

Proposals Due: August 1, 2008 by 5:00 PM Eastern Time*

The New York State Energy Research and Development Authority (NYSERDA) requests proposals from individuals, firms, and teams interested in providing evaluation advisory services for the Energy Efficiency Portfolio Standard (EEPS) electric and gas efficiency programs (EEPS programs). The EEPS programs are funded by a statewide System Benefits Charge (SBC) and are designed to enhance delivery of energy efficiency products and services to accomplish the Public Service Commission's (PSC) energy efficiency goals as outlined in its June 23, 2008 Order. The scope of evaluation advisory services will encompass programs offered by NYSERDA, New York's publicly-owned utilities, the New York Power Authority (NYPA), Long Island Power Authority (LIPA), and other program administrators. The EEPS programs are currently funded at about \$176 million annually through June 30, 2011.

NYSERDA requests the services of a contractor to assist Department of Public Service (DPS) staff in (1) providing advice and consultation regarding evaluation policies, protocols, and procedures, (2) reviewing and providing comments on evaluation plans, solicitations and evaluation reports prepared by program administrators, and (3) providing ad hoc briefings, presentations, reports, workbooks, and other such reports that may be requested by DPS staff. For further information, please see http://www.dps.state.ny.us/Case_07-M-0548.htm.

The initial term of this contract will be for one year up to a maximum funding amount up to \$250,000. After the initial one-year term, the contract may be renewed annually, at NYSERDA's option, for an additional two years at, respectively, up to \$150,000 and \$100,000.

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

Roseanne Viscusi, RFQ 1265 NYS Energy Research and Development Authority 17 Columbia Circle Albany, NY 12203-6399

If you have technical questions concerning this solicitation, contact Larry Pakenas at (518) 862-1090, ext. 3247or ljp@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 Larry Pakenas (Designated Contact) at (518) 862-1090, ext. 3247 or ljp@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 a completed and signed Proposal Checklist will be returned. Faxed or e-mailed proposals will not be accepted. Proposals will not be accepted at any 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.

1. Introduction

Objective of Solicitation

On June 23, 2008, the New York State Public Service Commission (Commission) issued an Order — Case 07-M-0548, *Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, Order Establishing Energy Efficiency Standard and Approving Programs*, Issued and Effective June 23, 2008 — establishing the State's Energy Efficiency Portfolio Standard (EEPS) and approving a subset of "fast track" and "expedited" programs (EEPS programs) to commence immediately. The procedural history leading up to the Order is included therein.

The Order directed that all EEPS programs be subject to common evaluation protocols and that evaluation activities be funded at five percent (5%) of program budgets. The Order further directed that an Evaluation Advisory Group be formed to advise Department of Public Service (DPS) DPS Staff on developing evaluation protocols and to provide advice on other critical reporting issues. The Evaluation Advisory Group will consist of program administrators, stakeholders, and other State entities.

A contractor will be retained to assist NYSERDA, DPS Staff, and the Evaluation Advisory Group with the services outlined below. The purpose of this solicitation is to retain the services of an outstanding individual, firm, or team with expertise in diverse areas related to the theory and practice of evaluating gas and electric energy efficiency programs. The Contractor must have extensive experience and knowledge of the evaluation field to render credible and persuasive advice and assistance within a variety of program settings, including:

- Public benefit programs offered by public authorities, including NYSERDA, the New York Power Authority, Long Island Power Authority, and the Dormitory Authority;
- Programs delivered by investor-owned utilities;
- Programs delivered by other administrators such as energy service companies, nonprofits and municipalities.

2. CONTRACTOR REQUIREMENTS

2.1. General Requirements

The Contractor will be required to be familiar with and fully understand, in detail, the large portfolio of EEPS programs to be offered by multiple program administrators across New York. Selected responsibilities of the Contractor are listed below. The Contractor shall be available to conduct additional evaluation-related activities requested by DPS Staff and as directed by the NYSERDA Project Manager.

2.2. Requested Services

The Requested Services have been assigned letters for use in preparing Attachment C — Project Personnel, Availability, and Rates and should not be construed as indicating priority order.

