submit detailed information about your printing facilities; i.e., two-color press, four-color press, six-color press, in-house binding, in-house die-cutting, offset, digital, and so on. Describe your firm's resources and procedures for providing printing services and the qualifications of your account executive.

8. Provide any other significant information about your firm that is relevant to demonstrating its experience and why it is qualified to meet NYSERDA's needs.

9. Indicate whether your firm will provide the printing services directly or through another firm. Submit corporate information about proposed subcontractors.

Part 2. COST QUOTATION

The proposer must complete the Printing Cost Quotation Form (Attachment C).

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

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.

Quotations 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 quotation. Each page of the quotation should state the name of the proposer, RFQ 1225, and the page number.

The following language requesting indirect cost supporting documentation REQUIRED:

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

1. Describe the basis for the rates proposed (i.e., based on prior period actual results; based on projections; based on federal government or other independently-approved rates).

2. If rate(s) is(are) approved by an independent organization, such as the federal government, provide a copy of such approval.

3. If rate(s) is(are) based on estimated costs or prior period actual results, include calculations to support proposed rate(s). Calculations should provide enough information for NYSERDA to evaluate and confirm that the rate(s) is(are) consistent with generally accepted accounting principles for indirect costs.

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

Quotation Evaluation

All quotations that meet the requirements established in this RFQ will be reviewed and ranked by a Technical Evaluation Panel (TEP) consisting of NYSERDA staff and selected outside reviewers. Final rankings and contract award(s) will be based on the following criteria:

1. Does the proposer have adequate resources for performance, or the ability to obtain such resources as required during performance?

2. Does the proposer have the necessary and relevant experience, organization, technical qualifications, skills, and facilities, or the ability to obtain them, including subcontractor arrangements?

3. Does the proposer demonstrate it can provide a timely, often one-day, turnaround throughout the contract period?

4. Does the proposer demonstrate it can provide pick up and delivery of jobs?

5. Does the proposer demonstrate a satisfactory record of performance?

6. Does the proposer have competitive rates?

GENERAL CONDITIONS

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

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

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

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

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

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

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

Tax Law Section 5-a - NYSERDA is required to comply with the provisions of Tax Law Section 5-a, which requires a prospective contractor, prior to entering an agreement with NYSERDA having a value in excess of $100,000, to certify to the Department of Taxation and Finance (the "Department") whether the contractor, its affiliates, its subcontractors and the affiliates of its subcontractors have registered with the Department to collect New York State and local sales and compensating use taxes. The Department has created a form to allow a prospective contractor to readily make such certification. *See,* ST-220-TD (available at http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td_606_fill_in.pdf). Prior to contracting with NYSERDA, the prospective contractor must also certify to NYSERDA whether it has filed such certification with the Department. The Department has created a second form that must be completed by a perspective contractor prior to contacting and filed with NYSERDA. *See,* ST-220-CA (available at http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf). The Department has developed guidance for contractors that 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 quotations. NYSERDA will use the Sample Agreement (Attachment E) to contract successful quotations. NYSERDA expects to notify proposers in approximately six to eight weeks from the quotation due date/receipt of an application whether your quotation 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 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 this 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 also must disclose if they have ever been debarred or suspended by any agency of the U.S. Government or the New York State Department of Labor.

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Attachments:

- **Attachment A - Printing Services Quotation Checklist**
- **Attachment B - Disclosure of Prior Findings of Non-Responsibility**
- **Attachment C - Printing Cost Quotation Form**
- **Attachment D - Executive Order No. 4**
- **Attachment E - NYSERDA Sample Agreement**

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Attachment A - RFQ No. 1225 Quotation CHECKLIST (MANDATORY)

Proposal Title		Due Date: 9/18/2008	
Primary Contact (Prime Contractor)		Title	
Company		Phone	Fax
Address	City	State or Province	Zip
Secondary Contact		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 QUOTATON CAN THESE ITEMS BE FOUND?

PART I
Business History and Growth _____
List of ongoing and completed projects, names and addresses of contact and samples of print work, _____
List of prior/existing or proposed contracts with other New York State agencies _____
Current workload and ability _____
Description of printing facilities and resources _____
PART II
Attachment B (Cost Proposal) _____
Contractor's Designated Contact form (if applicable) _____
Disclosure of Prior Findings of Non-Responsibility (Mandatory) _____
Resumes for personnel and subcontractors _____

Indictment/Conviction of Felony (if applicable) _____
NYSERDA Contracts Awarded (if applicable) _____
Prior and/or Competing Proposals (if applicable) _____
Exceptions to Terms & Conditions (if applicable) _____
Completed and Signed Contract Pricing _____
Proposal Form(s) _____

AUTHORIZED SIGNATURE & CERTIFICATION

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

Signature	Name
Title	Organization
Phone	

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

Attachment B
Disclosure of Prior Findings of Non-responsibility Form

(Mandatory)

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

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

Has any Government al Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named Individual or Entity due to the intentional provision of false or incomplete information ? (Please indicate with an “X”) (Please indicate with an “X”)		Yes
		No
If you answered yes, please provide details below.		
Government Agency or Authority:		
Date of Termination or Withholding of Contract:		
Basis of Termination or Withholding: (Add additional pages as necessary)		

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

By:_____ Date:_____
Signature

Name:_____ Title:_____

ATTACHMENT C

RFQ 1225
PRINTING COST QUOTATION FORM

Please complete all sections you intend to bid on and that would be included in a potential contract. Any blank sections will eliminate you from consideration for that category only.

All pricing must include hard-copy proofs, unless otherwise indicated in a specific bid request.

NOTE: QUOTES MUST COMPLY WITH EXECUTIVE ORDER NO. 4. (ATTACHMENT D) PLEASE SPECIFY STOCK

TECHNICAL REPORTS, MANUALS, BOOKLETS

A. Turn-around time from pick-up date: _____ working days

B. Quotation for report printing: black text only (Please quote this sample bid)

Quantity:	Quote	100	300	500
Pages:	202 Pages Plus Cover			
Binding Style:	Perfect Bind			
Finished Size:	8.5 x 11			
Stock:	Covers: 80 # cover - 100% PSC Recycled bright white Text: 60 # text			
Ink:	PMS color + K/K - Covers K/K Text			
Bleeds:	None			

C. Quotation for report printing: black and color text pages combined (Please quote this sample bid)

Quantity:	Quote	100	300	500
Pages:	86 Pages Plus Cover			
Color Pages:	**11 color pages over three 8-page signatures**			
Finished Size:	8.5 x 11			
Stock:	Covers: 80 # cover Text: 60 # text			
Ink:	PMS color + K			
Binding:	Perfect Bind			
Bleeds:	None			

D. Quotation for fold-outs:

Number of Copies			
Cost per:	100	500	1,000
11x17 foldout (includes printing and insertion)			

F. Quotation for binding:

(a) Saddle-stitch: Specify maximum number of pages that can be saddle-stitched: _____pages

Please note restrictions or charges for perforating: _____

Number of Copies			
Cost per:	100	500	1,000

(b) Perfect-bind: Specify maximum number of pages that can be perfect-bound: _____pages

Number of Copies			
Cost per:	100	500	1,000

(c) Spiral binding (comb, wire O, or other): Indicate pricing policy. Please attach additional information.

Number of Copies			
Cost per:	100	500	1,000

G. Reprints:

Do you allow credits/discounts for reprints: Yes ❑ No ❑

If yes, describe how credit/discount is applied (e.g., price per page, negative, etc.):

H. Pick-up/Delivery

Does price include pick-up of original material from NYSERDA offices in Albany Yes ❑ No ❑

Does price include delivery of printed material to NYSERDA offices in Albany Yes ❑ No ❑

If not, please indicate carrier(s) used and shipping costs per carton:

Weight	Cost per Unit	Days to Ship

POCKET FOLDERS

A: Score, box, ship flat: No Gusset

- Quote 1,000 _____ 5,000 _____ 10,000 _____ 15,000 _____ +Ms
- 18.25 x 16, finished size 9x12
- Sub 100 100% PCW bright white recycled
- 2/0 black + PMS130 (spot color KO) + PMS339 + matte varnish
- Full Bleeds
- Business card die cut 1- side

B. Score, Box, ship flat: with Gusset.

- Quote 1,000 _____ 5,000 _____ 10,000 _____ 15,000 _____+Ms
- 18.25 x 16, finished size 9x12
- .5 gusset spine; .25 gusset each pocket
- Business card die cut-1 side
- 100# double-thick cover with varnish
- PMS 281 overall solid, KO white and PMS 130
- Full Bleeds

FACT SHEETS AND BROCHURES

Print, score, box, ship: Please attach additional information as necessary.