- A. Establish statewide evaluation and reporting protocols for use by program administrators that include standardized evaluation techniques, terminology, and reporting formats. The protocols should relate to specific programs and to general research issues such as methods for reporting forecasted annual customer demand and energy consumption and measuring demand and energy reductions achieved by programs.
- B. Attend and participate in Advisory Group meetings.
- C. Establish evaluation priorities and recommend proportional budget allocations for program administrators

- and programs consistent with Commission guidelines.
- D. Establish an evaluation cycle for all programs offered under the EEPS.
- E. Review program progress with respect to the Commission's goals and offer programmatic recommendations based on program performance.
- F. Establish ongoing data collection requirements and recommend tracking system specifications for use by program administrators.
- G. Coordinate statewide evaluation studies such as:
 - 1. Identifying methodological issues that could be cost-effectively addressed on a statewide or regional basis. Relevant issues could include best practices for measuring free ridership, techniques for accurately measuring program costs, and studies of operating hours of efficiency measures, for example, in residential compact fluorescent lamps (CFLs).
 - 2. Identifying process, impact, and baseline market evaluation studies that might be cost effectively conducted on a statewide or regional basis (e.g., ENERGY STAR® appliance sales, appliance saturation studies, consumer behavior, economic impacts of energy efficiency programs).
 - 3. Developing a priority list of essential studies to be conducted on statewide or regional basis, and coordinating the implementation of these studies based on need, funding, and other appropriate factors.
- H. Review pertinent energy use and market trends in New York (e.g., end-use electricity consumption levels, load pockets, sales of energy consuming equipment including ENERGY STAR® appliances) as they relate to the EEPS programs and goals. Provide analysis and programmatic recommendations.
- I. Provide advice and consultation to all program administrators on evaluation policies, protocols, and procedures, as directed by NYSERDA.
- J. Review and recommend action on evaluation plans that accompany program designs submitted by program administrators
- K. Review solicitations prepared by program administrators for consultants to perform evaluations and other related tasks.
- L. Review assumptions to be used in benefit/cost tests and related cost effectiveness analyses.
- M. Review evaluation reports prepared by program administrators.
- N. Review periodic program administrator implementation progress reports.
- O. Conduct additional specific work tasks related to evaluation, as directed by the Project Manager, and assist with unplanned, *ad hoc* evaluation activities as funding is available.

2.3. Deliverables and Reporting Requirements

The Contractor shall prepare and submit the following deliverables and periodic reports:

- Ad hoc briefings, formal presentations, summaries, white papers, guidelines, workbooks, and other reports requested by NYSERDA that document the results of the work completed under the tasks assigned to the Contractor.
- Periodic progress reports will be required by NYSERDA. Reporting may include accounts of work completed, comparing scheduled with actual progress on assigned work, comparing budget with actual spending by task, identifying problems and issues of concern, suggesting appropriate resolution for problems and issues, and identifying future activities to be completed.

2.4. Contractor's Responsibility

The selected contractor under this RFQ must be available to timely complete at DPS staff request and under NYSERDA's direction all of the tasks outlined in Section 2.2. Requested Services.

The selected contractor must assume overall responsibility for all tasks and complete the deliverables listed in Section 2.3. Deliverables and Reporting Requirements of this RFQ. The Contractor must commit to begin delivery of services by September 2, 2008, or immediately upon contract execution, whichever is sooner.

2.5. NYSERDA's Responsibility

The NYSERDA Project Manager will be responsible for defining and communicating the specific work tasks to be undertaken by the Contractor. The Contractor shall then be responsible for developing work plans and deliverables, and coordinating the work with DPS staff.

3. COMPENSATION

Funding for this contract will not exceed \$500,000 over three years and will be paid in annual increments of up to \$250,000, \$150,000, and \$100,000 in the first, second, and third years, respectively. The contract will be for one year with two one-year extensions, at NYSERDA's option, for a maximum period of three years.

The firm or individual selected for participation will be offered a time-and-materials contract.

4. PROPOSAL REQUIREMENTS

Proposals will be entertained from individuals, firms, and teams. Firms and teams must identify who will have responsibility for all facets of the contracted work including invoicing and payments. Proposals must address the following areas:

4.1. Staffing and Costs

For each proposing individual, firm, or team: identify which of the Requested Services each individual is qualified to perform, each individual's name; name of firm (for teams), title, educational degree(s), area(s) of specialization, and fully loaded hourly rates for the first, second, and third years. Resumes should be included for each named individual and must clearly demonstrate each individual's ability to develop and apply industry best-practice evaluation approaches for the work anticipated under this Contract, as well as demonstrate the proposer's qualifications for overseeing complex evaluation activities.

4.2. Schedule and Contractor Availability

NYSERDA anticipates awarding a one-year contract, with the possibility of annual renewal at NYSERDA's discretion, for two additional years. The selected Contractor must begin delivery of services by September 2, 2008, or immediately upon contract execution, whichever is sooner. Proposers should refer to the June 23, 2008 Order for a discussion of EEPS reporting and compliance filing requirements.

For each individual named, the proposer must provide the average number of hours that can be devoted to the Services Requested listed in Section 2.2. above, from September 2, 2008 through September 1, 2009. Proposers must ensure that named individuals will be immediately available on short notice.

4.3. Potential Conflict of Interest

In order to avoid any real or perceived conflict of interest, consultants and firms that are currently performing program evaluation and program implementation work for NYSERDA, New York State utilities, and other potential New York program administrators, within and outside of New York, will not be selected unless they can

demonstrate that such work does not present a conflict of interest.

Proposers having any real or perceived conflict of interest may still submit a proposal. The proposer must identify the nature of any potential conflicts of interest among team members in providing services to NYSERDA and DPS under this RFQ and fully discuss possible conflicts of interest, actual and perceived, which could arise in connection with performance by team members under the proposed contract. Proposer should describe how the firm would resolve conflicts of interest.

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

Once selected, the contractor may not perform program evaluation and program implementation work for NYSERDA, New York utilities, or any other program administrator for the duration of the contract.

5. PROPOSAL FORMAT

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, effective response will not influence the evaluation of the proposal. Each page of the proposal should state the name of the proposer, the RFQ number, and the page number. The proposal must be in the following format:

Section 1: Introduction and general information about the proposer.

Section 2: Areas of expertise and relevance to required services listed in Section 2.2.

Section 3: Cost of services

Appendices: Resumes of key personnel

Client contacts and references

Section 1: Introduction and general information about the proposer. (Limit to two pages.) The proposer should provide a general description of proposer's experience and expertise and the geographic and functional scope of proposer's activities. For firms and teams, the proposer should identify the project manager who will serve as contact within the organization for all requests for services, and provide full contact information for the individual. The locations of offices that would provide services should be indicated and, if offices are located outside New York, proposer should explain how unnecessary and excessive travel costs will be mitigated.

Proposers should summarize their understanding of NYSERDA's requirements, especially with respect to their ability to provide timely assistance, their general approach to fulfilling them, and describe why NYSERDA should select the Proposer.

Section 2: Areas of expertise and relevance to requested services described above. Proposer should briefly discuss its areas of expertise and identify readiness to provide Requested Services. Proposer should group Services where appropriate. Include:

- Key staff available to provide services and qualifications to provide services
- Similar projects and services provided to existing and former clients
- Additional information Proposer deems relevant.

Resumes of personnel and client contacts and references should be included in appendices.

Section 3: Cost of Services. Proposals must include billing rates for all three years for all key personnel identified in the proposal, including the primary contact. (See attachment C.)

Attach documentation to support indirect cost (overhead) rate(s) in the 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 rates are approved by an independent organization, such as the federal government, provide a copy of such approval.
- 3. If rates are based on estimated costs or prior period actual results, include calculations to support proposed rates. Calculations should provide adequate 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 such differences. Requests may be made for financial statements or other financial information needed to support such audit.

Appendices

Resumes of Key Personnel
Client Contacts and References

6. CONTRACTOR EVALUATION

6.1. **GENERAL GUIDELINES**

As noted above, assurances of objectivity will be essential for the Contractor seeking to be selected through this solicitation.

Ability to respond in a timely manner with appropriate personnel and expertise will be considered in the evaluation process. Proposers must detail how they plan to respond promptly to requests for assistance from NYSERDA.

A proposer will be awarded a contract based on their expertise and qualifications to perform selected services outlined in this RFQ. Proposers should detail their expertise and specify the types of activities they are able to perform and are encouraged to include potentially relevant expertise and technical skills in addition to those listed in Section II. Capabilities and Expertise Sought.