A: Fact sheets

- Quantity: 3,000; 7,500; 10,000; +Ms
- Size: 8.5 X 11
- Stock: 80# text
- Bleeds: none
- ink: 4 color process (4/0 & 4/4)

B: Brochures

- Quantity: 1,000; 3,000; 5,000; +Ms
- Size: 11 x 17 flat
- Binding: Score & fold to 8.5 x 11
- Stock: 80# cover
- Ink: 4/4 throughout with full varnish coat on outside cover
- Bleeds: Full

POSTCARDS

Print, box, ship: Please attach additional information as necessary.

- Quantity: 1,000 _____ 5,000 _____ 10,000 _____
- Size: 4.25 x 6 inches
- Stock: 80 lb
- Ink: 4/4
- Bleeds: full

BUSINESS CARDS

Print, box, ship: Please attach additional information as necessary.

- 44 business cards, 500 each
- 2/0 (K + 130)
- 80# white cover, thermography*

* If thermography is not available, please clearly indicate on your bid

LETTERHEAD

Print, box, ship: Please attach additional information as necessary.

A: letterhead

- Quote 5,000 _____ 10,000 _____ 20,000 _____
- Size: 8.5 x 11
- Paper Stock
- 2/0 K + PMS 130

B: Matching Envelopes

- Quote 5,000 _____ 10,000 _____ 20,000 _____
- Size: #10
- Paper stock
- 2/0 K + PMS 130

ENVELOPES

Please indicate paper stock.

Envelopes				
	3,000	5,000	10,000	15,000
1/0 (prints one side) #10				
1/0 (prints one side) #9				
1/0 (prints one side) 9 x 12				
1/0 (prints one side) 10 x 13				

LARGE FORMAT ITEMS - Indicate paper stock.

A: Poster Board

- Quantity: 1
- Size: 24 x 36
- Mount: 1/4" gator Board
- Laminate: Lustre Laminant

B: Presentation Check 1

- Quantity: 1
- Stock: 80# gloss coated cover
- Size: 15.5" x 36"
- Mount: 1/4" White Foam Core
- Laminate: none

C: Banners

- Quantity: 1
- Stock: 15 mil scrim vinyl or equivalent, please specify)
- Size: 24" x 72" (2' x 6')
- finishing add grommets

D: Lamination

- Quantity: 100 copies
- Size: 8.5 x 11
- Lamination 5 mil Encapsulated

E. Display Graphics

- Quantity: 3
- Size: 29.25" x 81.25"
- Bleeds: Full
- Lamination: 5 mil (please specify what you will be quoting)
- Finishing: boarder on the back for trade show booth

HAND INSERTION

Please indicate pricing for hand insertion and assembly of three ring binders, covers, spine and tabs.

MAILING SERVICES

Please list all mailing services (if any) and detail costs for such services:

RUSH CHARGES

Please detail rush charge policy:

Attachment D

EXECUTIVE ORDER

No 4: ESTABLISHING A STATE GREEN PROCUREMENT AND AGENCY SUSTAINABILITY PROGRAM

WHEREAS, the State of New York ("State") is dedicated to the simultaneous pursuit of environmental quality, sound public health, economic prosperity and social well-being; and

WHEREAS, the production, use and disposal of materials, and the generation and use of energy, can have significant impacts on environmental quality and public health; and

WHEREAS, State government is a major consumer of materials and energy; and

WHEREAS, the State's policies include conserving, improving and protecting natural resources and the environment; preventing water, air and land pollution; and enhancing the health, safety and welfare of State residents and their overall economic and social well-being; and

WHEREAS, it is the State's policy to promote cost effective methods to reduce energy and resource consumption, and reduce or eliminate the use of hazardous substances and the generation of hazardous substances, pollution and waste at the source; and