6.2. CONTRACTOR SELECTION

- Proposals received by the due date and meeting the submission requirements established in the RFQ will be reviewed and ranked by a Technical Evaluation Panel (TEP) consisting of NYSERDA staff, DPS Staff, and outside experts.
- Proposals will be evaluated against each other and against the selection criteria.
- NYSERDA, through its TEP, will review each proposal and may contact references to determine
 whether a proposer has the necessary resources to successfully provide services requested
 through this RFQ.
- NYSERDA will negotiate a contract for services in fulfillment of the needs of this RFQ on the basis of demonstrated competence and qualifications. Contract negotiations may include proposer's labor rate schedules, indirect cost rate, and other direct cost estimates to ensure the work is accomplished at fair and reasonable cost. The contracts will not guarantee a specific amount of work.
- The following factors will be considered by the TEP:
 - Expertise with respect to Requested Services listed in Section 2.2.

- Previous experience in the conduct and delivery of similar services.
- Demonstrated ability to effectively and economically deliver the Requested Services.
- Costs of service

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 Qualifications. 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 not be accepted.

7. GENERAL CONDITIONS

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

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

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

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

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

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

State Finance Law sections 139-j and 139-k - NYSERDA is required to comply with State Finance Law sections 139-j and 139-k. These provisions contain procurement lobbying requirements which can be found at http://www.ogs.state.ny.us/aboutogs/rregulations/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. See

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 prospective contractor prior to contacting and filed with NYSERDA. See, ST-220-CA at Available at

http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf. The Department has developed guidance for contractors which is available on line.

Contract Award - NYSERDA anticipates making one award under this solicitation. It may award a contract based on initial applications without discussion or following limited discussion or negotiations. 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 no more than thirty (30) days following the proposal date whether the proposal has been selected to receive an award.

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

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

VI. ATTACHMENTS:

Attachment A — Proposal Checklist

Attachment B — Disclosure of Prior Findings of Non-Responsibility

Attachment C — Rate Schedule

Attachment D — Sample Agreement



NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

ATTACHMENT A - RFQ No. 1265 PROPOSAL CHECKLIST (MANDATORY)

Proposal Title		Due Date August 1, 2008		
Primary Contact (Prime Contractor)		Title		
Company		Phone	Fax	
			e-mail	
Address	City		State or Province	Zip
Secondary Contact			Title	
Company			Phone	Fax
			e-mail	
Address	City		State or Province	Zip
THE PRIME CONTRACTOR MUST SIGN THIS FO	RM BE	LOW and A	NSWER THE FOLLOWING	QUESTIONS:
Do you accept all Terms & Conditions in the Sample Agre	eement?	(if no, explai	n on separate pg)	Yes No
Have you been indicted/convicted for a felony within the p	past 5 ye	ears? (if yes,	explain on separate pg)	Yes No
Are you a Minority or Women-Owned Business Enterpris	e?			Yes No
Does your proposal contain Minority or Women-Owned B	Business	enterprises a	as subcontractors?	Yes No
Are you submitting the required number of copies? (See	proposa	al instructions	.)	Yes No
Is other public funding pending/awarded on this and/or very similar topic (prior (if yes, explain on separate page)			and/or competing proposals)?	Yes No
ON WHAT PAGE IN YOUR PROPOSAL CAN THESE ITEMS BE FOUND?				
Page Introduction and general information about proposer Areas of expertise and relevance to required services Cost of Services Page Indictment/Conviction of Felony (if applicable) NYSERDA Contracts Awarded (if applicable) Prior and/or Competing Proposals (if applicable) Exceptions to Terms & Conditions (if applicable) Completed and Signed Contract Pricing Proposal Form(s) Disclosure of Prior Findings of Non-responsibility Form			able) able)	
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		anization		
Phone				

 $\textbf{NOTE} : \textbf{This completed form } \underline{\textbf{MUST}} \text{ be signed and attached to the front of all copies of your proposal.}$



NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

Attachment B to RFQ 1265 Disclosure of Prior Findings of Non-responsibility Form (Mandatory)