WHEREAS, the State's solid waste management priorities include reducing the generation of solid waste, reusing materials, and recycling materials that cannot be reused; and

WHEREAS, by making sound choices in the course of their daily activities, such as the commodities, services, and technology they consume, and the amount of waste they generate, State agencies and public authorities can minimize potential environmental and health impacts on workers and the public; and

WHEREAS, the State's procurement of commodities, services and technology can be enhanced through State agency and public authority choices that minimize the potential environmental and health impacts of their activities; and

WHEREAS, State government can be a leader in environmental stewardship through the use of green procurement and sustainable management practices.

NOW, THEREFORE, I, DAVID A. PATERSON, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

A. Definitions

1. "State agency" or "agency" shall mean any State agency, department, office, board, commission or other instrumentality of the State, other than a public authority.

2. "Public authority" or "authority" shall mean a public authority or public benefit corporation created by or existing under any State law, a majority of whose members is appointed by the Governor (including any subsidiaries of such public authority or public benefit corporation), other than an interstate or international authority or public benefit corporation.

B. Interagency Committee on Sustainability and Green Procurement

1. There is hereby established an Interagency Committee on Sustainability and Green Procurement (the "Committee"). The Committee shall be comprised of the Director of the Budget, the Commissioner of General Services, the Commissioner of Environmental Conservation, the Commissioner of Health, the Commissioner of Economic Development, the President of the Urban Development Corporation, the Commissioner of Transportation, the President of the Environmental Facilities Corporation, the President of the New York State Energy, Research and Development Authority, the Chair of the Power Authority of the State of New York, and the Executive Director of the Dormitory Authority of the State of New York. The Commissioner of General Services and the Commissioner of Environmental Conservation shall serve as co-chairs of the Committee.

2. Members of the Committee may designate an executive staff member to represent them and participate on the

Committee on their behalf. A majority of the members of the Committee shall constitute a quorum, and all actions and recommendations of the Committee shall require approval of a majority of the total members of the Committee.

C. Green Procurement Lists and Specifications

1. The Committee, no later than September 1, 2008, and annually thereafter, shall select a minimum of three "priority categories" of commodities, services or technology, and at least twelve "priority commodities, services and technology" within each of the priority categories, for which the Committee shall develop "green procurement lists" ("procurement lists") and "green procurement specifications" ("procurement specifications") for use by State agencies and public authorities in the procurement of commodities, services and technology. The Committee shall focus on commodities, services and technology that reasonably will: (a) reduce or eliminate the health and environmental risks from the use or release of toxic substances; (b) minimize risks of the discharge of pollutants into the environment; (c) minimize the volume and toxicity of packaging; (d) maximize the use of recycled content and sustainably managed renewable resources; and (e) provide other environmental and health benefits.

2. The Committee, no later than December 1, 2008, shall develop: (a) procurement specifications to be used for the development and issuance of new contracts and new solicitations for priority commodities, services and technology; and (b) procurement lists of priority commodities, services and technology that are available under existing procurement arrangements that satisfy the requirements of this order.

3. In developing the procurement lists and procurement specifications, the Committee shall consider the following factors: (a) protection of the public health and the environment, including the health of children and other vulnerable populations; (b) avoidance of risks from the use or release of toxic substances; (c) pollution reduction and prevention; (d) sustainable resource management and use, and sustainable manufacturing and production processes; (e) reduction of greenhouse gases; (f) the use of renewable resources, remanufactured components and recycled content; (g) waste

reduction, recyclability and compostability; (h) quality, durability and utility; (i) minimizing adverse impacts throughout a commodity's or technology's life cycle; (j) cost; (k) extended producer liability; and (l) legal and regulatory requirements applicable to the use and procurement of commodities, services and technology.

4. The Committee may review the priority categories, priority commodities, services and technology, procurement lists and procurement specifications periodically and revise or supplement them as appropriate in a manner consistent with the requirements of this section.

5. The Committee shall establish specific goals to achieve reasonable reductions in the amount of solid waste generated and paper consumed annually by State agencies and authorities. The Committee shall also develop and implement strategies to assist State agencies and authorities to achieve such reduction goals.