Name of Individual or Entity seeking to enter the procurement co	ntract:			
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")	No			
Was the basis for the finding of non-responsibility due to a	Yes			
violation of §139-j of the State Finance Law? (Please indicate with an "X")	No			
Was the basis for the finding of non-responsibility due to the	Yes			
intentional provision of false or incomplete information to a Governmental Entity? (Please indicate with an "X")	No			
If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.				
Government Agency or Authority:				
Date of Finding of Non-responsibility:				
Basis of Finding of Non-responsibility: (Add additional pages as	necessary)			
Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-				
named Individual or Entity due to the intentional provision of false or incomplete information ? (Please indicate with an "X")	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)				
basis of Termination or Withholding: (Add add	ntional pages as necessary)			
Offerer certifies that all information provided to is complete, true, and accurate.	NYSERDA with respect to State Finance Law §139-k			
By:	Date:			
Signature Signature	Date			
Name:	Title:			

Attachment C -- Project Personnel, Availability, and Rates

1. Direct Personnel Costs

	Services to be	Average number of	Not to exceed Hourly Rates	
Name and Title	Provided (Use	hours available per		
Classification	letters, A, B, etc.	month	Minimum	Maximum

Multiplier, Including Overhead, General,	%
Administrative, and Profit or Fixed Fee	

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

- i. 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).
- ii. If rate(s) is approved by an independent organization, such as the federal government, provide a copy of such approval.
- iii. If rate(s) is based on estimated costs or prior period actual results, include calculations to support proposed rate(s). Calculation should provide enough information for NYSERDA to evaluate and confirm that the rate(s) are consistent with generally accepted accounting principles for indirect costs.

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

3. Direct Non-Personal Service Costs:

Routine direct non-personal service costs such as those listed below should be included in hourly rates.

 Travel Supplies Postage Laboratory Tests Test Equipment Rentals Computer Services 	 Overnight Mail Report Reproductions & Outside Printing Telephone
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Attachment D

New York State Energy Research and Development Authority SAMPLE 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 to	he following documents:
 Exhibit A, Statement of Work; Exhibit B, General Contract Pr Exhibit C, Standard Terms and Exhibit D, Prompt Payment Po Exhibit E, Guidelines for NYS 	ovisions, Terms and Conditions; Conditions; licy Statement; and
9. ACCEPTANCE	
[CONTRACTOR]	NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
Ву	By Jeffrey J. Pitkin
Name	Jeffrey J. Pitkin Treasurer
Title	

STATE OF COUNTY OF)		
COUNTY OF) 55		
On the d	lay of	_ in the year	, before me, the undersigned, a Notary Public in and
for said State, person	nally appeared _		, personally known to me or proved to me on
the basis of satisfact	ory evidence to b	be the individual(s)	whose name(s) is/are subscribed to the within
instrument and ackn	owledged to me	that he/she/they exe	ecuted the same in his/her/their capacity(ies), and that
by his/her/their sign	ature(s) on the in	strument, the indivi	duals(s), or the person upon behalf of which the
individual(s) acted,	executed the doc	ument.	
		-	Notary Public

Exhibit A

Statement of Work

(To be developed between NYSERDA and Contractor)

EXHIBIT B

GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

Article I

Definitions

Section 1.01. <u>Definitions</u>. 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.

<u>Agreement</u>: 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.

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

<u>Contract Data</u>: 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.

<u>Contractor</u>: The Contractor identified in Item 2 of page one of the Agreement.

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

<u>Person</u>: 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.

<u>Proprietary Data</u>: 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.

<u>Subcontract</u>: 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.

<u>Subcontractor</u>: 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.

<u>Unlimited Rights</u>: 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.

<u>Work</u>: 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. <u>Manner of Performance</u>. 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. <u>Project Personnel</u>. It is understood and agreed that the "Contact Person" identified in Item 3 of page one of the Agreement shall serve as Project Director and as such shall have the responsibility of the

overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. NYSERDA shall be notified in writing of any change of Project Director by the Contractor.