D. Sustainability and Environmental Stewardship Programs

1. Each State agency and authority shall develop and implement a Sustainability and Environmental Stewardship Program, which shall include:

(a) specific projects, programs and policies designed to achieve compliance with the requirements of this Order; and

(b) specific projects, programs and policies designed to reduce the public health and environmental impacts of the activities and operations of the agency or authority, including: (i) the reduction or elimination of the use and generation of toxic substances, pollution and waste; (ii) the reduction, reuse, recycling and composting of solid waste; (iii) increasing energy efficiency; (iv) increasing the use of renewable energy sources; (v) conserving water and other natural resources; and (vi) maximizing the use of environmentally preferable or "green" commodities, services and technology.

2. Commencing no later than July 1, 2008, all copy paper, janitorial paper and other paper supplies purchased by each State agency or authority shall be composed of 100% post-consumer recycled content to the maximum extent practicable, and all copy and janitorial paper shall be process chlorine-free to the extent practicable, unless such products do not meet required form, function or utility, or the cost of the product is not competitive.

3. Commencing no later than July 1, 2008, all State agency and authority publications shall be printed on 100% post-consumer recycled content paper. Where paper with 100% post-consumer recycled content is not available, or does not meet required form, function and utility, paper procurements shall use post-consumer recycled content to the extent practicable. Non-recycled content shall be derived from a sustainably-managed renewable resource to the extent practicable, unless the cost of the product is not competitive.

4. State agencies and authorities shall rely on and use the procurement lists and specifications issued by the Committee when developing new solicitations and contracts for the procurement of commodities, services and technology, and for the procurement of commodities, services and technology under existing contracts, unless the head of the agency or authority determines: (a) that such commodities, services or technology will not meet required form, function or utility; (b) the cost of the commodities, services or technology is not competitive; or (c) there is an emergency or other compelling public health or safety reason not to purchase such commodities, services or technology. Such form, function, utility or other determination shall be presented in the procurement record, and notice of the determination shall be provided to the Committee Chairs.

5. All State agencies and authorities shall, to the extent practicable: (a) implement effective programs to source separate recyclable materials, including paper, metal, glass and plastic, that will maximize materials

recovery; (b) implement effective programs to reduce waste; (c) use locally available compost, mulch and soil amendments produced from secondary materials; and (d) utilize secondary materials in construction.

E. Training and Staff

1. State agencies and authorities, no later than September 1, 2008, shall assign an employee to serve as a Sustainability and Green Procurement Coordinator ("Coordinator"). Coordinators shall be given full management support and provided with the necessary resources to enable the agency or authority to comply with this order.

2. The Committee shall design and implement training and outreach programs for Coordinators and assist them with the training of appropriate staff, vendors and contractors.

3. The Commissioner of General Services, no later than September 1, 2008, shall select an employee to serve as Director of Green Procurement, who shall assist the Commissioner of General Services in carrying out his or her duties under this order.

4. The Office of General Services, the Department of Environmental Conservation, the Environmental Facilities Corporation, and the New York State Energy Research and Development Authority are authorized to assist State agencies and authorities in complying with this order, including through the development and implementation of Sustainability and Environmental Stewardship Programs.

F. Reporting

1. The Committee, no later than December 1, 2008, shall develop a format for a progress report to be used by State agencies and authorities to inform the Committee of: (a) the progress each agency and authority has made toward achieving the goals described in or established pursuant to this order; (b) the effectiveness of the procurement lists and specifications; and (c) the specific sustainability projects that have been implemented and the effectiveness of such programs.

2. Each State agency and authority, no later than March 1, 2009, and on March first each year thereafter, shall submit a progress report to the Committee in the form and containing the information specified by the Committee. At a minimum, such report shall describe the agency or authority's efforts regarding waste reduction and recycling activities, recycled products procurement, quantities of waste generated and materials recycled, incentives and disincentives to waste reduction and recycling, and recommendations for additional measures to encourage efficient use of the State's resources.

3. The Committee, on or before June 1, 2009, and on June first each year thereafter, shall submit a report to the Governor, which shall compile the information submitted by State agencies and authorities pursuant to this section and report on progress made on the implementation of this order.

G. Sustainability and Green Procurement Advisory Council

There is hereby established a Sustainability and Green Procurement Advisory Council ("Council"), which shall consist of 11 members appointed by the Governor who have experience in the fields of green procurement, public health, waste prevention and recycling, energy efficiency, workplace safety, labor relations, environmental protection, environmental justice, or chemical manufacturing. The Governor shall select a Chair of the Council from among its members. The Council shall meet at the times requested by the Committee and provide such advice and assistance as the Committee may require.

H. Miscellaneous

1. Every agency and public authority of this State shall furnish such information and assistance as the Committee determines is reasonably necessary to accomplish its purposes.

2. Executive Order 142, issued on January 16, 1991, is hereby revoked and superseded by this Executive Order.

Given under my hand and the Privy Seal of the State in the City of Albany this twenty-fourth day of April in the year two thousand eight.

David A. Paterson
Governor

Charles O'Byrne
Secretary to the Governor

Attachment E

New York State Energy Research and Development Authority
SAMPLE AGREEMENT

1. Agreement Number:

2. Contractor:

3. Contact:

4. Award Date:

5. Contract End Date:

6. Federal ID:

7. Total Amount of Award: $

8. Commitment Terms and Conditions:

The Agreement consists of this form plus the following documents:

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

9. ACCEPTANCE

[CONTRACTOR]

By _____

Name _____

Title _____

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

By _____
Jeffrey J. Pitkin
Treasurer

STATE OF)
) SS.:
COUNTY OF)

On the _____ day of _____ in the year 2005, 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

The New York State Energy Research and Development Authority ("NYSERDA") hereby offers to retain the Contractor on the terms and conditions set forth in this Agreement, to perform the services set forth in the Statement of Work attached hereto as Exhibit A and made a part hereof (the "Work").

1. Term. This Agreement will be deemed to be effective as of the date shown in Item 4 of page one of the Agreement, and the Work will be provided by the Contractor through the date shown in Item 5 of page one of the Agreement. The Agreement may be terminated by either NYSERDA or by the Contractor upon fifteen (15) days prior written notice to the other party. In the event of such termination, compensation shall be paid to the Contractor in accordance herewith for Work performed to the date of termination.

2. Authorization. Any Work hereunder shall be provided only to the extent requested of the Contractor in a Letter of Authorization from NYSERDA's Director of Communications, which shall indicate the authorized level of funding for the Work effort and the schedule for completion of the Work effort. Any such Work effort shall be performed in a manner consistent with Exhibit A, the Statement of Work, and shall be performed expeditiously and in accordance with the completion requirements delineated in the Letter of Authorization. All Work performed under this Agreement shall be subject to the review and approval of NYSERDA, as directed by the Director of Communications.

3. Compensation. NYSERDA will compensate the Contractor at the rate set forth in the Letter of Authorization from NYSERDA's Manager of Communications. Such rate shall not exceed the rates set forth in the Rate Schedule included in Exhibit A, depending on function as delineated in Exhibit A, for services rendered in performance of the Work hereunder. The rate(s) include overhead, general and administrative expense, and profit. In no event shall the total cost to NYSERDA for the performance of Work under this Agreement exceed the amount shown in Item 7 of page one of the Agreement. The Contractor may submit monthly invoices for Work performed during the previous monthly period, and NYSERDA will pay the amount of such invoices in accordance with and subject to its Prompt Payment Policy Statement, a copy of which is 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 not included with such invoice.

4. Release by the Contractor. The acceptance by the Contractor of final payment with respect to Work under any written Letter Authorization hereunder shall constitute and operate as a release by the Contractor in favor of NYSERDA for any and all claims against NYSERDA that the Contractor might otherwise have or assert for Work, materials or equipment furnished by the Contractor and for services rendered by the Contractor pursuant to or in connection with the Work for which such final payment is made.

5. Representations. The Contractor represents and warrants to NYSERDA that:

   (a) it shall perform the Work in an efficient and expeditious manner with high diligence and skill in accordance with the best professional standards;

   (b) it has no, and shall not obtain during the course of this Agreement any, interest, financial or otherwise, direct or indirect, nor is the Contractor engaged in any business or transaction or professional activity, nor has the Contractor incurred any obligation of any nature, which is in substantial conflict with the rendering of services under this Agreement.