Article III

<u>Deliverables</u>

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

Article IV

<u>Payment</u>

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

- (a) <u>Staff Charges</u>: The Contractor shall be compensated for the services performed by its employees under the terms of this Agreement at the employee's actual wage rate.
- (b) <u>Direct Charges</u>: The Contractor shall be reimbursed for reasonable and necessary actual direct costs incurred (e.g., equipment, supplies, travel and other costs directly associated with the performance of the Agreement) to the extent required in the performance of the Work in accordance with the provisions of the Budget. Travel, lodging, meals and incidental expenses shall be reimbursed for reasonable and necessary costs incurred. Costs should generally not exceed the daily per diem rates published in the Federal Travel Regulations. Reimbursement for the use of personal vehicles shall be limited to the Internal Revenue Service business standard mileage rate.
- (c) <u>Indirect Costs</u>: The Contractor shall be reimbursed for fringe benefits, overhead, general and administrative (G&A), and other indirect costs included in the Budget at such rates as the Contractor may periodically calculate, consistent with appropriate federal guidelines or generally accepted accounting principles.

Furthermore, NYSERDA shall have no liability under this Agreement to the Contractor or to anyone else beyond funds paid to NYSERDA by third parties for the purposes of this Agreement.

Section 4.02. <u>Progress Payments</u>. The Contractor may submit invoices for progress payment no more than once each month or no less than once each calendar quarter for Work performed during such period.

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

- (a) Staff charges: for each employee, the name, title, number of hours worked, hourly rate and labor extension;
- (b) Direct charges: all direct costs shall be itemized on the invoice and supported by documentation, such as vendor invoices, travel vouchers or other documentation; and
 - (c) Indirect charges: indirect cost rates and method by which rates are applied.

The Contractor shall be notified by NYSERDA in accordance with Section 504.4 (b)(2) of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, of any such information or documentation which the Contractor did not include with such invoice.

In accordance with and subject to the provisions of such Exhibit D, NYSERDA shall pay to the Contractor, within the prescribed time after receipt of an invoice for a progress payment, 90% of NYSERDA's share of the amount so requested, unless NYSERDA should determine that any such payment or any part thereof is otherwise not properly payable pursuant to the terms of the Agreement or the Budget.

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

Section 4.04. <u>Final Payment</u>. 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. <u>Release by the Contractor</u>. 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. <u>Maintenance of Records</u>. 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. <u>Maximum Commitment</u>. 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. <u>Audit Adjustment</u>. 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. <u>General Restrictions</u>. 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 \$15,000, 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. <u>Performance</u>. 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. <u>Schedule</u>. 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. <u>Acceptance of Work</u>. 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.

Section 6.03. Option to Renew. NYSERDA shall have an option to renew this Agreement, at NYSERDA's discretion, for two additional one year periods, upon the same terms and conditions as this Agreement. NYSERDA may exercise its option by providing written notice to Contractor not less than 30 days prior to the expiration of the initial term or any subsequent renewal term.

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

Contract Data

Section 8.01. Rights in Contract Data.

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

- (1) NYSERDA shall have Unlimited Rights in Contract Data.
- (2) The Contractor shall have no rights in Contract Data unless expressly provided by NYSERDA.

The Contractor agrees to keep all Contract Data confidential except to the extent that NYSERDA agrees to disclose Contract Data.

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 §139-k is complete, true, and accurate.

Article X

Indemnification

Section 10.01. <u>Indemnification</u>. 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. <u>Maintenance of Insurance; Policy Provisions</u>. 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 <u>Types of Insurance</u>. 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. <u>Types of Insurance</u>. 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.

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- (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 <u>Payment</u> 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 certifications filed by the Contractor in accordance with State Finance Law §139-k, were 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 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. <u>Independent Contractor</u>. 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. <u>Laws of the State of New York</u>. The Contractor shall comply with all of the requirements set forth in Exhibit C hereto.

Section 14.02. <u>All Legal Provisions Deemed Included</u>. 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, lo	ogo, identity, any affiliation, or the
service mark New York Energy \$mart□, and any related logo, without	at 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. <u>WAGE AND HOURS PROVISIONS</u>. 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. <u>INTERNATIONAL BOYCOTT PROHIBITION</u>. 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. <u>SET-OFF RIGHTS</u>. 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. <u>CONFLICTING TERMS</u>. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit C, the terms of this Exhibit C shall control.
- 7. <u>GOVERNING LAW</u>. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
- 8. <u>NO ARBITRATION</u>. 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. <u>PERMITS</u>. 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. <u>PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS</u>. 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. <u>COMPLIANCE WITH TAX LAW SECTION 5-a</u>. 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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