6. Rights to Data. All reports, records, documents, and other papers and materials prepared in connection with this Agreement, and all Work, and the product of all Work performed hereunder, shall be the property of NYSERDA, and the Contractor shall not use or disclose same except upon the prior written approval of NYSERDA.

7. Publicity. Under no circumstances shall the Contractor issue, or permit to be issued, any press release, advertisement or literature of any kind, or conduct or permit to be conducted any interview or news conference referring to the Work, except upon prior written approval of NYSERDA.

8. 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 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.

9. Assignment. 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.

10. Maintenance of Records. The Contractor shall keep, maintain and preserve throughout the term of this 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 this Agreement. NYSERDA will have the right from time to time and at all reasonable times during the term of this Agreement and such period thereafter to inspect and audit any and all such books, accounts and records.

11. Audit Adjustment. Any payment made hereunder shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by an agency of the United States, State of New York or NYSERDA not to constitute an allowable charge or cost hereunder.

12. Termination. NYSERDA reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Executive Order Number 127, signed by Governor Pataki on June 16, 2003, was intentionally false or intentionally incomplete. Further, 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 in either event, NYSERDA may exercise its termination right by providing written notification 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 Paragraph hereof entitled Term 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).

13. Compliance with Applicable Laws. In the performance of the Work hereunder, the Contractor shall comply with all applicable Federal, State and local laws and regulations, including, without limitation, the provisions set forth in Exhibit C attached hereto and made a part hereof. Further, it is the intent and understanding of the parties hereto 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. Accordingly, every such

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

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

EXHIBIT B

REVISED 1/05

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 $15,000 for the purchase goods and services:

a. Prior to entering such an agreement, the Contractor is required to provide NYSERDA with a completed and accurate certification (Form ST-220).

b. Annually, during the term of the Agreement, and, during any renewal periods (if applicable), the Contractor is required to provide NYSERDA with a completed and accurate certification (Form ST-220).

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

EXHIBIT D

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 NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under contracts. This Part constitutes NYSERDA's prompt payment policy statement as required by that section.

(b) This Part generally applies to payments due and owing by NYSERDA to a person or business in the private sector under a contract it has entered into with NYSERDA 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 NYSERDA 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) "NYSERDA" means the New York State Energy Research and Development Authority.

(b) "Contract" means an enforceable agreement entered into between NYSERDA 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 NYSERDA pursuant to a contract;

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

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

(d) "Date of payment" means the date on which NYSERDA 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 NYSERDA's Controller, located at Corporate Plaza West, 286 Washington Avenue Extension, Albany, New York 12203-6399.

(f) "Payment" means provision by NYSERDA 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 NYSERDA'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 NYSERDA 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 NYSERDA not to be liable for interest pursuant to Section 506.

(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 NYSERDA may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to NYSERDA'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, NYSERDA 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 NYSERDA for the portion working, completed or delivered, NYSERDA 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 NYSERDA of a payment due a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to NYSERDA.

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 NYSERDA 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 NYSERDA.

(b) NYSERDA 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 NYSERDA 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 NYSERDA 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, NYSERDA 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. NYSERDA 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 NYSERDA 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 NYSERDA and the date when NYSERDA 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 NYSERDA or another entity, or is specifically permitted by the contract or by other State or Federal provision and NYSERDA 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, NYSERDA 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 NYSERDA 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 NYSERDA, 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 NYSERDA.

Section 504.6 Interest eligibility and computation. If NYSERDA fails to make prompt payment, NYSERDA 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 NYSERDA 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 NYSERDA 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 NYSERDA 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 NYSERDA. 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, Corporate Plaza West, 286 Washington Avenue Extension, Albany, New York 12203-6399. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA'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 NYSERDA'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 NYSERDA 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 NYSERDA 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 NYSERDA 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 NYSERDA, provided that the Chair, upon written notice to the other Members of NYSERDA, may from time to time promulgate nonmaterial amendments of these regulations.